

# READING LAW THREE SUGGESTIONS FOR LEGAL EDUCATION

*Peter Dewitz*

## INTRODUCTION

IT is often argued that reading is reading, meaning that once one has acquired good reading skills any text is equally accessible. A significant amount of research now exists to refute that claim. Indeed, the opposite may be true; each genre we read requires the use of special knowledge plus the tools or strategies to use that knowledge. Legal texts can be considered a genre, and success with legal texts is based on some general reading skills, as well as specific knowledge of that genre.<sup>1</sup> The goal of this article is to explore how to read law and what can be done to assist the beginning law student. The article proceeds by first considering what we know about reading comprehension and the difference among adult readers. Next, I discuss what is specific about reading legal texts, and finally, how law schools might assist beginning law students reading for understanding.

## I. READING COMPREHENSION

The simple view of reading argues that reading is the product of decoding and comprehension.<sup>2</sup> Decoding is the set of skills we use to recognize and identify words. Decoding for the fluent adult reader is an almost automatic process based on orthographic knowledge (spelling patterns) and phonological knowledge (letter sound associations). For almost all law students decoding is well developed and fluent. While law students will occasionally encounter new terms, almost all can be identified through basic decoding or phonics principles. Decoding a word, however, does not mean that the reader has access to its meaning, and legal texts are full of new terms which represent new concepts (e.g. *situs*, *in itinere*) and new meanings for old labels.

Reading comprehension is based on decoding ability, but requires three additional important types of knowledge—domain knowledge, text structure knowledge, and strategic knowledge. The most important factor that affects comprehension ability is the knowledge that the reader brings to the page.<sup>3</sup> Reading

---

\* Professor, Curriculum, Instruction and Special Education, School of Education, University of Virginia. Ph.D. in Education, Claremont Graduate School (1976).

1. See James F. Stratman, *The Emergence of Legal Composition as a Field of Inquiry: Evaluating the Prospects*, 60 REV. EDUC. RES. 153, 159-61 (1990).

2. Philip B. Gough & William E. Tunmer, *Reading and Reading Disability*, 7 READING & SPECIAL EDUC. 6, 7 (1986). Decoding is a more general term for phonics. Several processes can be used to recognize words, visual skills, contextual skill, and phonics. All of these skills operate automatically and almost effortlessly in the mature reader. *Id.*

3. Richard C. Anderson & P. David Pearson, *A Schema-Theoretic View of Basic Processes in Reading Comprehension*, in 1 HANDBOOK OF READING RESEARCH 255, 259-69 (P. David Pearson et

is a constructive process, in which the reader builds an interpretation of a text based on information provided by the author and knowledge that the reader possesses. What readers know determines what they will comprehend. Lacking knowledge in a given domain, the reader cannot make sense of new information—we need to know something about physics to understand a physics text. Studies in areas other than law document that differences in reading comprehension among adult readers can be explained by differences in domain knowledge.<sup>4</sup> To comprehend legal text requires knowledge of case law, jurisprudence, legal theory, and so forth. Thus, the novice is at a serious disadvantage compared to the expert, but that is why she goes to law school.

The second type of knowledge is an understanding of text structure.<sup>5</sup> The more a reader knows about the structure or organization of a text the more smoothly comprehension can proceed.<sup>6</sup> Text structure knowledge is the knowledge a reader possesses about the overall organization of a text.<sup>7</sup> When we read a newspaper article we know that the most important points will be located in the first sentence and paragraph. The rest of the article will elaborate on the opening information. Knowing this, we can focus our attention on the beginning or the lead and stop reading when we have learned what we want to know. Readers use text structure knowledge as a map to locate important information.

Readers develop text structure over time. At first, children learn about narrative structure, setting, characters, problem, plot, and resolutions. Next, students begin to learn about and read expository text with a variety of structures, including hierarchical lists, problem solution, chronology, and cause and effect. Legal cases and legal briefs present new text structures and a new challenge for just-graduated college students who have spent four years reading narratives or expository text structures.

Legal cases have their own unique structure, and they typically include a summary of previous proceedings, issues or disputes, a rationale of the reasoning, decisions, and the rule. Experts use their knowledge of this structure to guide their comprehension. The expert reader will first locate the facts of the case, then the decision, and finally read to understand the rationale behind the reasoning. Informal interviews with law professors easily highlight their text structure

---

al. eds., 1984). This chapter presents the basic precepts of schema theory as an explanation for reading comprehension. A schema is an abstract representation of stored knowledge. During reading, comprehension occurs when the reader can match the text information to the pre-existing schema. The new is interpreted in light of the old. The existing schema fills in the gaps in the text and allows for many kinds of inferences. When we read "Marge looked at the menu," our schema tells us that she is most likely in a restaurant. Our schemata allow us to supply the information that author omits.

4. See Peter P. Afflerbach, *The Influence of Prior Knowledge on Expert Readers: Main Idea Construction Strategies*, 25 *READING RES. Q.* 31, 35 (1990); Barbara Graves & Carl H. Fredericksen, *Literary Expertise in the Description of Fictional Narrative*, 20 *POETICS* 1, 18 (1991).

5. Bonnie J.F. Meyer & G. Elizabeth Rice, *The Structure of Text*, in 1 *HANDBOOK OF READING RESEARCH* 319, 319 (P. David Pearson et al. eds., 1984). The concept of text structure in the present article refers to the organizations of a text existing above the paragraph level including the macropropositional level and the top-level structures.

6. Bonnie J.F. Meyer et al., *Use of Top-Level Structure in Text: Key for Reading Comprehension of Ninth-Grade Students*, 16 *READING RES. Q.* 72, 96-100 (1980).

7. Meyer & Rice, *supra* note 5, at 323.

knowledge. Many will describe or acknowledge seemingly insignificant but important strategies for reading a case, like first searching out the decision, and then reading the rationale and other parts of the case. Research evidence suggests that law students can improve their comprehension of legal texts by directly teaching them the structure of those texts.<sup>8</sup>

The third type of knowledge used by a reader is strategic knowledge.<sup>9</sup> A reading strategy is a set of mental processes or tactics used by a reader to achieve a purpose.<sup>10</sup> Strategies are intentional, flexible, and self-evaluative.<sup>11</sup> For most of our reading, strategies are used in a relatively unconscious manner, yet reading difficult material often makes these strategies more conscious and intentional.<sup>12</sup> For example, when understanding is difficult, a reader may choose to reread, summarize, or consult an alternative text, like a hornbook. A reader is also flexible in the use of strategies. At times it is important to make an inference, to build causal coherence where the author failed to be explicit. At other times a reader may summarize as a means of holding on to the gist of the text or she may create an image or a visual diagram to clarify complex causal relationships. Readers act strategically when they set a purpose for reading, search for important information, make inferences, summarize, and monitor the developing meaning.

There are three broad categories of strategies that readers employ as they move through a text—problem formation strategies, default strategies, and rhetorical strategies.<sup>13</sup> Readers use problem formation strategies to set expectations for a text.<sup>14</sup> They ask themselves questions, make predictions, and hypothesize about the developing meaning. In these problem formation strategies the reader might pose questions about the forward direction of the text or she might look back to wonder why an event occurred or whether an argument was sound.

Default strategies represent the summarizing, paraphrasing, and retelling that readers employ to build an on-going sense of the text.<sup>15</sup> For most of our reading, we are building our own representation of the text and we use both our existing

---

8. See Mary A. Lundeberg, *Metacognitive Aspects of Reading Comprehension: Studying Understanding in Legal Case Analysis*, 22 *READING RES. Q.* 407-417-32 (1987).

9. Scott G. Paris et al., *The Development of Strategic Readers*, in 2 *HANDBOOK OF READING RESEARCH* 609, 610-11 (Rebecca Barr et al. eds., 1991).

10. *Id.*

11. See Michael Pressley et al., *Strategies That Improve Children's Memory and Comprehension of Text*, 90 *ELEMENTARY SCH. J.* 3, 3-32 (1989).

12. See Sharon B. Kletzien, *Strategy Use by Good and Poor Comprehenders Reading Expository Text of Differing Levels*, 26 *READING RES. Q.* 67-81 (1991) (finding that good high school comprehenders used more reading strategies as the text became more challenging).

13. See Dorothy H. Deegan, *Exploring Individual Differences Among Novices Reading in a Specific Domain: The Case of Law*, 30 *READING RES. Q.* 154, 157-58 (1995). These terms are peculiar to Deegan and represent summary terms for strategies that often are given more specific labels. For a more thorough treatment of strategy labels, see MICHAEL PRESSLEY & PETER AFFLERBACH, *VERBAL PROTOCOLS OF READING: THE NATURE OF CONSTRUCTIVELY RESPONSIVE READING* 1-14, 119-40 (1995); Janice A. Dole et al., *Reading Comprehension Instruction*, 61 *REV. EDUC. RES.* 239, 242-49 (1991).

14. Deegan, *supra* note 13, at 157-58.

15. Rand J. Spiro, *Constructive Processes in Prose Comprehension and Recall*, in *THEORETICAL ISSUES IN READING COMPREHENSION: PERSPECTIVES FROM COGNITIVE PSYCHOLOGY, LINGUISTICS, ARTIFICIAL INTELLIGENCE, AND EDUCATION* 245, 255 (R.J. Spiro et al. eds., 1980).

schema and the ideas presented by the author to do so. In the act of reading there are two texts, the text provided by the author in print and the text we build in our head. Our internal paraphrasing and summarizing are the default strategies we use to build this internal text. Much of these default strategies demand inferences, using information from our background knowledge to flesh out the ideas in the text and using the specifics of a text to elaborate the abstract knowledge of our schema. When we read about a Queen Anne chair, our abstract chair schema gives us the general structure and function of a chair, and the text makes that structure specific to Queen Anne chairs—unless you grew up in a Danish Modern home.

Rhetorical strategies go beyond the text itself as the reader comments and evaluates the ideas read.<sup>16</sup> According to Haas and Flowers, "*Rhetorical strategies* take a step beyond the text itself. They are concerned with constructing a rhetorical situation for the text, trying to account for author's purpose, context, and effect on the audience."<sup>17</sup> In reading law we might try to fit the case in a historical setting, question the decision or the rationale, and comment on the clarity of the judge's writing.

Being strategic is part of the overall self-regulated nature of reading. Readers constantly monitor their reading, noting when comprehension is proceeding smoothly and when difficulties occur. When comprehension breaks down, readers attempt to repair their problems through rereading the text, summarizing, making inferences or consulting outside help. This twofold nature of self-regulation, monitoring of comprehension and repair of comprehension breakdown is called metacognition.<sup>18</sup> Metacognition, or thinking about thinking, is critical to a reader's success, especially when reading challenging texts.<sup>19</sup>

All readers use strategies; the use of strategies depends on the difficulty of the reading material, the maturity of the reader, and the context of the reading. When text is relatively easy, it poses few demands on the reader and we are largely unaware of the strategies we employ; but as text becomes more demanding, we become aware of our own comprehension or lack of it, and maybe even our use of strategies to resolve comprehension breakdowns. Mature and immature readers alike employ reading strategies, but mature readers do so with greater efficiency and success.<sup>20</sup> Finally, the social context in which we read influences our use of strategies. In school, where critical and evaluative thinking is prized, rhetorical strategies may be more prevalent than in the beach reading of the latest Grisham novel, where problem formulating and default strategies are sufficient.

---

16. See Deegan, *supra* note 13, at 161.

17. Christina Haas & Linda Flowers, *Rhetorical Reading Strategies and the Construction of Meaning*, 39 C. COMP. & COMM. 167, 176 (1988).

18. Scott G. Paris et al., *Meta-metacognition: A Review of Research on Metacognition and Reading*, in *DIALOGUES IN LITERACY RESEARCH* 143, 153 (John E. Readence et al. eds., 1988).

19. See Linda Baker & Ann L. Brown, *Metacognitive Skills and Reading*, in 1 *HANDBOOK OF READING RESEARCH* 353, 354 (P. David Pearson et al. eds., 1984).

20. Peter Dewitz et al., *Effects of Inference Training on Comprehension and Comprehension Monitoring*, 30 *READING RES. Q.* 154, 154-71 (1987).

## II. READING LAW BY EXPERTS AND NOVICES

After four years of undergraduate education, often from distinguished universities and brandishing strong grade point averages and high LSAT scores, first year law students are novices. They must begin to learn a vast new body of information which must be gleaned from texts that are often difficult, and, at times, worse. Scott Turow, then a beginning law student and now a successful novelist, compared legal case reading to “something like stirring concrete with my eyelashes.”<sup>21</sup> Beginning law students are plagued by three problems that parallel the type of knowledge essential to successful reading. They lack conceptual knowledge; they do not know how legal texts are organized; and they are ignorant of the reading and learning strategies of legal experts.<sup>22</sup>

### A. *Use of Background Knowledge*

A novice reader of the law simply lacks the background knowledge necessary to comprehend what she reads. Lacking the rich conceptual base of the expert, her comprehension will be impaired. When a reader attempts to read an unfamiliar text several things happen. First, she has difficulty with new terms and new meanings for old terms. For example, if a text stated: “If one of the supposed parties is wanting’ there is an absence of ‘one of the formal constituents of a legal transaction’”<sup>23</sup> the novice is likely to read the word *wanting* to mean *desiring* rather than *lacking*. These word meaning confusions compromise the meaning the reader is attempting to create. The novice copes with this confusion by making inferences which result in future misunderstanding. So in the preceding passage, the novice may interpret the text to mean, “Only one party has to want a contract?” When meaning breaks down, the natural strategy is to make inferences based on what you already know. Since the novice knows little, the inference often leads the reader to misunderstand the text.<sup>24</sup>

Lack of background knowledge will also seriously affect the search strategies of the novice reader. One goal of the successful reader is to identify the important ideas in a text and ignore the trivia. Good readers allocate their attention and memory to salient or important information. Determining what is important can be accomplished through the use of two complementary strategies—one is reader-based and the other is text-based.<sup>25</sup>

For knowledgeable readers, background knowledge acts as a screen or filter for what they read. Being knowledgeable about a subject allows the reader to compare

---

21. SCOTT TUROW, ONE L 30-31 (1978).

22. See Lundeberg, *supra* note 8, at 417

23. *Id.* at 415.

24. See Jill E. Olschavsky, *Reading as Problem-Solving: An Investigation of Strategies*, 12 READING RES. Q. 654, 666 (studying the thinking strategies of good and poor high school readers confronted with difficult text). The strategies that are exhibited by poor adolescent readers parallel those of novice law students’ first readings of the law.

25. See Peter N. Winograd, *Strategic Difficulties in Summarizing Text*, 19 READING RES. Q. 404, 421-22 (1984).

the text being read to her stored conceptual knowledge. If a reader is knowledgeable about conflicts of law, she will use her knowledge structures to swiftly focus her attention on important aspects of the text.<sup>26</sup> In this way the expert is at a superior advantage to the novice. When the expert reads in her field it is like the chess master surveying a chess game. The chess board is alive with predictable patterns that are easy to comprehend. To the novice chess player, the game board is a random array of black and white pieces.

The novice reader of the law, lacking extensive background knowledge, will find it difficult to determine importance in legal cases, and must therefore rely on text-based strategies. Text-based strategies, while at times inferior to reader-based strategies, can be efficient, but they rely more on the use of text structure knowledge to locate important information.<sup>27</sup> In a text-based strategy, the reader follows the text structure, the pattern of organization created by the author, to locate the important ideas. Some texts make this strategy very functional. The author creates a clear structure through the use of headings, subheadings, introductions, and conclusions. The reader follows this structure like a map to locate the important information. Following the text structure clues created by the author will help many readers locate important information. Only two problems limit the utility of this approach—the clarity of the text structure and the reader's knowledge of text structure patterns.<sup>28</sup>

### *B. Use of Text Structure*

Research on expert and novice readers of legal text reveal differences in text structure knowledge. The experts, law professors or practicing lawyers, use text structure knowledge far more frequently than do novice readers.<sup>29</sup> Experts attend to headings and use them to guide their reading. The expert begins reading a text by reading the headings, noting the parties involved in the case, the type of court, the date, and the name of the judge. Interviews with novice readers reveal much less use of text structure support. Novices do attend to the parties, but ignore the rest of the contextual information. These reading differences between experts and novices are both reader-based and text-based. The novice lacks both prior knowledge of the law and familiarity with the structure of a legal case.

The difference between the expert and the novice is further revealed in how they read a case after establishing, or in the case of most novices, failing to establish, the facts of the case. The experts previewed the decision, examined the length of the case, located the action taken, and studied the facts more consistently than did the novice. Lundeberg reported that:

---

26. See *id.* at 421.

27. See *id.* at 421-22.

28. See Isabel L. Beck & Margaret G. McKeown, *Expository Text for Young Readers: The Issue of Coherence*, in KNOWING, LEARNING AND INSTRUCTION: ESSAYS IN HONOR OF ROBERT GLASER 47-50-60 (Lauren B. Resnick ed., 1989); P. David Pearson & Linda G. Fielding, *Comprehension Instruction*, in 2 HANDBOOK OF READING RESEARCH 815, 827-32 (Rebecca Barr et al. eds., 1991).

29. See Lundeberg, *supra* note 8, at 417

One of the first strategies the experts used when I handed them the photocopied case was to flip to the end of it, and mark the *decision* (which usually tells in one or two words how the judge decided the case—whether he or she supported it or reversed it). The experts, on some level, knew that having this information prior to reading the rest of the case would be beneficial.<sup>30</sup>

In contrast the novice rarely if ever notes the decision prior to reading the case. These simple strategies, which Scott Paris calls cognitive secrets,<sup>31</sup> explain the success of an expert compared to the novice. Lundeberg reports that while the expert uses the text structure to locate important information, the novice allocates time and attention to remembering who is the plaintiff and the defendant.<sup>32</sup>

Finally, the expert's and the novice's use of time also reveals their different style of reading. Experts actually read the beginning of cases slower than the novice, trying to firmly establish the facts. After this slow introductory reading, the expert is then able to read the case at twice the rate of the novice. In contrast, the novice reads each portion of a case at an almost equal rate, albeit slower than the expert. The novice is much like the beginning distance runner who does not know how to set a pace that is sustainable through a long and difficult race.

### C. Use of Strategies

Experts and novices also differ in the thinking strategies they use while reading a legal text. Deegan analyzed the reading strategies of stronger and weaker beginning law students.<sup>33</sup> Two differences emerge in Deegan's research. First, strong law students employ more problem formation strategies than do weaker students. The strong students make more predictions while they read and ask themselves more questions. Thus, their reading has a stronger sense of purpose and inquiry than does the weaker reader. While the weaker students engage in less problem-formation strategies, they spend their time summarizing and retelling the content of the material. Since we have already seen that they are prone to misunderstandings, these summaries may be amiss. Even when the weaker law students employed problem-formation strategies, they were less persistent and resolved fewer of the problems that they defined. The use of problem-formation strategies was found to be a better predictor of first year grades in law school than LSAT scores or a student's undergraduate grade point average.<sup>34</sup>

Deegan provides some interesting transcripts that model the thinking process of the successful law student. In the example, students were asked to read about enterprise liability theory which was never directly defined in the passage, but the

---

30. *Id.* at 413.

31. *See* Paris et al., *supra* note 9, at 153.

32. *See* Lundeberg, *supra* note 8, at 414.

33. *See* Deegan, *supra* note 13, at 157-58. In a think-aloud protocol, the reader reads a text and stops periodically to talk about what they are thinking. These oral protocols are analyzed and categorized to capture the thinking of subject. Think-aloud protocols have been validated as an effect means of understanding the thinking of a reader. *See* PRESSLEY & AFFLERBACH, *supra* note 13, at 1-14, 119-40.

34. *See* Deegan, *supra* note 13, at 166.

principles were clearly presented.<sup>35</sup> The following is taken from a think-aloud of a successful first-year student:

OK, here's this word enterprise liability theory again, which I sort of glossed over at the beginning. So I'm gonna go back and make sure I knew what he was talking about when he was saying enterprise liability in the first paragraph [flips back and reads] "genesis of current theories of enterprise liability" So he must just be talking about the liability of not just the individual but corporations, for instance, or insurance companies or whatever. So now I link that back into what he's talking about [reads silently]. And this thing called enterprise liability theory Apparently that's the traditional theory, but I'm not sure [writes in margin "i.e. the traditional theory?"] which is to be contrasted with the social welfare theory But again, I'm not sure that's what he's getting at.<sup>36</sup>

At this point, Deegan points out that the reader has developed an interpretation of enterprise liability theory, and while his current thinking is wrong, he has left the issue open and several paragraphs later returns to resolve his partial misunderstanding.<sup>37</sup>

OK, OK, now I'm back to enterprise liability Now more of this is becoming clear. Enterprise liability is *not* a traditional theory, because he talks about that it pursues two of the traditional goals of tort law, which I understand are these [flips back in text] the three that I wrote here. [reads aloud] "But it greatly attenuates the remaining goals, that of condemning the traditional blameworthy conduct" which is the deterrence aspect. Now that makes sense, now I see that distinction a little more clearly<sup>38</sup>

Skimming and reading, the student continues to work to resolve his developing understanding of the passage:

So before in this I was going through the whole passage, I thought that enterprise theory was to be distinguished from the social welfare aspects. And now I realize that they are the same. So I'm confident as I go through it again, its gonna make sense.<sup>39</sup>

In contrast, less successful law students read in a very different manner. They, too, open up questions or problems, but more quickly resolve them. They make connections across ideas that should not be made, and construct inferences based on faulty understanding of words and sentences.<sup>40</sup> In many cases, they do not know that they do not understand.<sup>41</sup> Less successful law students list what they have read, summarize, and rely on ineffective strategies even when the meaning of a passage

---

35. *Id.* at 164.

36. *Id.*

37. *Id.*

38. *Id.* at 164-65.

39. *Id.* at 165.

40. *Id.*

41. *Id.*



does not become clear<sup>42</sup> Similar problems have been noted with high school and undergraduate college students.<sup>43</sup> As Deegan points out, rhetorical strategies can be dangerous, especially when readers attempt to comment on or evaluate the ideas in a text before they understand them.<sup>44</sup> All readers would be advised to refrain from judging a text until they develop a full and accurate representation of its ideas.

The reading of a legal case is rarely accomplished in one or two linear moves through the text. Think-aloud protocols of experts and novices reveal that the expert is the more cautious and thorough re-reader. Compared to the novice, the expert spends more time analytically re-reading the text, noting important facts, marking the rule in the case, and underlining key terms. Novices tend to underline on the first reading of a case with the same frequency as the expert, but then engage in much less close re-reading.

Given the difficulties faced by reading legal text, most law students attributed their problems to themselves and not to the text. When interviewed about their difficult reading assignments they comment:

I feel like an idiot. Why is this so hard for me to figure out?

I don't have a logical mind.

I don't have any idea what the issue is: I lost my concentration on the second page.<sup>45</sup>

Few law students attribute their difficulties to the text or the new conceptual problems that they face. Similar findings were noted in a study of women's experiences at one Ivy League law school.<sup>46</sup> These negative and personal attributions are somewhat surprising given the academic success almost all law students have experienced during their undergraduate years. When law students have reading problems and then attribute their difficulties to themselves it is incumbent on law schools to address these problems. Luckily these issues can be resolved with reasonably easy changes in regular law school classroom instruction and in short introductory seminars on successful learning strategies.

### III. ASSISTING THE NOVICE: SUGGESTIONS FOR LEGAL EDUCATION

Deficiency in background knowledge, text structure knowledge, and reading strategies limit the effectiveness of the novice reader of a legal text. These problems are not easily separated, but for the sake of clarity they will be examined one-at-a-time. Each of these deficiencies can and should be addressed, and none require significant changes in legal education.

---

42. *Id.*

43. Several researchers have investigated the comprehension strategies used by good and poor readers. Strategy use by high school students parallels that of law students. *See* Kletzien, *supra* note 12, at 67-86.

44. Deegan, *supra* note 13, at 166.

45. Lundeberg, *supra* note 8, at 416.

46. *See* Lani Guinier et al., *Becoming Gentlemen: Women's Experiences at One Ivy League Law School*, 143 U. PA. L. REV. 1 (1994).

Legal educators need to address the background knowledge deficits of the beginning law student. Granted, one pursues a legal education to learn the law, so a lack of background education is not unexpected; yet changes in how texts are used in a law school class can have significant impact on students' comprehension. When a text is used for any class, the instructor has three opportunities to affect a students' understanding—before the text is read, while the text is being read, and after the text is read. Instruction at each time can have significant benefits. The most useful changes can come from how readings are introduced to students.

Research has demonstrated that what is discussed before a text is read can influence students' subsequent understanding.<sup>47</sup> The key factor is to provide students with some of the background knowledge that will be necessary to understand the readings. For some professors this may seem like spoon feeding, but in actual experience the benefits to students are significant. When experts read a text, they are typically familiar with the key terms in the text and have a strong grasp of the concepts that underlie it. The understanding of the novice is greatly facilitated when some of this information is presented before the text is read. Indeed, many students sense this and deliberately choose to read the text after, and not before, a class discussion, even risking the penalty of being called on to recite in class.

There are several approaches that can be used to provide students with the prior knowledge necessary to comprehend a text. Often a simple oral preview is enough to give students the necessary background. Tell the students that their next set of readings will cover the following concepts and then list them. Write the concepts on the board and provide a brief example. Examples are more powerful than definitions. When new material is to be learned, start with concrete examples and then move to the abstract. Typically, a ten minute preview will greatly enhance the students' comprehension of the text.<sup>48</sup>

Graphic organizers that present the salient facts in coherent visual structure are the most powerful means of developing the students' background knowledge. A graphic organizer is a visual display that presents the key ideas in a structure that reflect the relationships among the concepts. Richman (in this volume<sup>49</sup>) presents several typical graphic organizers that aid in reading the law. Charts, graphs, and semantic maps present complex ideas and their interrelationships in simple form. Charts and matrices can present the relationship among several variables at once and can be useful to compare and contrast ideas after reading. Perhaps the most useful device is a semantic map. The semantic map is a visual presentation of ideas and their hierarchical, temporal, or causative relationships. The semantic map attempts to capture in visual form the conceptual structure that underlies the topic that is being studied. Figure 1 presents a semantic map that might be used at the beginning of a conflicts of law course.

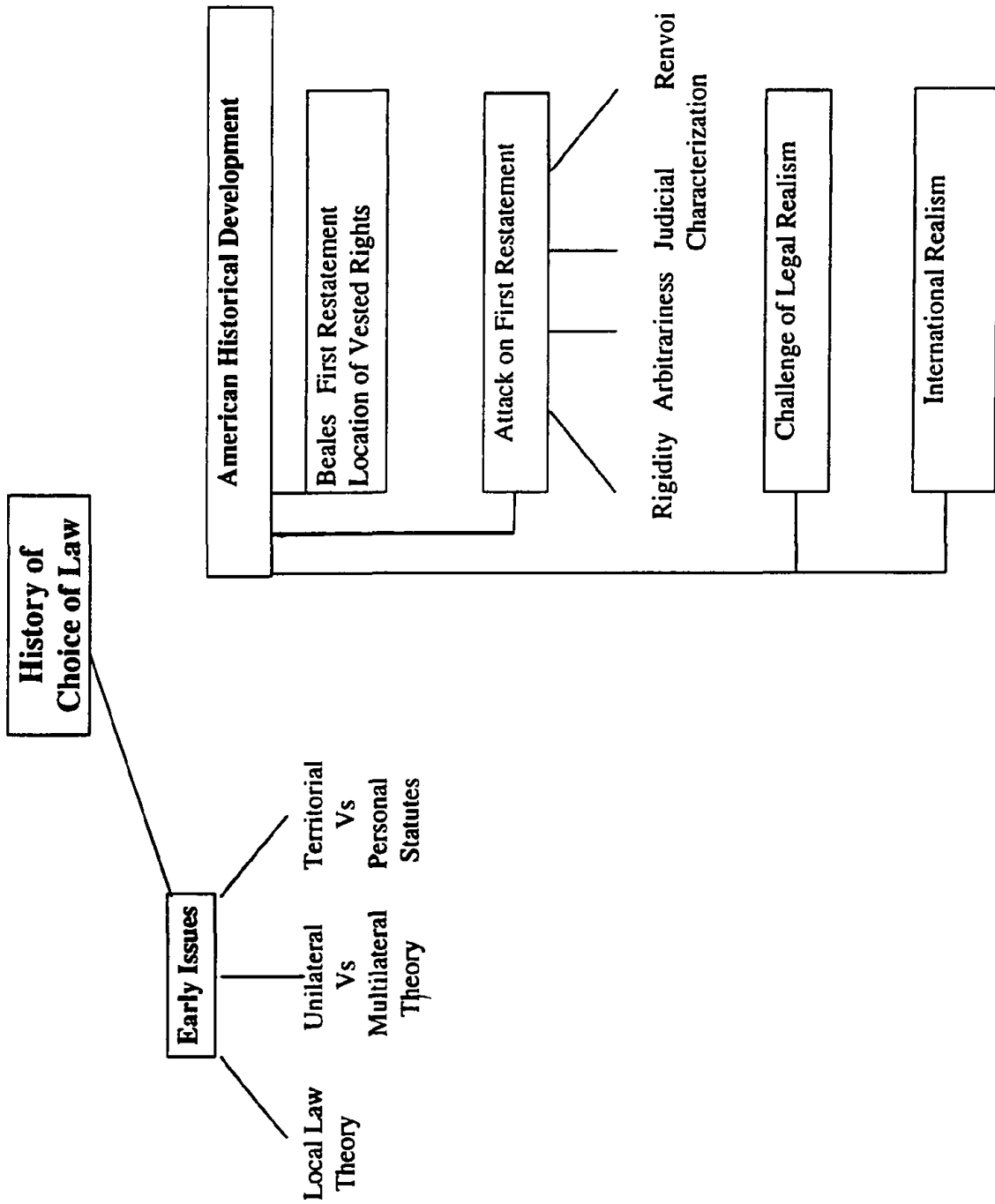
---

47. See Janice A. Dole et al., *Effects of Two Types of Prereading Instruction on the Comprehension of Narrative and Expository Text*, 26 *READING RES. Q.* 142, 154 (1991).

48. See Michael F. Graves & Maureen C. Prenn, *Effects of Previewing Expository Passages on Junior High Students' Comprehension and Attitudes*, in *CHANGING PERSPECTIVES ON RESEARCH IN READING/LANGUAGE PROCESSING AND INSTRUCTION* 173, 173-77 (Jerome A. Niles & Larry A. Harris eds., 1984).

49. William R. Richman, *Graphic Forms in Conflicts of Laws*, 27 *U. TOL. L. REV.* 631 (1996).

Figure 1



The nodes of the semantic map identify the key ideas that the student will be reading. The lines that connect the nodes represent the structure of the ideas, how concepts and principles are imbedded with one another. In some college courses, semantic maps have been used successfully to guide students' reading.<sup>50</sup> The instructor introduces a partial semantic map, students copy it, and as they read their note taking is guided by the map. They add information to the map and expand it by creating additional nodes.

The second approach that has proven to be very useful for both the first-year law student and those with more experience is to teach the strategies of case analysis employed by experts. Experts have an implicit understanding of the structure of legal cases and use that knowledge to their advantage. Some legal educators might argue that they acquired this knowledge and these strategies through a process of discovery, and law students should retrace those same difficult steps. However, research by cognitive psychologists suggests that novices in a field show greater growth in learning when knowledge and strategies are directly taught rather than when students are encouraged to discover them on their own.<sup>51</sup> Frederiksen notes that "[i]ndirect instruction is more appropriate after basic knowledge structures and skills have been acquired."<sup>52</sup>

The most effective instructional approach is to directly explain the structure of a legal case and the process for reading it. Students should be shown the basic structure of a legal case and its most likely variations. A simple structure like the one in Figure 2 is often enough for the novice to understand how to inquire and what to note while reading. Some students might want to use this structure as a reading guide, filling in each section with facts and summaries from the case. In an introductory seminar, this process can be demonstrated. Many beginning law students testify that these simple study guides are very helpful.

Figure 2

*Summary of previous legal proceedings*

Precedents and other legal cases. These may or may not be included in typical cases presented in casebooks.

*Issues or dispute—the facts*

What happened? To whom? Why?  
Why is this case in court?

*Decision (may precede or be part of the rationale)*

How did the court rule?

*Rationale or reasoning*

How did the court arrive at its opinion?

*The rule—maybe part of the reasoning*

---

50. See Bonnie B. Armbruster et al., *Does Text Structure/Summarization Instruction Facilitate Learning From Expository Text?* 22 READING RES. Q. 331, 333 (1987).

51. See Dole et al., *supra* note 13, at 249-55.

52. Norman N. Frederiksen, *Implications of Cognitive Theory for Instruction in Problem Solving*, 54 REV. EDUC. RES. 363, 392 (1984).

Making the structure of a legal case explicit provides novice students with some support as they read. This knowledge can and should be combined with strategies so that students are given a procedure for reading a case. Lundeberg has outlined such a procedure, which has proven to be effective in improving understanding of legal cases for both novice law students and students in their second and third year of law school.<sup>53</sup> Lundeberg suggests that a case be read in three stages:

1. Put the case in context;
2. Read the case for an overview;
3. Reread the case analytically<sup>54</sup>

These simple guidelines can be expanded into a specific set of directions for law students. Figure 3 presents a summary of these reading guidelines. Lundeberg presents a more complete discussion and examples of this strategy for reading legal cases in her article.<sup>55</sup>

### Figure 3

#### 1. PUT THE CASE IN CONTEXT Think before you read

*Examine the chapter and section title.*

- What do the words in the chapter and section titles mean?
- What questions might they address?

*Examine the citation.*

- What is the name of the case? Are the parties individuals or companies?
- Is it a state or federal court?
- What is the date? What was the social and political climate of that time?

#### 2. READ THE CASE FOR AN OVERVIEW

*Be alert to structure.*

- Summary of previous legal proceedings
- Issues or dispute
- Facts
- Rationale or reasoning
- Decision

*Understand the legal proceeding.*

- Focus on the first few sentences which describe the parties and dispute.

---

53. See Lundeberg, *supra* note 8, at 430-32.

54. *Id.*

55. See *id.*

*Picture the facts.*

What happened? To whom? Why?

*Identify the issue.*

Why is this case in court? On what general legal grounds?

What does the court say in this issue? Since the decision and the rule answer the issue, sometimes it is easier to frame the issue after finding the decision and rule.

*Find the decision and rule.*

At the end of the case the court states its decision. Is the judgment reversed or affirmed, is the motion denied? Why? What rule of law is the judge applying?

3. REREAD THE CASE ANALYTICALLY Pause and think about the implication of words.

*Notice terms and qualifying words.*

Try to define the central terms using the context of the passage, a traditional dictionary or a legal dictionary

Pay attention to qualifying words (if, when, only) they can significantly alter the meaning of a sentence.

*Distinguish relevant from irrelevant facts.*

With the issue, decision, and rule in mind, determine which facts were important to the court's decision. Often facts which are essential to one party's argument are considered irrelevant by the court.

*Study the rationale.*

Separate the rationale from the dicta, the other legal rules and statements not directly involved with the decision.

The rationale may contain the reasons for the rule and the application of the rule.

*Synthesize the case.*

How do the elements (issue, decisions, rule and rationale) fit together?

Why did the editor include this case in your casebook? How would you apply this rule to different facts?

Law students who have been presented these guidelines for case analysis have demonstrated improvement in their understanding of legal writing. Law students in the first few weeks and months of their education were trained in the use of these guidelines and then tested on their understanding of two legal cases. The results indicated that training improved students' ability to separate relevant from irrelevant facts, to understand the parties' actions and the decision, to state the rule and rationale of a case and to apply the rule to hypothetical situations. While some training effects emerged immediately experience suggests that law students gain even more facility with the guidelines over time. Even students beginning their second and third years of law school have benefitted from learning strategies for studying law. Lundeberg measured her effects by having law students read cases

and answer questions.<sup>56</sup> We do not know if these strategies, used over time, would aid long-term learning and retention. Strategy instruction with middle and high school students suggests that training in reading strategies, when specific to the discipline, can have sustained benefits, lasting for months or more.<sup>57</sup>

These guidelines for legal case analysis help law students read like lawyers, or at least like successful law students, but the process of training is crucial. Students must be engaged in self-controlled training. They must first be presented with the guidelines as an instructor explains their importance. One approach, used by Lundeberg, had a seminar of beginning law students read a case, with half the class given the guidelines and half not.<sup>58</sup> Then all the students discussed the case and the difficulties that they encountered. Such a discussion is likely to elicit from the students the value of the guidelines—personal testimony is persuasive.

After introducing the guidelines in the above manner the instructor needs to model their use. This involves reading a case with the class, segment by segment, and walking the students through the use of the guidelines. The instructor needs to make her thinking visible so students can see how an expert thinks while reading a case. The next step is to have the students try out the guidelines and provide support as they use them. Ask a series of questions that provide direction and support as they read each part of a case. Ask the students to justify their answers: "Why do you believe that? How did you reach that conclusion? What evidence in the case supports your position?"

After students gain some understanding of the guidelines, have them apply the guidelines to a second case, one taken from a different area of legal study. After the students have read the case with the support of the guidelines, discuss what they learned and the process that they used. The instructor might ask which strategies helped the most and which the least. Each student will use these guidelines in a different manner, just as experts have unique strategies for reading the law. It is important to stress the need to be flexible, and that good readers are strategic, but each uses strategies in a flexible manner.

Finally, encourage students to monitor their understanding of the case. The questions at the end of the guidelines can be employed as a self-test. If students can answer the questions, they will have some confidence in their level of understanding, and they should attribute their success to the strategies they have employed. Good readers monitor their understanding and attribute their success to cognitive activity under their own control.<sup>59</sup> The final questions in the guidelines help

---

56. See Lundeberg, *supra* note 8, at 417-26.

57. See Dewitz et al., *supra* note 20, at 108-11. We have been able to achieve reasonable long-term results with middle grade students, but research still needs to be done with college and post-graduate students. Lundeberg was able to achieve short-term gains but did not follow her subject for a full academic year. See Lundeberg, *supra* note 8, at 417-26. See also Jeanne D. Day, *Teaching Summarization Skills*, 3 COGNITION & INSTRUCTION 193, 208 (1986) (documenting research on junior college students); Victoria C. Hare & Kathleen M. Borchardt, *Direct Instruction of Summarization Skills*, 20 READING RES. Q. 62, 75 (1984) (documenting research on high school students).

58. See Lundeberg, *supra* note 8, at 418.

59. See Peter H. Johnson & Peter N. Winograd, *Passive Failure in Reading*, 17 J. READING BEHAV. 279, 281-83 (1985); Paris et al., *supra* note 9, at 619-21; Bernard Weiner, *A Theory of Motivation for Some Classroom Experiences*, 71 J. EDUC. PSYCH. 3, 14-15 (1979).

students to build a summary of the case or to diagram the dispute, the action, and the rationale. Creating a verbal or visual summary will help students retain what they have understood.

Teaching students to use the guidelines for legal case analysis should take no more than three hours, and can be incorporated into a short introductory seminar the first semester of law school. Just handing students the guidelines provides some benefit—three hours of instruction with instructor modeling, guided practice, and debriefing yields superior results for law students.

### CONCLUSION

At present, there is little conversation among professors in schools of education and schools of law, yet mutual interests exist. Education professors, especially those with a cognitive psychology bent, are interested in how students read and learn in complex domains. Legal education provides an excellent arena to study such learning. Law professors are concerned with how students learn the law and seek ways to improve legal education. In this article, I attempted to apply some basic understanding of reading comprehension to the problems faced by beginning students of law. These basic understandings, supported by the research of Deegan, Lundeborg, and others, have important implications for legal education.

The basic conclusion is that direct instruction in knowledge and strategies is beneficial to all students, even law students. We know that with relatively small doses of direct explanation, beginning law students can learn about the structure of legal texts and the strategies for reading them. This direct instruction need take no more than one or two class periods. By explaining to novice law students how to use the strategies of experts and successful students, we take some of the mystery out of reading and learning the law and make their tasks easier. When students have successful reading strategies they can concentrate on the content of the material and not the process.

Three simple changes in legal education show the potential to improve learning for all students. If professors help students understand the basic concepts and structures of ideas before they read their understanding will be improved. If professors help students understand the structure of legal texts, students will find it easier to locate important information. Finally, if students are shown and encouraged to use the reading strategies of experts their understanding of legal texts will improve. The last two changes can be accomplished in a three hour introductory seminar: the first requires that all law professors consider how they will introduce the required readings in their courses on a daily basis.

It is often argued, by law professors and even some law students, that most good lawyers had to struggle in law school and this struggle is emblematic of good learning. The research says otherwise. In any context of learning, it is the job of the expert to make explicit the secrets of her craft. In legal learning, that craft is cognitive and largely hidden, and it does not readily occur to legal educators to make their cognitive processes public. In so doing and providing law students support, legal educators will probably accelerate the learning of their students, eliminate some frustration, and perhaps enable all students to achieve more.



Whenever reading comprehension studies have been conducted in law school, there often are a large number of eager volunteers. When these students are asked why they participated in the study the students often volunteer that they hope to “talk to someone who understood their perceived, unvoiced, but very real concerns about reading.”<sup>60</sup> I have had similar responses to talks at law schools. We know how to assist the reading of law students and we should.

---

60. See Deegan, *supra* note 13, at 168.

