

LEGAL READING AND SUCCESS IN LAW SCHOOL: AN EMPIRICAL STUDY

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Abstract: Does the way in which law students read legal text impact their success? This article describes important new research on how law students read cases. This study examined the way in which first year law students in the top and bottom 50% of their class read a judicial opinion and whether their use of particular reading strategies impacted their law school grades. The results were significant: even when students had gone through the same first-semester classes, the more successful law students read a judicial opinion differently than those students who were less successful. In addition, there was a correlation between the reading strategies of the top law students and their first-semester grades. This article describes the results of the study using both empirical data and actual student transcripts to show how the most successful law students read legal text. This article also offers practical suggestions for legal educators to help students read more effectively and efficiently.

One of the most important skills in law school is the ability to read a judicial opinion efficiently and accurately. Yet there have been relatively few empirical studies researching how law students read legal text.² Not only are legal texts “largely incomprehensible” to novice readers, law schools do not always spend sufficient time instructing students about how to read legal text.³ Instead, we assume our students are

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² Laurel C. Oates, *Beating the Odds: Reading Strategies of Law Students Admitted Through Alternative Admissions Programs*, 83 IOWA L. REV. 139, 140 (1997).

³ Mary A. Lundeberg, *Metacognitive Aspects of Reading Comprehension: Studying Understanding in Legal Case Analysis*, 22 READING RES. Q. 407, 409 (1987). This is beginning to change. See, e.g., LAUREL CURRIE OATES & ANNE ENQUIST, *LEGAL WRITING HANDBOOK: ANALYSIS, RESEARCH, AND WRITING* 37 (Aspen Publishers, 2006) (containing a full chapter on legal reading); see also RUTH ANN MCKINNEY,

good legal readers upon entering law school. However, legal reading is a challenging task for a new law student.⁴ To comprehend legal text requires knowledge of legal terminology and an understanding of both case structure and legal theory.⁵ If we think back to our own first encounter with a judicial opinion, the text was confusing; the structure was mystifying; and the terms were unfamiliar. Scott Turow, describing his first year of law school at Harvard, compared reading cases to “something like stirring concrete with my eyelashes.”⁶ Although there are many students who adapt quickly to legal reading, there are others who continue to struggle with legal reading throughout law school. Can we guide our students more directly about what reading strategies are most effective? Does the way in which students read impact their law school success?

This study seeks to explore these questions and add to the growing body of empirical research on legal reading. Its purpose is to examine whether there is a correlation between the way in which first year law students in the top and bottom 50% of their class read a judicial opinion and whether their use of particular reading strategies impacts their law school grades. This study concludes that even when students have gone through the same first-semester classes, the more successful law students read judicial opinions differently than those students who are less successful. Further, this study suggests there is a correlation between the reading strategies of the top law students and their first-semester grades.

Part I of this Article describes the cognitive challenges of legal reading. Part II discusses the prior reading studies that have examined the way in which individuals read legal text. Part III describes the present study, including the participants, the “think aloud” procedure, and the study methodology for the collection, analysis and interpretation of the data. Part IV sets out the results of the study and explains the various conclusions that might be drawn from them. Finally, Part V presents examples of the reading strategies used by the most successful law students and offers observations on we might incorporate these strategies into the legal classroom.

I. THE CHALLENGES OF READING LEGAL TEXT

A. Law: A Unique Discourse

There are several reasons why it is relevant to study how law students read legal text. Both law school and the practice of law involve the interpretation and production of legal text.⁷ “Words are tools for lawyers, who must be able to forge words into

READING LIKE A LAWYER: TIME-SAVING STRATEGIES FOR READING LAW LIKE AN EXPERT (2005) (giving practical advice for beginning law students approaching legal text for the first time).

⁴ Lundeberg, *supra* note 3, at 409.

⁵ Peter Dewitz, *Legal Education: A Problem of Learning From Text*, 23 N.Y.U. REV. L. & SOC. CHANGE 225, 226 (1997).

⁶ Lundeberg, *supra* note 3, at 409 (citing SCOTT TUROW, ONE L 30-31 (1978)).

⁷ Dorothy H. Deegan, *Exploring Individual Differences Among Novices Reading in a Specific Domain: The Case of Law*, 30 READING RES. Q. 154, 157 (1995). Dorothy H. Deegan now publishes under the name

consequential discourse.”⁸ New lawyers need to do more than simply “think [...] like a lawyer;” they need to “read and write like a lawyer” as well.⁹ Second, students who have been accepted into law schools usually have been very successful in their undergraduate programs and have scored high on the LSAT.¹⁰ Therefore, it is easy to assume that our students will learn case reading quickly. Third, the legal academy may not acknowledge the relevance between legal reading and law school performance.¹¹ James Stratman, an experienced reading researcher, refers to this attitude as the “skills deployment assumption.”¹² Stratman suggests that legal educators incorrectly assume that law students enter law school with “intact literacy skills,” and that those skills can be “readily transferred to the texts of law.”¹³ In fact, the opposite may be true.¹⁴ For example, the students who volunteered for this study did so mainly because they hoped participating in the study would help them uncover secrets about legal reading. Even though half of the study participants did very well on their first-semester exams, these students still felt insecure about how they read legal text. Finally, studying how law students read the law is relevant because law school grades are critical to a law student’s future career.¹⁵ Many legal employers only offer interviews to students if they fall within the top 10% or 15% of their class. Therefore, the question of how reading strategies correlate to law school grades is particularly important. Dorothy Deegan, one of the pioneers of legal reading research, put forth the following question in her 1995 study: “If it could be empirically demonstrated that variability in reading correlates with performance as assessed by grades, then the law school community would be hard-pressed to continue to ignore factors concerning individual differences in student reading.”¹⁶ The present study seeks to answer this question.

B. *Four Types of Reading Knowledge*

Legal texts are unique in both their form and structure; they are their own special genre.¹⁷ A beginning law student’s success with legal text is based upon both general

of Dorothy H. Evensen. For the purposes of clarity and consistency within this article, however, I will refer to her as Dorothy Deegan and I will refer to her study as the “Deegan” study.

⁸ *Id.* at 157.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* (citing John B. Mitchell, *Current Theories on Expert and Novice Thinking: A Full Faculty Considers the Implications for Legal Education*, 39 J. LEGAL EDUC. 275 (1989)).

¹² *Id.* (citing James F. Stratman, *The Emergence of Legal Composition as a Field of Inquiry: Evaluating the Prospects*, 60 REV. EDUC. RES. 153, 235 (1990)).

¹³ *Id.* (citing Stratman, *supra* note 12).

¹⁴ I readily know that many law schools, particularly those that fully support their skills and writing programs, teach legal reading to various degrees. However, even in the best programs, we can likely do more. The results of this study will hopefully offer additional suggestions as to how to incorporate legal reading into any curriculum.

¹⁵ *Id.* (footnotes omitted).

¹⁶ *Id.* at 157.

¹⁷ *Id.*

reading skills and an understanding of the law.¹⁸ Professor Ruth Ann McKinney summarizes the importance of legal reading to the beginning law student as follows:

Law students—and lawyers—who read law well are getting something from their reading that is not shared by those who read law less proficiently. Starting with the first days of class, what law students understand about the reading process itself has a major impact on how they read their assignments. How they read their assignments determines what they are able to get from those cases and statutes, what they are able to bring to class discussions and take from class discussions, and – ultimately – what they are able to learn for exams.¹⁹

In order to understand how law students read legal text, we need to understand the reading process more generally. Professor Peter Dewitz explains that reading is the product of both how we recognize words and how we comprehend the words we read.²⁰ First, word recognition is the set of strategies we use to identify words.²¹ While beginning law students encounter many new terms, they usually can identify these words using basic phonics principles.²² However, just because a reader recognizes a word does not mean that the reader comprehends its meaning.²³ As we know, legal cases are full of new terms for beginning readers which represent new and sometimes abstract concepts.²⁴ As Dewitz explains, “Reading comprehension is essentially the process of building a mental representation of the ideas expressed by the author.”²⁵ In addition, the factor most affecting reading comprehension is the “real world” knowledge that the reader brings to the legal text.²⁶ The typical law student usually lacks background knowledge about the law. Yet, without this background knowledge, a new reader has a hard time making sense of all the new information in a legal text.²⁷

Another type of knowledge needed by the legal reader is an understanding of “text structure.”²⁸ Comprehension proceeds more smoothly if the reader understands the organizational structure of the text.²⁹ Consider the typical judicial opinion, with its synopsis, fact section, issue statement, and holding. A new reader could easily become confused by the unusual structure of a judicial opinion. And consider that most law

¹⁸ Peter Dewitz, *Reading Law: Three Suggestions for Legal Education*, 27 U. TOL. L. REV. 657, 657 (1996) (citing James F. Stratman, *The Emergence of Legal Composition as a Field of Inquiry: Evaluating the Prospects*, 60 REV. EDUC. RES. 153, 159-61 (1990)).

¹⁹ RUTH ANN MCKINNEY, *READING LIKE A LAWYER, TIME-SAVING STRATEGIES FOR READING LAW LIKE AN EXPERT* viii (2005).

²⁰ Dewitz, *supra* note 5, at 225 (citing Phillip B. Gough & William E. Tunmer, *Decoding, Reading and Reading Disability*, 7 READING & SPECIAL EDUC. 6, 7 (1986)).

²¹ *Id.* at 225.

²² *Id.* at 226..

²³ *Id.* For example, “per curiam” opinion or “pro se” litigant.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.* See also RAND J. SPIRO ET. AL, *COGNITIVE FLEXIBILITY THEORY: ADVANCED KNOWLEDGE ACQUISITION IN ILL-STRUCTURED DOMAINS* 603 (Robert Ruddell et.al, eds., 1994).

²⁸ *Id.* at 227.

²⁹ *Id.*

students have spent four years reading, writing and studying in the humanities and the social sciences, where they may have been able to read text more simplistically than we require in law school.³⁰ No wonder the judicial opinion seems particularly strange during those first few weeks of law school.

In addition to word recognition and text structure, the beginning legal reader needs a third type of knowledge called “grammatical knowledge” which “helps the reader understand the relationship among concepts within a sentence.”³¹ In legal text, the grammar and syntax can become so complex that the reader has to work hard to make sense of how the paragraphs fit together.³² This presents a significant challenge to the novice legal reader.

Finally, readers need a fourth type of knowledge called “strategic” knowledge or more commonly referred to as reading strategies.³³ Reading strategies are “set[s] of mental processes used by a reader to achieve a purpose.”³⁴ Reading strategies are “intentional, flexible, and self-evaluative.”³⁵ Strategic reading occurs when readers “set a purpose for reading, self-question, search for important information, make inferences, summarize, and monitor the developing meaning.”³⁶ For basic reading, we are usually unaware of the reading strategies we use to help us move through text.³⁷ We may evaluate, underline or question the text without thinking about these actions as actual “strategies.” However, as reading becomes more difficult, we become more conscious of how we are reading the text.³⁸ Novice readers approaching a new type of text for the first time make use of several basic strategies, including underlining, making notes, highlighting, questioning text, etc. Experts in a field have developed more specialized reading strategies, which allow them to read more analytically and efficiently. For example, a practicing attorney or “legal expert” may synthesize text, hypothesize, and connect with prior knowledge or experience.³⁹ One purpose of the present study is to understand what reading strategies help beginning law students comprehend legal text most efficiently and accurately.

³⁰ *Id.* at 228.

³¹ *Id.*

³² *Id.* Dewitz provides the example that the demands of syntax are more easily appreciated if we compare the complex prose of Faulkner to the less demanding writing of Hemingway. *Id.* at 228.

³³ *Id.*

³⁴ *Id.* Other researchers have differentiated between a learning strategy and a learning tactic. A learning tactic is an individual study/reading tactic such as “underlining, note-taking, outlining, summarizing, visualizing or using mnemonic devices.” Suzanne E. Wade, et. al., *An Analysis of Spontaneous Study Strategies*, 25 *READING RES. Q.* 147, 149 (1990). A learning strategy, on the other hand, is a “collection of mental tactics employed by an individual in a particular learning situation to facilitate acquisition of knowledge or skill.” *Id.*

³⁵ Dewitz, *supra* note 5, at 228 (citing Scott G. Paris, Barbara A. Waskik, & Julianne C. Turner, *The Development of Strategic Readers*, 2 *HANDBOOK OF READING RESEARCH* 609, 610-11 (1991)).

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ This study comparing students is part of a larger empirical study examining the way in which lawyers and judges read legal text in comparison to law students. The portion of the study analyzing expert readers will likely be completed in 2007.

C. Reading Strategies: Problematizing, Default and Rhetorical

We all use a number of reading strategies when we read text. Because of the vast number of strategies we employ whenever we read text, it is helpful to group our reading strategies in broader categories. Dorothy Deegan (Evensen), one of the first researchers to examine how law students read legal text, used the results of her reading study to construct three categories or types of reading strategies: problematizing, default, and rhetorical strategies.⁴⁰ The first category, problematizing strategies, contain those reading strategies that help readers solve problems within the text. “Readers use problem formation strategies to set expectations for a text. They ask themselves questions, make predictions, and hypothesize about developing meaning.”⁴¹ Deegan found in her study that “problematizing” strategies involved “strategic behavior” on the part of the reader, in that the reader’s behavior could be described as purposeful.⁴² Various studies have associated the use of “problematizing” strategies with high performing student readers and expert/lawyer readers.⁴³ These readers asked questions; they talked back to the text, made predictions, hypothesized about meaning, and connected with the overall purpose of their reading.⁴⁴

In contrast to problematizing strategies, default strategies represent the basic strategies that readers use to move through legal text, including paraphrasing, rereading, noting certain structural elements of text, underlining text and making margin notes.⁴⁵ Deegan noted that when readers used default strategies, they moved through the text in a linear progression.⁴⁶

Typically, readers would restate or paraphrase portions of information, often underlining and/or making margin notes. What differentiated these moves from the ones associated with problematizing strategies was the unproblematic nature of the process. In other words, these verbalizations were not specifically initiated from or tied to explicit questions or hypotheses.⁴⁷

Beginning readers rely more heavily on default strategies because these strategies are both accessible and familiar. It is easy for novice legal readers to underline or highlight an opinion because these are the same reading strategies the students used earlier in their academic careers.

⁴⁰ Deegan, *supra* note 7, at 161. I adopted these same categories to define and analyze the way in which the students in this study read a judicial opinion. Deegan’s study as well as other reading studies will be discussed in greater detail in Part II. See also MICHAEL PRESSLEY & PETER AFFLERBACH, VERBAL PROTOCOLS OF READING: THE NATURE OF CONSTRUCTIVELY RESPONSIVE READING 1-14, 119-40 (1995).

⁴¹ Dewitz, *supra* note 5, at 228-229 (describing his definition of Deegan’s problematizing strategies).

⁴² Deegan, *supra* note 7, at 160.

⁴³ See Deegan, *supra* note 7, at 163-165; Oates, *supra* note 2, at 159; Lundeberg, *supra* note 3, at 417.

⁴⁴ Oates, *supra* note 2, at 159-160.

⁴⁵ Dewitz, *supra* note 5 at 228-229; Deegan, *supra* note 7 at 161.

⁴⁶ Deegan, *supra* note 7, at 160-161.

⁴⁷ *Id.* at 161.

Deegan identified a third category of reading strategies called “rhetorical” strategies.⁴⁸ While using rhetorical reading strategies, readers move through the text in an evaluative manner or in a way that synthesizes what is being read with the reader’s own experiences.⁴⁹ Rhetorical strategies “represented points where the reader...took a step beyond the text itself. They [were] concerned with constructing a rhetorical situation for the text, trying to account for the author’s purpose, context and effect on the audience.”⁵⁰ In the present study, I adopted Deegan’s three categories, i.e., problematizing, default and rhetorical, to describe the verbalizations the study participants produced during their think aloud sessions.

II. PRIOR RESEARCH ON LEGAL READING

Research in the field of legal reading is still relatively new after its start nearly twenty years ago. The first study was completed in 1987, when Mary Lundeberg studied ten experts (eight law professors and two attorneys) and ten novices (individuals who were presumed to be good readers but who had no training in law) as they read a judicial opinion and thought aloud.⁵¹ Lundeberg found that “while very few of the novices began their reading by noting the names of the parties, the date of the opinion, or the court and judge deciding the case, almost all of the experts did.”⁵² In addition, Lundeberg found that very few novices evaluated the opinion, while most of the experts evaluated the opinion, reread the terms and facts analytically, and agreed or disagreed with the end result of the court’s decision.⁵³ Further, the expert readers previewed the opinion, and paid closer attention to the context of the opinion before they began to read.⁵⁴ Lundeberg concluded that legal experts read a judicial opinion very differently than readers who were unfamiliar with the law.⁵⁵

While Lundeberg focused on the reading strategies of experienced and inexperienced legal readers, in 1995, Dorothy Deegan (Evensen) compared the way in which law students in the upper and lower quartiles of their first-year class read a law review article.⁵⁶ Deegan’s study sought to determine if a relationship existed among

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.* (citing C. HAAS & L. FLOWER, *Rhetorical Reading Strategies and the Construction of Meaning*, 39 COLLEGE COMPOSITION AND COMMUNICATION 167, 176 (1988)).

⁵¹ Lundeberg, *supra* note 3, at 410.

⁵² Oates, *supra* note 2, at 140-141 (citing Lundeberg, *supra* note 3, at 411). Lundeberg used six major codes to categorize the different reading strategies of experts and novices: (1) Use of Content; (2) Overview (of the Opinion); (3) Rereading Analytically; (4) Underlining; (5) Synthesis; and (6) Evaluation. Under each of these categories were additional subcategories. *See* Lundeberg, *supra* note 3, at 412.

⁵³ Lundeberg, *supra* note 3, at 412.

⁵⁴ *Id.*

⁵⁵ *Id.* at 412-415. Lundeberg’s study specifically addressed the reading strategies of expert and novice legal readers, which is the subject of a companion study to the present research. The results of the companion study will be published in a second article. Lundeberg’s study is discussed in far more detail in the companion article.

⁵⁶ Deegan, *supra* note 7, at 157-158. As mentioned before, Dorothy Deegan is now Dorothy Evensen.

strategy use, reading outcomes and domain performance as assessed by grades.⁵⁷ Deegan's participants were law students who had just completed their first year of law school.⁵⁸ Deegan selected a total of 20 students: the 10 highest and 10 lowest ranked students in terms of first-year grade-point averages.⁵⁹ Deegan directed the law students to think aloud while reading an excerpt from a law review article on tort law.⁶⁰ Similar to Lundeborg, Deegan asked her students to read the text in order to prepare for a simulated class recitation about the article.⁶¹ After the think aloud, the students were asked to recite the main points of the article as if they were reporting to a class on the subject matter.⁶²

Deegan transcribed the verbal protocols and interviews.⁶³ She then coded the transcripts and created three categories of reading strategies: problematizing, default and rhetorical strategies.⁶⁴ When the readers engaged in strategic behavior and worked to solve problems as they read, Deegan categorized these types of moves as problematizing strategies.⁶⁵ When the readers' moves represented a linear progression through the text, such as when readers paraphrased the text, Deegan categorized these moves as default strategies.⁶⁶ The third category, rhetorical moves, involved readers evaluating the text, i.e., where the reader took a step beyond the text itself.⁶⁷

In the final analysis, Deegan compared only the problematizing and the default strategies (as only these two strategies demonstrated significant between-group differences).⁶⁸ She found there were significant differences between the two groups based upon how much of their time they spent utilizing default and/or problematizing strategies.⁶⁹ The students in the high performance group spent 29.1% of their time utilizing default strategies and 58.9% of their time using problematizing strategies.⁷⁰ In contrast, the low performance group used default strategies 44.7% of the time and used problematizing strategies only 40.3% of the time. Deegan's study suggested that there were differences in how students in the upper and lower quartiles of their law school class read legal materials.⁷¹ Further, students who used problematizing strategies more

⁵⁷ *Id.* at 157.

⁵⁸ *Id.* 157-158.

⁵⁹ *Id.* at 158.

⁶⁰ *Id.*

⁶¹ *Id.* at 159. In this study, I chose a judicial opinion as the study text. Law students deal with judicial opinions each and every day of their first year of law school. Therefore, if we hope to improve their legal reading, it makes sense to study what they read each day.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.* at 161.

⁶⁵ *Id.* at 160.

⁶⁶ *Id.* at 160-161.

⁶⁷ *Id.* at 161.

⁶⁸ *Id.*

⁶⁹ *Id.* at 163.

⁷⁰ *Id.*

⁷¹ *Id.* at 165.

often and more successfully were more likely to get better grades than students who used the strategies less often and with less success.⁷²

In 1997, Professor Laurel Curie Oates published a study in which she analyzed the reading strategies of four first-year law students who were part of an alternative admissions program at a regional law school.⁷³ In her study, Oates, like Lundeberg and Deegan, used a think-aloud protocol as the primary method of data collection.⁷⁴ Oates had the study participants read a portion of a legal case and talk about their thinking processes as they went through the case.⁷⁵ In addition, a law professor was used as a control or “expert” legal reader.⁷⁶ While two of the students performed as predicted, i.e., in the bottom quartile of the class, the other two students performed better than expected, i.e., one in the top fifteen percent of the class, and the other in the top ten percent.⁷⁷ Oates’ results showed that those students who did better on their first-semester exams read differently than those who did not do as well.⁷⁸

Oates concluded that those students who did better than expected based upon admissions criteria did so, at least in part, because the students read for a purpose and they understood that the interpretation given to a particular fact or text depended on the contexts in which the fact appeared or the text was read.⁷⁹ In contrast, those students who performed as expected based upon admissions criteria were more likely “to read simply to decode the text.”⁸⁰

Finally, in 2002, James Stratman examined whether first-year law students read and analyzed cases differently when they assumed a particular purpose or professional role.⁸¹ Stratman sought to explore the relationship between a law student’s cognitive processes and how these processes worked in contextualized legal problem-solving.⁸² Specifically, Stratman studied 56 first-year law students and had them think aloud as they read a series of related appellate legal cases for different professional purposes.⁸³

⁷² *Id.* at 166. Deegan also had her participants perform a recitation task which evaluated the reader’s comprehension as well as reading strategies. This was certainly an important part of her study that was not replicated in the present study.

⁷³ Oates, *supra* note 2, at 139.

⁷⁴ *Id.*

⁷⁵ *Id.* at 146.

⁷⁶ *Id.* The four students entered law school with similar admissions criteria: “LSAT scores between 142 and 146 and undergraduate GPAs between 3.2 and 3.53. *Id.*”

⁷⁷ *Id.*

⁷⁸ *Id.* at 148. The data suggested that those students who did well in their first year of law school used more of the strategies adopted by expert legal readers than did the students with a weaker performance. *Id.* For example, one high-achieving student did more “talking back to the text” than did any of the other three students. *Id.* The data also suggested another hypothesis: students who did better than their LSAT scores predicted may have exceeded expectations because they used strategies like those used by expert legal readers. *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ James F. Stratman, *When Law Students Read Cases: Exploring Relations Between Professional Legal Reasoning Roles and Problem Detection*, 34 DISCOURSE PROCESSES 57 (2002).

⁸² *Id.* at 59.

⁸³ *Id.* at 57.

Although Stratman characterized his study as more of a “cognitive study of lawyering,” as opposed to a reading study, he readily acknowledged that cognition and reading overlap.⁸⁴ Stratman began his study posing the following question:

[H]ow can we know the difference between when students are having difficulties as critical readers and when they are having difficulties as contextually sensitive legal problem solvers, or when in fact they are having difficulty connecting these two processes with each other?⁸⁵

One significant difference between Stratman’s study and the reading studies performed by Lundeberg, Deegan, and Oates is that Stratman focused on “varying students’ purposes for reading cases beyond law classroom reevaluation.”⁸⁶ Stratman chose to analyze three roles in which lawyers typically find themselves when they read judicial opinions: an advisory role; a policy role and an advocacy role.⁸⁷ Stratman also added a fourth purpose for reading; he asked one group of students to read to “prepare for a law classroom recitation.”⁸⁸ The purpose of this fourth role was to replicate the tasks used in Lundeberg’s and Oates’ studies and to provide a useful comparison.⁸⁹

Stratman’s study concluded that differences in both reading task and role matter. Problem recognition rates for the three real-world roles were consistently better than those for the class recitation task.⁹⁰ In other words, students detected more “problems” and answered more questions correctly when they read with a purpose as opposed to when they read simply as “students.” Stratman’s conclusion appears to support findings of the other reading studies discussed above: students comprehend more when they read with a “real world” purpose.⁹¹

The present study seeks to add to the research on legal reading and both replicates and builds upon aspects of each prior study. In addition, this study explores legal reading from the perspective of a legal educator. Other than Oates, none of prior reading researchers taught in law schools. Like Lundeberg’s study, this study examines how participants read a judicial opinion. Case analysis is central to any first year law student’s daily curriculum. Whereas Oates studied four law students in an alternative admissions program, this study broadens Oates’ research by exploring the reading strategies of 24 regularly admitted law students. Like Deegan’s research, this study divides participants into higher and lower performance categories and examines whether the students’ use of particular reading strategies impacts their success. However, this

⁸⁴ *Id.* at 60.

⁸⁵ *Id.* at 59-60.

⁸⁶ *Id.* at 64.

⁸⁷ *Id.* at 64-65. The present study also has students assume a role, i.e., a practicing attorney. This is one interesting difference between the prior studies (other than Stratman’s) and the present research.

⁸⁸ *Id.* at 65.

⁸⁹ *Id.*

⁹⁰ *Id.* at 84.

⁹¹ The type of purpose used by the students did not matter, i.e., the students performed equally well regardless of whether they were acting as an advocate, etc. Stratman’s results suggested that students comprehend more if they read for *some* purpose versus simply reading text to prepare for class. *Id.*

study looks at broader performance categories of students, i.e., top and bottom 50%. In addition, this research expands upon Deegan's prior work because it examines whether reading with the purpose of advising a client changes the way in which students read a case. Each student in the present study was asked to assume the specific role of an attorney as they read the judicial opinion. As such, this study sought to explore Stratman's hypothesis that reading with a "real world" purpose enhances case analysis and, ultimately, success in law school. This study also poses the question of whether there is a statistical relationship between the use of reading strategies and law school success. In other words, does the way in which students read affect how well they do in law school? And are reading strategies better predictors of success than either undergraduate grades and/or LSAT scores? Finally, this study seeks to explore the hypothesis that legal education can affect the success of law students by teaching legal reading early on in the law school curriculum.

III. THE PRESENT STUDY

A. *The Participants*

The participants in this study were law students who had just completed their first semester of study at a private, urban U.S. Law school. Out of approximately 150 first-year law students, 24 students volunteered to participate in the study.⁹² This group was then divided into two sub-groups, a "higher-performance" group (HP) and a "lower performance" group (LP). Within the group of 24, 12 "higher-performance" (HP) students ranked in the top 50% of the first-year law school class, (while 10 students in the HP group ranked in the top 25%). The "lower performance" group (LP) contained 12 students in the bottom 50% of the class, (and 8 out of the 12 LP students fell in the bottom 25% of the class).⁹³

⁹² The participants signed consent forms and agreed to provide grade information, including their LSAT scores, undergraduate GPA (UGPA), and their first year, first semester law school GPA (LGPA). ⁹² LSAT scores for the HP group ranged from 151 to 161. The LP group had a range of LSAT scores from 148 to 165. Undergraduate GPA's for the HP participants ranged from 2.62 to 3.92. Undergraduate GPA's for the LP participants ranged from 2.44 to 3.44.

⁹³ Although we could have selected narrower performance categories, i.e., top 10% or top 20% as opposed to top and bottom 50%, I chose to use broader categories because it enabled me to use all student volunteers for the study. Interestingly, however, we did run the data using sub-groups at the top 10% level and the top 25% range (and the appropriate lower ranges respectively), assuming that this may provide us with even more marked results. The results did not change, i.e., the relative percentages of time the different groups spent using certain reading strategies was approximately the same regardless of whether we were examining top 50% or top 25%. In addition, by using the larger performance categories, we were able to consider some very interesting peculiarities within the study participant data. For example, some of the lower performing law students had the highest incoming LSAT scores. In contrast, some of the higher performing law students had significantly lower LSAT scores than one would have assumed initially. In summary, the benefits of having broader performance categories (and having a larger sample size) outweighed any perceived detriments (of not comparing more defined percentages in terms of class rank).

Based upon the students' undergraduate GPAs and LSAT scores, one could have assumed the students' first year performance in law school would have been very similar. Results from an independent-samples *t*-test found no significant differences between the HP and LP groups in terms of either their undergraduate GPA (UGPA) or LSAT scores. The mean UGPA was 3.41 (SD=.40) for the HP group and 3.10 (SD=.38) for the LP. The mean LSAT scores for the HP group were 157.75 (SD=4.2) and 155.42 (SD=5.1) for the LP group.⁹⁴

Table 1 Mean scores on undergraduate GPA (UGPA), LSAT scores, and law school GPA (LPGA) by group.⁹⁵

Group	UGAP	LSAT	LPGA
Higher Performing Students	3.41 (.40)	157.75 (4.2)	3.37 (mean)
Lower Performing Students	3.10 (.38)	155.42 (5.1)	2.44 (mean)

The total group consisted of 24 participants, with thirteen females and eleven males respectively (HP = 8 F / 4 M; LP = 5 F / 7 M). Twenty-two out of the 24 participants began law school directly from undergraduate programs. All 24 participants were enrolled in law school full-time. The students were not paid for their participation in the study.

B. Materials

Because cases are the primary text used in law school and in the practice of law, I chose a single judicial opinion as the reading text.⁹⁶ The case, *In Re Thonert*, 733 N.E.2d 932 (Ind. 2000), was chosen according to the following criteria:

1. The opinion was relatively short so that testing could be completed within 1 hour but longer than one page, so that readers could either look-ahead or look-back as needed. The case contained 1715 words and was three pages in length.
2. The case involved both a subject matter and a procedural posture that was unfamiliar to most first-year law students. The opinion, *In Re Thonert*, was a *per curiam* decision by the Indiana Supreme Court reviewing a disciplinary proceeding against an attorney. The attorney appeared *pro se*. The court upheld the agreement and held that the lawyer had violated the Indiana Rules of Professional Responsibility because he failed to advise both his client and the court of prior adverse authority. Because the attorney had actually participated as

⁹⁵ The results are from independent samples t-tests. $t(10)=2.341, p< .05$.

⁹⁶ This was an important difference between the present study and Deegan's study.

a lawyer in the prior case, the court had specific evidence that the lawyer violated professional conduct rules.⁹⁷

3. The case represented a typical judicial opinion that an attorney might read in the practice of law.
4. The case was unedited and contained structural components typically found in a published opinion, e.g., headnotes, keynotes, footnotes, a synopsis, etc.

In addition to the *In Re Thonert* opinion, a short practice text was used which involved an excerpt from an appellate opinion involving a breach of contract issue. This practice text was used to instruct participants on the think aloud procedure.

C. *The Think Aloud Procedure*

The present study utilized a think aloud procedure as the primary method of data collection. The think aloud or verbal report is an important research tool for obtaining accurate information about cognitive processes that cannot be investigated directly.⁹⁸ “Because participants state their thoughts as they are thinking them, their reports are considered more accurate than reports obtained through introspection or post hoc questioning.”⁹⁹ When the study participants arrived for their think aloud session, they were informed of the general nature of the think-aloud task. Each participant read and signed a consent form to participate in the study and a records release form to allow access to their LSAT and GPA data.¹⁰⁰

Each interview session took approximately 45 minutes. The first portion of the session was the think-aloud procedure. The second part of the session was an interview

⁹⁷ The Indiana Supreme Court framed the issue as follows: “The respondent in this attorney disciplinary matter is charged with failing to disclose to an appellate tribunal controlling authority known to him, not disclosed by opposing counsel, that was directly adverse to his client’s position. He also failed to advise his client of the adverse authority when his client was contemplating his legal options. This matter is presented to this Court upon the Disciplinary Commission’s and the respondent’s *Statement of Circumstances and Conditional Agreement for Discipline*, entered pursuant to Ind. Admission and Discipline Rule 23(11)(c), in resolution of this matter. That agreement is before us now for approval.” *In Re Thonert*, 733 N.E. 2d. 932, 932-933 (Ind. 2000).

⁹⁸ Suzanne E. Wade, et. al., *An Analysis of Spontaneous Study Strategies*, 25 *READING RES. Q.* 147, 150 (1990).

⁹⁹ Oates, *supra* note 2, at 144 (citing K. ANDERS ERICSSON & HERBERT A. SIMON, *PROTOCOL ANALYSIS: VERBAL REPORTS AS DATA*, 60-61 (1984)).

¹⁰⁰ The consent forms and the study design were approved by the University of St. Thomas Institutional Review Board for the use of human subjects. I initially met with prospective student volunteers during a classroom visit to their legal writing courses at the beginning of the second semester of law school. During the visit, I explained that I was interested in learning more about how law students read legal text. I told them that if they were interested in participating in the study, they would be asked to read a short judicial opinion and “think aloud” as they read the opinion, and that the “think aloud” and a subsequent interview would take approximately 45 minutes to an hour of time. Further, I told them that they would not be tested during the course of the session nor would I be in the room during the think aloud. After the classroom visit, I emailed a subsequent invitation to students. Twenty-four students responded to the email and agreed to volunteer for the study.

to ask follow-up questions about the opinion they read and the reading strategies they generally use when reading legal text.¹⁰¹ Participants were told they should read the case as they normally would read a case, but that they needed to read the case out loud and stop every few sentences to state what they were thinking at that time.¹⁰² Participants were also told that their think aloud would be taped by an audio recorder, but that they would be alone in the room.¹⁰³ Accordingly, I did not do any prompting of the participants during the think aloud protocol.

At the beginning of the session, the participants were trained to think aloud using an excerpt from another case. The participants were instructed to read the text aloud, stopping every sentence or two to state what they were thinking. Most of the participants understood how to “think aloud” and gave verbal reports on the practice text very easily. After the practice session was completed, we began the actual think aloud. I gave each participant an unmarked copy of the study text, *In Re Thonert*, and a separate sheet of paper which contained the following statement:

Read the following legal text assuming that you are a practicing attorney and that you are reading the opinion to prepare for a meeting with a client who has a case that is similar to the facts of the case you are reading.

I wanted to discover whether students would read the text differently having a “real world” purpose for which to read.¹⁰⁴ After providing the participants with the test case

¹⁰¹ I conducted each of the think-aloud procedures and interviews myself. The interviews took place in a conference room at the law school furnished with a table and comfortable chairs, and a variety of pens, highlighters, and paper.

¹⁰² Further, I instructed participants to use those reading strategies that they normally used when reading cases, i.e., highlighting, underlining, making notes, constructing case briefs, etc.

¹⁰³ I chose to remain outside the room during the think aloud procedure in order to avoid putting the participants on the defensive and/or affecting their normal reading processes. I wanted to refrain from testing or judging students as they read so that they would feel comfortable reading the case using their typical strategies. Prior to the actual study, I ran a pilot study in which I remained in the room and prompted students as they read through the text. This was very disruptive to the students and I felt it inhibited their normal reading process. In the actual study, I remained out of the room. In addition, during the pilot, I had students complete a multiple-choice question/answer test to determine at what level they understood the case. The pilot students became overly concerned with having to complete a “test” at the end of the think aloud to the extent that it substantially interfered with how they read the opinion. Therefore, I chose to focus the study more on how students read and the strategies they used versus an assessment of how well they read, i.e., I did not utilize an assessment tool at the conclusion of the think aloud.

¹⁰⁴ I specifically chose to use a purpose that left something up to the imagination of the reader, e.g., although they were representing a client, they were not told who the client was or what type of case it was. As part of this full research study, I had lawyers and judges, as well as students, read the opinion using this stated purpose. The results of the expert/novice aspect of the study will be reported in a different article. With the lawyers, I was curious to see how they defined their purpose, i.e., I specifically wanted to leave it vague in order to test whether they would/could supply additional details. The study results suggested that lawyers and judges did define their purposes specifically within these initial parameters. Likewise, I wanted to see if the students would understand any purpose at all, and if they did, whether they would further define the purpose like legal experts. The results showed that the lower performing students generally did not utilize any purpose for reading, while the higher performing students did utilize the purpose (although not to the same extent as attorneys and judges).

and purpose, I started the audiotape and left the room. Just before leaving, I gave the participants a final reminder or prompt that they should read the text aloud and stop every few sentences to state what they are thinking. After the participants finished the think aloud procedure, I came back into the room and conducted a short interview.¹⁰⁵

D. Coding and Analysis of Data:

Because this study seeks to validate and build upon Deegan's original reading study, I followed Deegan's coding strategy closely.¹⁰⁶ The audiotapes of each interview and think aloud were transcribed professionally. I gave each transcript a random number to ensure the confidentiality of the study participants. After reviewing the transcripts, I divided the text into three different types: oral reading of the actual text, silent reading, and participant verbal responses.¹⁰⁷ I divided the participants' verbal responses into "communication units:" a main clause and a subordinate clausal unit.¹⁰⁸ I analyzed each of the communication units and developed a series of codes to describe the type of responsive acts in which the readers were engaged.¹⁰⁹ In other words, I asked what the readers were doing at that point in time in the text and I assigned a descriptive phrase to the action. Each of these codes described a particular "move" made by the reader.¹¹⁰ After analyzing all the transcripts, there were 40 codes used to describe the different moves made by readers.¹¹¹

For example, in working through the fact section of the opinion, one participant gave the following response:¹¹²

So, I'm thinking there, obviously, how the *Snowe* case has some significant differences from facts of our ca se // and I would note . . . those differences

¹⁰⁵ The interview was used for two purposes. First, I asked the students to describe the process they typically used to read cases assigned for their law school classes. Second, I asked participants about how the students read the main case, what they thought about the result, whether they agreed with the judge's decision, and whether they thought it was a difficult text to read.

¹⁰⁶ Deegan, *supra* note 7, at 159-162.

¹⁰⁷ *Id.* at 159. Oral reading of the opinion text was italicized; silent reading was noted in parentheses; and verbal responses were bolded and separated.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.* at 160.

¹¹⁰ *Id.*

¹¹¹ See Appendix 1 for a list of all the codes used in the study to describe the moves of readers. See also Deegan, *supra* note 7, at 169 (containing a list of the codes used by Deegan). Many of the codes overlapped. For example, we both used the terms of "hypothesizing," "skimming," "rereading," and "paraphrasing," etc. However, as I began coding the transcripts, I also gave my own descriptions to readers' moves because readers were making moves not described by Deegan. This was not altogether surprising given that Deegan's participants were reading a law review article and my participants were reading a legal case. Further, because I added a different purpose for which to read, participants could have "connected with the purpose" or failed to do so.

¹¹² In the following examples, readers' verbal responses are characterized by bolded text; readers recitation of actual text from the opinion is characterized by italics. The descriptive codes I gave to the responses are in brackets [. . .] and are in green text later in the article.

first of all// being the case failed to indicate whether the defendant ever viewed this tape.//¹¹³

This response was divided into three communication units (noted by double slashes //).¹¹⁴ The initial code for the first unit was “evaluating.” The second and third units were coded as “noting important details.”

In this next example, the student drew on her prior knowledge and experience to help put the case into a context. These types of statements were coded as “connecting with prior knowledge or experience.”¹¹⁵ Note how the reader connected with an experience she had while working for a judge:

Now I’m thinking of my mentor who is a Judge – an appellate judge//and he runs into this all the time where attorneys do not disclose certain information that could be adverse to their client// . . .¹¹⁶

These two communication units were coded as “connecting with prior knowledge or experience.” In addition, like Deegan, I often found that several moves made by a reader could be grouped together into shorter, “sequential episodes” as the reader moved through a particular section of the case in a linear manner within a short sequence of moves.¹¹⁷ For example, I coded the following verbal response as follows:

So ok, I’m thinking this –that’s – the attorney has been a lawyer in that state since 1974. [noting important detail]// And that’s why the case is before the court [confirming understanding]// and is being – he is up for disciplinary matters [noting important detail]// and he is an attorney in that state. [noting important detail]// So, that’s what that tells me. [confirming understanding].//¹¹⁸

This reader confirmed her understanding in five short sequences each of which built upon one another in a linear fashion.

I also found that there were just as many “nonsequential” moves.¹¹⁹ In a nonsequential move, a student raised an issue but resolved it later on in the text.¹²⁰ In other words, the reader used a series of moves to resolve a question or concern, but the resolution was out of sequence and nonlinear. One example is when a participant used the strategy of “reading on” even though they were confused about a fact or issue. Instead of clarifying their understanding before moving on, they continued reading. This was an interesting strategy that sometimes worked but more often did not work. If the

¹¹³ Transcript 100 at 4.

¹¹⁴ Deegan, *supra* note 7, at 160.

¹¹⁵ *Id.*

¹¹⁶ Transcript 121 at 1.

¹¹⁷ Deegan, *supra* note 7, at 160.

¹¹⁸ Transcript 100 at 3.

¹¹⁹ Deegan, *supra* note 7, at 160.

¹²⁰ *Id.*

reader did successfully resolve her confusion, the resolution occurred over several paragraphs and was “nonsequential” in nature. The following is an example of a nonsequential episode.

Ok. [vocalizing readiness]// So somehow we – I think we jump back to a present case [making assumption]// and basically I’m confused right now. [voicing confusion]// The respondent also failed to – [reciting]// I’m going to keep reading to see if I can get some context. //[reading on]// The respondent also failed to argue that holding in Fletcher should be charged or extended. Although he advised his client of the Snowe case he failed to advise Fletcher or explain any impact Fletcher might have on the case. Ok. So obviously I can figure out that this is bad. [evaluating]// And that the attorney should have notified the client of both cases. [summarizing]// I’m still not exactly sure what the whole Fletcher thing was about though. [voicing confusion]// And I’m going to read again to see if I can pull out some context. [rereading].¹²¹

The participant decided to “read on” hoping to become clearer as she moved through the opinion. One page later, the reader resolved her confusion:

Ok. [vocalizing readiness]// So what I was talking about earlier did happen. [connecting with previous text]// The respondent violated the rule by failing to disclose Fletcher to the Court of Appeals.¹²²

Again, the reader’s understanding of how *Fletcher* fit within the main case occurred over the course of several pages of text and was nonsequential.

After reading and rereading the transcripts again, I categorized each “move” into one of Deegan’s three main categories: problematizing; default; and rhetorical strategies.¹²³ Like Deegan, I also added a fourth category which I called “other.”¹²⁴ Moves that fell within the “problematizing” category were purposeful or “strategic.”¹²⁵ The participants actively engaged in the text and responded to the text by “drawing a tentative conclusion,” “hypothesizing,” “planning,” “synthesizing” or “predicting.”¹²⁶ Deegan categorized these actions as “problem solving” and “problem posing” which she later collapsed into the single category of “problematizing.”¹²⁷ I adopted this category to describe how readers grappled with the text in a purposeful way to work out a problem or an issue. In the following example, the reader uses problematizing strategies.

So now I’m just going to go back to where they started talking about the facts. [connecting with prior text]// Because I’m more concerned about the videotape as I think that’s going to be an issue [hypothesizing]// Prior to the

¹²¹ Transcript 100 at 1.

¹²² *Id.*

¹²³ Deegan, *supra* note 7, at 160-161.

¹²⁴ *Id.* at 161.

¹²⁵ *Id.* at 160.

¹²⁶ *Id.*

¹²⁷ *Id.*

*client's initial hearing, and before the client met with or hired a lawyer, the client was advised by videotape of his rights. So this is curious.[evaluating]// Um – I guess it's so unclear to me. [voicing confusion]// Apparently at the first appearance, the client viewed the videotape and plead guilty. [synthesizing]. But I guess it's a little unclear [evaluating]// and apparently he wasn't represented at that time [distinguishing]//.*¹²⁸

In contrast to the problematizing strategy, the second category is the “default” reading strategy. A reader used a “default” strategy when she moved through the text in a linear progression.¹²⁹ Readers used “default” strategies when they “paraphrased” or “underlined” text. In this study, default strategies also included “margin notes,” “noting aspects of structure” and “highlighting” text. Default strategies were different than problematizing strategies because of the unproblematic nature of the process.¹³⁰ In other words, verbal responses in the default category were not “tied to explicit questions or hypotheses.”¹³¹ Instead, the reader usually noted something about the structure of the case and/or paraphrased or recited the text. For example, one reader gave the following verbal report while reading through the facts of the opinion:

Ok. So it is a disciplinary proceeding action, [noting important detail]// and the main issue is the attorney's failure to disclose material information that was known to him. [noting aspect of structure]// Um – and it was directly adverse to his clients position. [paraphrasing]// He didn't advise the client and he didn't advise the court [paraphrasing]// and so there was a public reprimand [paraphrasing]// and admonishment. [noting factual detail]// Um – just briefly skimming [skimming]// the um keynotes [noting aspect of structure]// the Attorney and Client, failure to disclose authority in the Rules of Professional Conduct there would be Rule 1.4 and 3.3. [paraphrasing]// I'm skimming with that. [skimming]//.¹³²

These twelve moves represented a “nonproblematic” processing of the text and I characterized these moves as default strategies.¹³³

The third category of reading strategies was “rhetorical strategies.” Deegan labeled moves as rhetorical when readers were examining the text in an “evaluative” way or when readers moved outside of the text “into the realm of [...] personal knowledge.”¹³⁴ In the present study, I categorized the following moves as rhetorical:

¹²⁸ Transcript 109 at 3.

¹²⁹ Deegan, *supra* note 7, at 160-161.

¹³⁰ *Id.* at 161.

¹³¹ *Id.*

¹³² Transcript 105 at 1.

¹³³ Deegan, *supra* note 7, at 161 (citing R.J. Spiro, B. Bertram & W. Brewer, eds., *Constructive Processes in Prose Comprehension and Recall*, in *THEORETICAL ISSUES IN READING COMPREHENSION* 256 (1980)). Deegan relied on Spiro's theory that “the default assignment process. . . probably forms the basis for a large part of construction in comprehension.” *Id.*

¹³⁴ *Id.* at 161.

“evaluating,” “connecting with prior experience” and “contextualizing.”¹³⁵ In addition, I added “connecting with purpose” as a rhetorical strategy because when readers connected to the given purpose of the reading, they took a step “beyond the text itself.”¹³⁶ This turned out to be an interesting difference between the two studies that had an impact on the overall results. The next example illustrates a reader using rhetorical strategies by connecting to the purpose of the study, i.e., preparing for a client meeting:

Here we have a legal professional who is supposed to be giving the best information to his client to make informed decisions [evaluating]// and that’s the basis for this rule. [evaluating]// And so in our case, because the client may be coming into us [connecting to purpose]//, we have to understand whether or not the attorney actually did advise the client of all of the rights in the situation [connecting with purpose]// or if he’s just making the facts suit his own argument to get the case. [connecting with purpose]//. We need this information to make informed decisions regarding whether to go forward with it. [connecting to purpose]//.¹³⁷

The reader was both evaluating the text of the opinion and connecting with the underlying purpose of the reading as he considered how the text related to his “client’s” case.

The last category was the “other” category.¹³⁸ Many of the readers spent some time commenting on their “typical processes,” such as the following: “Usually, I just skip over the headnotes and go right to the opinion;” or “I rarely brief cases anymore; I just write things in the margin of my book.” In addition, anytime a reader vocalized getting ready to read and/or reported a distraction, these moves were also placed in the “other” category.¹³⁹

A database was created to help analyze the frequency and type of reading strategy used by each participant. These individual strategies or moves were placed into one of the four larger categories, i.e., default, problematizing, rhetorical or other. The percentage of time each group (HP and LP) spent using each reading strategy was then compared.¹⁴⁰ After obtaining those percentages, we calculated whether the differences in strategy use between the HP and LP group were statistically significant and whether there was a statistically relevant correlation between strategy use and undergraduate GPA, LSAT scores, and first-semester law school grades.

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ Transcript 105 at 4.

¹³⁸ Deegan, *supra* note 7, at 161.

¹³⁹ In the final analysis, we only counted “reporting distraction” in the “other” category.

¹⁴⁰ In order to establish reliability estimates for the strategic moves selected for further investigation, I asked an independent coder to validate my coding strategy by analyzing several random transcripts to differentiate between the problematizing, default, and rhetorical responses.

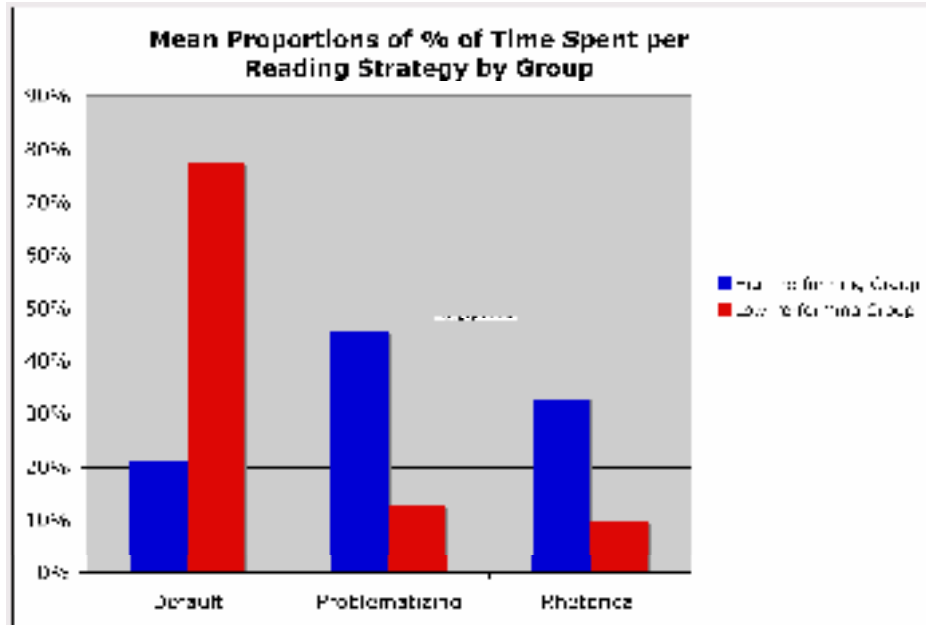
IV. RESULTS OF THE PRESENT STUDY

There were significant differences between the HP and LP groups with regard to the percentage of time each group spent engaging in various reading strategies. The more successful students read the opinion differently than the less successful students. The higher performing students (HP) spent more time engaging in problematizing and rhetorical strategies and significantly less time engaging in default reading strategies. In contrast, the lower performing students (LP) spent the majority of their time using default strategies, and only a small percentage of their time using problematizing and rhetorical strategies.

The HP students spent a mean time of 21.43% (SD=16.90) engaged in default strategies; 45.70% (SD=14.76) in problematizing strategies, and 32.87% (SD=12.97) in rhetorical strategies. In contrast, the LP students spent a mean time of 77.48% (SD=11.52) engaged in default strategies; 12.54% (SD=7.11) in problematizing strategies, and 9.55% (SD=6.70) in rhetorical strategies. Independent t-tests confirmed that the differences in mean values obtained between groups for the default strategy, the problematizing strategy, and the rhetorical strategy were significant.¹⁴¹

¹⁴¹ Independent t-tests confirmed that the differences in mean values obtained between groups for the default strategy, $t(22)=-9.496, p<.001.$, the problematizing strategy, $t(22)=7.011, p<.001.$, and the rhetorical strategy, $t(22)=5.532, p<.001.$, were significant. See Deegan, *supra* note 7, at 163. Like Deegan's study, these results were based upon calculating the frequency or number of moves in each individual category translated into proportions. The proportions represented the total number of moves by each participant in the different reading categories. *Id.* What is not represented in these data is the consequence of moves as the readers used them, i.e., a reader may have devoted a major proportion of moves to problematizing or rhetorical strategies, but may not have comprehended the opinion accurately. *Id.* at 164. Although testing the readers' comprehension of the text would have been useful additional information, I focused the study on the process of how students read as opposed to how *well* they read. Deegan's study did report the success or lack of success of the individual participant's episodes which was an important aspect of her study.

Table 2: Results of the Christensen Study



The other significant finding in this study was a statistical correlation between the way in which students read, i.e., their use of reading strategies, and their law school GPA.¹⁴² Notably, there was no correlation between undergraduate GPA and LSAT scores with the use of any particular reading strategy. In other words, when students entered law school with high UGPA and strong LSAT scores, these scores did not correlate to high grades in law school. However, there was a correlation between students' use of problematizing and rhetorical strategies and law school grades. In this study, the more time a student spent using problematizing and rhetorical reading strategies, the higher a student's law school, first-semester GPA. The way in which a student read was a more accurate predictor of law school success than either undergraduate GPA or LSAT scores.

A. Comparison of the Present Study Results with Deegan's Study

The results of the present study are both similar to and different from the results of Deegan's study. Although the two studies differed in some aspects of their design, a comparison is very useful as it provides us with additional information about legal reading. This section will compare the two studies and offer possible explanations as to their outcomes.

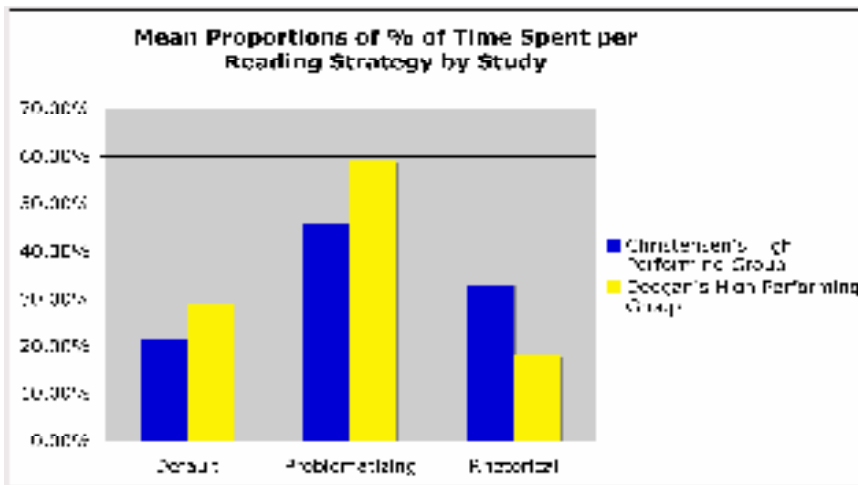
¹⁴² Pearson *r* correlations were used to determine the correlation, if any, between grades, LSAT scores, and reading strategies. Law school GPA was correlated with the use of problematizing (.646), rhetoric (.632) and default strategies (-.710), all at the .001 level. There were insignificant correlations between the use of reading strategies and UGPA and LSAT scores.

1. Higher Performing Students

The HP students in the present study spent 21.43% of their time using default strategies; Deegan’s HP students spent 29.1% of their time using default strategies. These results are similar. The HP students in this study spent 45.70% using problematizing strategies; Deegan’s HP students spent 58.9% using problematizing strategies. Deegan’s HP students spent more time problematizing, and accordingly, these results are somewhat different. In this study, the HP students spent 32.87% of their time using rhetorical strategies. Although Deegan did not report the percentage of time her HP students spent using rhetorical strategies, we can approximate it at around 18%.¹⁴³ The HP students in the present study appeared to rely upon rhetorical strategies significantly more often than Deegan’s HP students. This is an interesting difference between the results of the two studies.

There are two likely explanations. First, the present study asked students to read for the specific purpose of preparing for a client interview. The HP students likely spent more time using rhetorical strategies, i.e., “connecting to purpose,” because they were asked to read with a specific purpose in mind. The second possible explanation is that a judicial opinion has an inherent and unique structure that lends itself more easily to the use of rhetorical reading strategies. The students in the HP group were able to adapt to the structure of the case and, therefore, could spend more time engaged in rhetorical reading strategies.

Table 3: Higher Performing Students: Comparison of Christensen & Deegan Studies



¹⁴³ Deegan reported that the three types of strategies, default, problematizing, and rhetorical accounted for 97% of the total verbalizations producing during reading. Deegan, *supra* note 7, at 161. The remaining 3% were categorized as “other” moves. *Id.* Therefore, we can calculate that the default and problematizing moves made up 79% of the verbalizations (29.1% + 58.9%) plus 3% of “other” moves (82%). Then, we can deduce that for the HP group, their rhetorical strategies accounted for approximately 18% of their moves (100% - 82% = 18%) Deegan’s LP group spent 85% of their verbalizations in default and problematizing strategies (44.7% + 40.3%) plus 3% in other moves (88%); therefore, the LP group spent about 12% of their time using rhetorical strategies (100%-88%).

2. Lower Performing Students

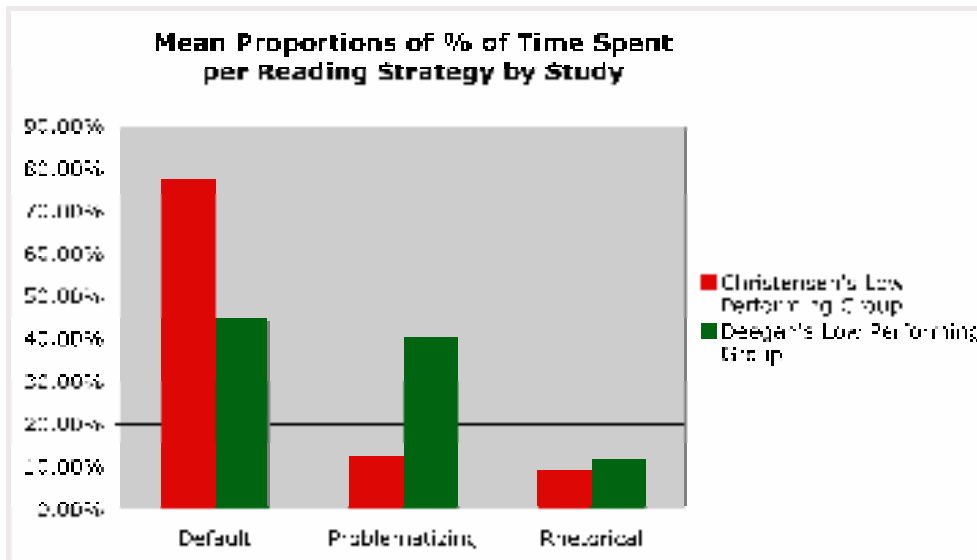
With regard to the LP students in each study, the present study found LP students spent 77.48% of their time using default strategies; in contrast, Deegan's LP students spent 44.7% of their time. These results show a notable difference between the two studies. Why did the LP students in the present study spend significantly more time using default strategies? One possibility is that the students in the present study had completed only a single semester of law school whereas Deegan's students had finished a full year of law school. The additional semester of law school may have given Deegan's LP students more experience with legal reading which enabled them to utilize more problematizing strategies. Another explanation may be that this study used a judicial opinion as the main text whereas Deegan used a law review article.¹⁴⁴ Weaker students may rely more heavily on default reading strategies when reading a case because they can focus on the structural components of the case, i.e., they can note the issue, holding, footnotes and/or highlight text as they read. Even if the students were confused by the reasoning or result of the case, the LP students could minimally identify the "parts" of the case as they read aloud.

With regard to using problematizing strategies, the present study's LP students spent 12.54% of their time using problematizing strategies; in contrast, Deegan's LP students spent 40.3% in problematizing strategies. Again, the LP students in the present study appeared to use problematizing strategies significantly less than Deegan's LP students. Finally, the LP students in the present study spent 9.55% using rhetorical strategies; again, although Deegan did not report rhetorical strategy use, we can approximate that her LP students spent 12% of their time using rhetorical strategies.¹⁴⁵ With regard to rhetorical strategies, the results are similar.

¹⁴⁴ Deegan, *supra* note 7, at 158.

¹⁴⁵ See *supra* note 163 describing Deegan's study. Deegan, *supra* note 7, at 161.

Table 4: Lower Performing Students: A Comparison of Christensen & Deegan Studies



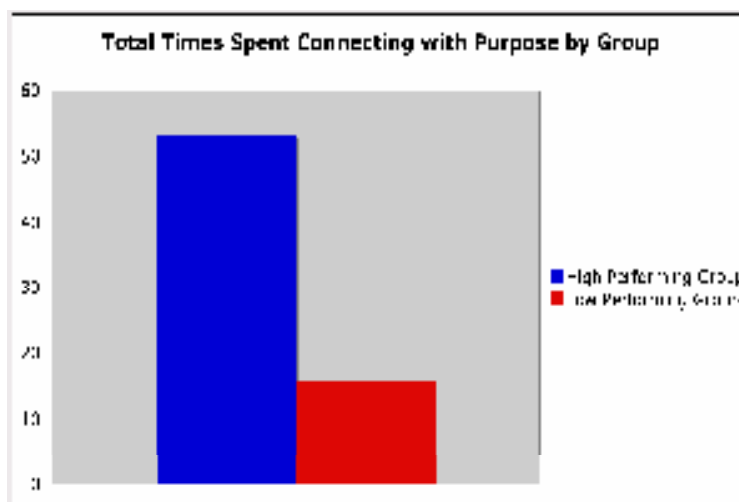
3. Summary of the Similarities and Differences Between the Two Studies

The present study appears to validate Deegan's results as they relate to important differences between HP and LP groups. In both studies, HP students spent more time using problematizing strategies than LP students. The stronger students hypothesized more, predicted while they read, and synthesized the case material. Further, in both studies, the HP students read the text more actively. One difference between the studies is that HP students in the present study spent about 13% less of their time problematizing than Deegan's HP students, i.e., 45.70% versus 58.9%, respectively. As mentioned above, this may be attributable to the fact that the present study involved a practical purpose for which to read. The HP students in this study student spent more time using rhetorical strategies, i.e., "connecting to purpose," because they were asked to do so as they read. Accordingly, they spent less time problematizing.

The present study also validates Deegan's results as they relate to LP students. The LP students in both studies spent more time using default strategies than either problematizing or rhetorical strategies. In both studies, the weaker students spent more time paraphrasing and retelling the case. This was particularly true in the present study where the LP students spent over 77% of their time engaging in default strategies (compared to 44.7% for Deegan's LP group). Again, this marked difference may be the result of the participants reading a case instead of a law review article or the fact that the present study participants simply had less experience as legal readers.

Finally, in the present study, the HP students spent more time using rhetorical strategies than Deegan’s HP students, i.e., 32.87% compared to 18%, respectively. This appears to be an important difference between the two studies, both in terms of study design and study results. It was clear that in the present study, reading for the purpose of preparing for a client interview affected the way in which students read the case. When given a practical purpose for which to read, students (particularly the HP students) read the case differently. Consider the specific number of times each group “connected” with purpose in comparison to their total number of rhetorical moves. The HP students noted or connected with purpose 54 times out of a total 254 rhetorical “moves.” The LP students noted purpose only 16 times.

Table 5: Christensen Study: “Connecting with Purpose”



Not only did LP students fail to note the “purpose” of the case reading, they used far fewer rhetorical strategies as a whole when compared to the HP students: they evaluated the text less, failed to use or connect with their prior experience, and failed to engage with the purpose of the reading.

B. What Conclusions Can We Draw?

The results in the present study confirm Deegan’s results published more than a decade ago. Students who are more successful in law school read cases differently than students who are less successful. Higher-performing students spend more time problematizing and using rhetorical strategies than lower performing students. Likewise, lower performing students spent more time using default strategies. Importantly, the present study illustrated that “connecting to a practical or ‘real world’ purpose” is a particularly important reading strategy that affects the way in which students read legal text.

In addition, the present study adds new data to the current research on legal reading. The results showed a correlation between the reading strategies used by students and their law school GPA. Students who spent more time using problematizing and

rhetorical strategies were more successful, i.e., had higher grades, than students who did not. In contrast, there was no statistical correlation between how well the study participants did before law school, i.e., UGPA or LSAT scores, and their success in law school. If we accept these results as true and the implications that flow from them, they provide interesting questions for consideration. First, the results support the current trend in law schools to recognize the importance of the legal writing and skills curriculum within the first year (and beyond). More law schools are investing money in hiring tenure-track writing and skills professors who specialize in the discipline of teaching legal reading, case analysis, writing, advocacy, ADR and other essential skills. Second, the results suggest that professors in any discipline can enhance their students' learning by considering how to incorporate lessons of legal reading into their first year classrooms. Third, the results question the reliability of the LSAT as a predictor of student success in law school. In the present study, the type of reading strategies used by students was a better predictor of success than incoming UGPA and/or LSAT scores. Finally, the results of this study provide all legal educators with the opportunity to affect our students' success: we can teach students how to read legal text more accurately and efficiently.

V. QUALITATIVE OBSERVATIONS

In addition to the quantitative results explained above, the remaining section of this Article will discuss various qualitative observations about how students read legal text and offer some suggestions as to how we might incorporate these observations into the law school classroom. After reviewing each of the transcripts again, I looked for larger patterns and trends. This section offers four observations about the way in which higher performing students read the law differently than lower performing students. The more successful students “connected with purpose;” they established the “context” of the case before they began to read; they worked actively to “resolve confusion;” and finally, stronger students used a diversity of reading strategies and did not overuse a single reading strategy over others.

1. *Successful Law Students Connected With Purpose*

In this study, law students who connected with the purpose of preparing for a client interview read the opinion differently than those who did not read with a purpose. The HP students as a group connected to the purpose of the reading more frequently than the LP students. Law students who related to the purpose of the case reading, i.e., read the case as a practicing lawyer, used this purpose to guide their reading. Specifically, these students read the facts of the test case more closely (to determine whether their client's case might be analogous to the facts of the opinion); they noted the respondent's punishment (to inform their client of potential consequences); and they understood the procedural posture of the case more accurately (understanding that the court was reviewing a mutual agreement). Many of these details were lost to students who read without a purpose. On average, HP students spent 4% of their total reading time discussing the purpose of the reading; LP students spent less than 1% of their total

reading time connecting to purpose.¹⁴⁶ These results appear consistent with Stratman’s conclusions, i.e., that students comprehended text better when they assumed the role of an actual attorney as opposed to reading as a law student preparing for class.¹⁴⁷

The following examples from participant protocols illustrate how readers acknowledged or failed to acknowledge the stated purpose of the reading protocol. A female in the HP group, who finished her first semester in the top 3% of her class, began her reading taking note of her overall purpose:

All right. I am a practicing attorney and I’m reading the opinion to prepare for a meeting with a client and they have a case that is similar to the facts that I am reading. [connecting with purpose]”¹⁴⁸

About mid-way through the facts of the opinion, she once again related her reading to her purpose, i.e., analyzing the case to counsel her “client.”

So going back to *Fletcher v. State*. [noting important detail]// . . . So *Fletcher*, if we’re basing our arguments on *Fletcher*, that is not good for our client’s case. [connecting with purpose.]//¹⁴⁹

This reader connected with purpose consistently throughout her reading, assuming the role of an attorney as she moved through the text. In contrast, a male LP participant failed to connect with the purpose during any part of his reading. As a result, he was easily distracted as he read and appeared to be overwhelmed by the details in the text.

On May 30, 1996, the respondent entered an appearance on behalf of the client and filed a motion to withdraw the guilty plea. So I’m going to write that in my facts. [marking action]// “30, May.” I don’t like all the numbers next to each other so I put “May” after. [reporting typical process]// The respondent entered an appearance on behalf of the client and filed a motion to withdraw. Attempt to withdraw guilty plea. The trial court denied the motion without hearing. Ok. So – I’m going to put that up in procedural history. [marking action]// I’m going to put it above the appellate court. [marking action]// Trial court denied motion. [noting factual detail]// And I’m going to make a line connecting them. [marking action]// Ok. Now I’m thinking what I’d like to purchase on Ebay. [reporting distraction]// I actually stopped drafting my briefs on the computer because I would become distracted by Ebay. [reporting typical process]//Ok.¹⁵⁰

¹⁴⁶ This percentage was computed by taking the number of times the HP/LP students “connected with purpose” respectively, and dividing by the total number of verbal responses made in the verbal protocol.

¹⁴⁷ Stratman, *supra* note 107, at 84. Oates also noted that her more successful students read with a stronger sense of purpose. Oates, *supra* note 2, at 159.

¹⁴⁸ Transcript 134 at 2.

¹⁴⁹ *Id.*

¹⁵⁰ Transcript 118 at 3.

If this reader had assumed the role of an attorney as he read, it may have helped him focus on the reading task. Interestingly, this student talked a great deal during his reading protocol; he made 291 verbal responses while reading the case while most students made approximately 100 verbalizations. Although this student had much to say during the think aloud, very little of what he said appeared to help him understand the basics of the opinion. Although he may simply have been bored with the reading task itself, his lack of focus may also signal other difficulties. In his post-think aloud interview, I asked him what he thought of the case. He answered as follows: “I liked it. I can learn from it. I was confused at first who the respondent was, and how the different cases came in . . . I thought the court did a good job.”¹⁵¹ Yet he was unable to provide a thorough recitation of what occurred in the case, its reasoning and/or outcome. After first semester exams, this student fell in the bottom 10% of his first-year class. This student might have benefited from a simple piece of advice: know your purpose before you begin to read.

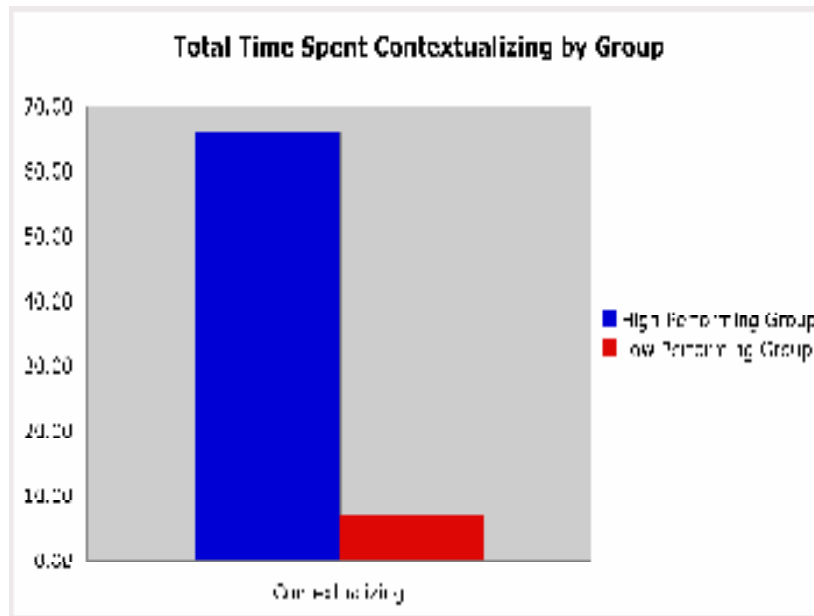
These results send an important pedagogical message. We can assign our students specific purposes for which to read any given case. At the beginning of the first year of law school, most students will not do this by themselves. However, we can emphasize to our students that *why* we read a case is almost as important as what we are reading.¹⁵² Before you assign a series of cases in your class, give students a purpose for which to read. As you progress through the first year curriculum, remind students that both law students and lawyers benefit from reading with a practical and “real world” purpose.

¹⁵¹ *Id.*

¹⁵² Many of us do this intuitively, but consider having students practice reading as a lawyer or a judge. Divide the class into two sections; one section can read the case as an appellee and the other half as an appellant. One other suggestion is to “think aloud” in front of your class during the first few weeks. Take the opportunity to “show” students how you would read a case as a lawyer, a judge, or an experienced legal reader, i.e., law professor.

2. Successful Law Students Established the Context of Case

Another factor that impacted the way in which students read was whether or not they established the context of the case before they began to read. By in large, students in the HP group “contextualized” the opinion more frequently than LP students.



For example, HP students noted that the Indiana Supreme Court was reviewing the case; that the case was recent; and that it was a *per curiam* decision. Beginning their reading understanding the context of the case served these students well allowing the students to create a picture in their heads before beginning to read. The fact that the more successful students used the strategy of “contextualizing” more often is not altogether surprising.¹⁵³ Lundeberg noted that her legal “experts” (2 lawyers and 8 law professors) began the case by noting the subject matter, headings, parties, and date of the opinion.¹⁵⁴ If legal experts use “contextualizing” as an expert strategy, it makes sense that the more successful law students also made use of this strategy. The following examples illustrate how different HP and LP students “contextualized” the test case.

A female in the HP group, in the top 10% of her class at the end of first-semester, began her reading by noting the context of the opinion.

All right this case is in Indiana [contextualizing]// and it comes from the northeastern quarter [contextualizing]// in the matter of Victor H. S. 02S009902 VI

¹⁵³ See Oates, *supra* note 2, at 148. In Oates’ study, her legal expert, a law professor, began by first reading the caption, noting the name of the court and the year of the decision.

¹⁵⁴ Lundeberg, *supra* note 3, at 412.

151. *The Supreme Court of Indiana*. So this would be the highest court.
[contextualizing]//¹⁵⁵

Although the context of the case was not crucial to the outcome of this case, the type of the court authoring an opinion can be important. Is the court a state appeals court? Is the decision from a federal or state court? Is the decision published or unpublished? We want our students to note of these details whenever they read a case. The type of court, the date of the decision, and the particular judge may affect the weight of the opinion's authority, the credibility of the decision or the quality of the writing. These details establish the initial context of the opinion.

Another female participant, in the top 10% of the class, began the case noting the context of the opinion:

Ok. This case is from the Supreme Court of Indiana. [contextualizing]// August 22, 2000.[contextualizing]// *It's in the matter of Richard J. Thonert. Disciplinary proceeding was brought against attorney in which disciplinary commission and attorney entered statement of circumstances and conditional agreement for discipline.*
It sounds a little juicy. [evaluating]// Attorney on trial. [noting important detail]//.¹⁵⁶

In contrast, a male in the LP group jumped right into the text of the opinion when he began reading without noting anything about the date, type or subject matter of the opinion. Instead, this LP reader focused on highlighting and noting the structural components of the opinion. Eventually, this reader became very confused about what was happening in the opinion. His reading protocol began:

The first thing is I would take out – I would take out my green marker, which means [holding] and I very rarely use it; it only means holding and I would mark– [reporting typical process]// the Supreme Court would get a thick line [highlighting]// and then I would try to break up the different phrases of that sentence so that it would be easier to pick up with the explanation, [reporting typical process]// but it's all in one sentence and it's kind of confusingly written. [voicing confusion]// So the Supreme Court, and then one line is held that attorney's failure to disclose appellate tribunal controlling authority, which was known to him [highlighting] and then I would be done at this comment. I would put a thick line through and because connecting word –[marking action]// had not been disclosed by opposing counsel and I'd stop at that comment again. That was directly adverse to his client's position. I'd stop at that comment again. [marking action]//¹⁵⁷

This student continued to skim and mark the case as he read it. However, his heavy reliance on highlighting and marking the opinion overshadowed any real understanding of the case. At the conclusion of his case reading, he still expressed confusion:

¹⁵⁵ Transcript 103 at 2.

¹⁵⁶ Transcript 102 at 2.

¹⁵⁷ Transcript 114 at 2.

Right now I'm thinking to myself, I don't know exactly what happened here. [voicing confusion]// I know that they didn't tell. [noting important detail]// Something has not been disclosed to the client. [noting important detail]// I'm not exactly positive what that thing is. [questioning]// I'm still not sure what this adverse authority or counsel is. [voicing confusion].¹⁵⁸

This student verbalized that he “highlighted” or “marked action” in the opinion 68 times out of his total 180 verbalizations, more than 40% of the time. However, what seemed to be absent from his protocol was a sense of the larger picture or context of the case. After the think aloud, I asked the student about his general reading strategies and more specifically, what he thought about the present case.

Interviewer: What are your reading strategies for class?

Student: My goals are to look for the issues and the rules. Um, and not so much for the holdings because usually it's an application of whatever questions were important to the rules. . . .

Interviewer: Do you still do case briefs for major cases?

Student: I do case briefs for my cases. But I don't necessarily write down any of the fact pattern. Usually, like I book read the fact pattern using like the use of different colors and sizes of markers—so if I'm called on in class I can rattle off the fact pattern. Usually, I can remember it. And, my brief that I write down is more of like a process of reading so that I'm making sure that I find what the question is, what the rule is, what the court decided. . . .

Interviewer: Do you tend to read a case once through or twice through?

Student: Well, I usually only read it through once while taking detailed notes. I really don't need to read it twice because if I highlight a paragraph then I go through and I read it again while I'm typing it back out.

Interviewer: What do you think about this particular case?

Student: I thought that they could have used the two different client's last names more because that was [confusing] when he was talking about *Fletcher* and when he was talking about the current case. And, to use “tribunal” in place of a higher court of an appeals court was confusing to me at first. I didn't really know what he was talking about . . . it seemed like jargon for jargon's sake. . .

Interviewer: Did you find it to be fairly simple, straightforward case to read?

¹⁵⁸ *Id.*

Student: It was very simple. . . .

Interviewer: In this case, did it make a difference that I made you read for a purpose?

Student: No. I don't know that I would have read it any different.¹⁵⁹

This student's interview response was interesting for several reasons. First, he appeared to describe his reading and briefing strategies as looking mostly for the "parts" of the cases as opposed to gaining an overview before proceeding to the text. His reading protocol certainly reflected this tendency. Second, I was surprised that this reader classified the case as "very simple." In reviewing his protocol, he appeared to struggle with many aspects of the opinion, and particularly, the legal terminology. Third, when I asked him what he thought of the case, the student talked about his frustration with the legal terminology as opposed to his understanding and/or agreement with the outcome of the case. This was different than most other students' responses who overwhelmingly agreed with the court's decision in the case. Finally, this student did not consider at any point the purpose of the case reading; it did not change the way in which he read the case.

What can we learn from this student's comments? For some students, legal reading and case analysis is limited to plugging the components of an opinion into a case brief format. These students tend to struggle in their case reading more than others. In order to have students begin to see the larger picture of any case, we want them to begin their legal reading by placing the case into a context. Ask your students to note the important contextual details of any case before they begin reading. Suggest that students preview the opinion by noting what type of case they are reading? Place the case into a social and procedural context before going straight to the facts of the case. All of these suggestions simply ask students to pause before they begin reading, and to ask not only why they are reading the case, but how the case fits into the larger world.

3. *Successful Law Students Resolve Confusion Before They Move On*

Another interesting difference between the HP and LP groups was how they handled confusion as they read. When students got stuck, did they read on hoping their questions would clear up on their own? Or did they go back, reread the text, and search for the answer before moving on to the next paragraph? Most of the study participants reported confusion during their reading. But they dealt with that confusion very differently. Students in the HP group more consistently resolved their questions early on, i.e., they would identify a question, find the answer, and then go back to the text. In contrast, the LP students left questions hanging. They made assumptions about the answer and read on. This strategy of "reading on" or "making an assumption" was not always helpful, particularly if the assumption was incorrect.

For example, a male participant in the LP group began the reading protocol by making an incorrect assumption about the subject matter of the case. Although the synopsis of the case characterized the subject matter as an attorney disciplinary issue, this

¹⁵⁹ *Id.* at 9-10.

student began the reading assuming the case was about the attorney-client privilege. This negatively impacted his reading of the case. He began the reading protocol as follows:

This is an issue of – I’m seeing this as an attorney-client privilege. [making assumption]// Maybe professional conduct rules kind of a case? [making assumption]// The second note here is – the keynote is Attorney and Client. [noting structural signal]//.¹⁶⁰

A few paragraphs down, the reader questioned his initial assumption, but instead of going back to reread and/or confirm his understanding, he simply “read on” hoping his confusion would resolve by itself.

*It is therefore, ordered that the respondent, Richard J. Thonert, is hereby reprimanded and admonished for his violations of Professional Conduct. That is – it’s not clear to me quite what the outcome is at this point [voicing confusion]// other than to say that whatever the agreement the parties have reached and discipline that’s called for from that agreement is what the appellate court agrees should happen. [paraphrasing]// Okay, I’m going to read on. [reading on]// The Clerk of this court is directed to provide notice of this order in accordance with Admission . . . So with regard to the actual punishment, I’m assuming that there was some actual public reprimand. [making assumption]// What that is I am not exactly sure. [voicing confusion]// It’s also as the punishment costs are assessed to the attorney. [noting important detail]// And that was it.*¹⁶¹

The participant ended his think-aloud at that point. In reviewing his transcript, it was clear that he struggled through each paragraph of the opinion having difficulty distinguishing between relevant and irrelevant information. He spent 68.65% of his time using “default” reading strategies and he paraphrased the text most frequently. He “evaluated” the text only 2 times during the protocol and he failed to connect with the purpose of the text at all. It was clear that the way in which this student read legal text affected his law school performance; his law school GPA was in the bottom 2% after the first semester of law school. Further, this student knew that his reading strategies were not working for him. He felt very frustrated after his first semester of law school. He described his method of reading cases as follows:

Student: Ah—Ideally, I try and read cases twice. Realistically that doesn’t happen as often as I’d like it to. My goal is through the first reading to get to understand what the case is about. Who the main players are? To basically – to understand the case and to get an idea of what I would need to put together in a basic brief. If I can’t read for the second time, . . . I try and skim through and pick out perfect details. . .

Interviewer: Has this been successful for you?

¹⁶⁰ Transcript 113 at 1.

¹⁶¹ *Id.*

- Student: Arguably no. No.
- Interviewer: Where do you feel you get stuck?
- Student: Just it's very time consuming. I feel like I'm a slow reader and even to read it once and to go back through even to skim it for the details that I'm looking for, I feel that I'm not getting through the material as quickly as I would like to and to grasp as much as I would like. To retain as much. The retention.¹⁶²

This student might benefit from additional reading instruction. He was spending considerable time and effort reading cases for class, but he was not extracting the right information. It is quite possible that using different reading strategies and changing the way in which this student read could dramatically improve this student's classroom performance.

In contrast, one HP reader resolved her initial confusion by answering her questions before she moved on. She was "willing to take risks with regard to her construction of meaning, but [she] held such actions subject to revision."¹⁶³ She evaluated the text; made comments; and related the text to her own experience. This student "talked back to the text,"¹⁶⁴ and as a result, her use of reading strategies enhanced her understanding of the case. Although she began her reading with questions, she kept rereading until she understood it.

Boy, that first paragraph was a little thick for me. [voicing confusion]// It sounds like there is a lot going on. [commenting on difficulty]// It sounds like neither party was forthcoming with a controlled issue. [hypothesizing]// Failure to disclose to appellate tribunal controlling authority, which was known to him. So he had knowledge and didn't disclose it. [summarizing]// It sounds like he is in trouble. [drawing tentative conclusion]// There are about four different keynotes. [noting aspect of structure]// All of them are titled attorney and client. [noting aspect of structure]// I'm just going to read two of them. [stating process]// Because if I read too many of them it sort of taints my reading. [reporting typical process]// And I'd rather just – so this is keynote [noting aspect of structure]//.¹⁶⁵

She reread the next few paragraphs carefully, making sure she understood the facts before moving on. Although she made assumptions as she read, her assumptions usually were correct and they ended up improving her understanding of the case.

¹⁶² Transcript 113 at 6.

¹⁶³ Deegan. *supra* note 7, at 165 (describing a student's episode where he took risks, but successfully made assumptions about the reading that resulted in the successful resolution of his initial problem).

¹⁶⁴ Elizabeth Fajans & Mary Falk, *Against the Tyranny of the Paraphrase: Talking Back to Texts*, 78 CORNELL L. REV. 163, 163 (1993).

¹⁶⁵ Transcript 102 at 1.

Ok. So here, this is probably the third or fourth time that I read this sentence. [rereading]// And now, it's finally clear what's going on. [clarifying]// So Thonert, he is a pro se for the respondent because he is an attorney himself [confirming understanding]// and it's an attorney disciplinary action. [confirming understanding]// He was involved in an appeal [summarizing]// and he had information that's pertinent in his client's case. [summarizing]// The opposing counsel didn't reveal it. [summarizing]// So, he had an ethical duty to review it. [drawing tentative conclusion]// That's the issue. [noting aspect of legal structure]// It's probably – I'm just going to speculate about the matter – how big of a wrap are we going to give this guy because he didn't adhere to ethical standards to the profession. [hypothesizing]//¹⁶⁶

Although she spent a fair amount of time rereading, her effort paid off. She finished the protocol with a competent understanding of the case. This reader ended up in the top 10% of her class at the end of first semester.

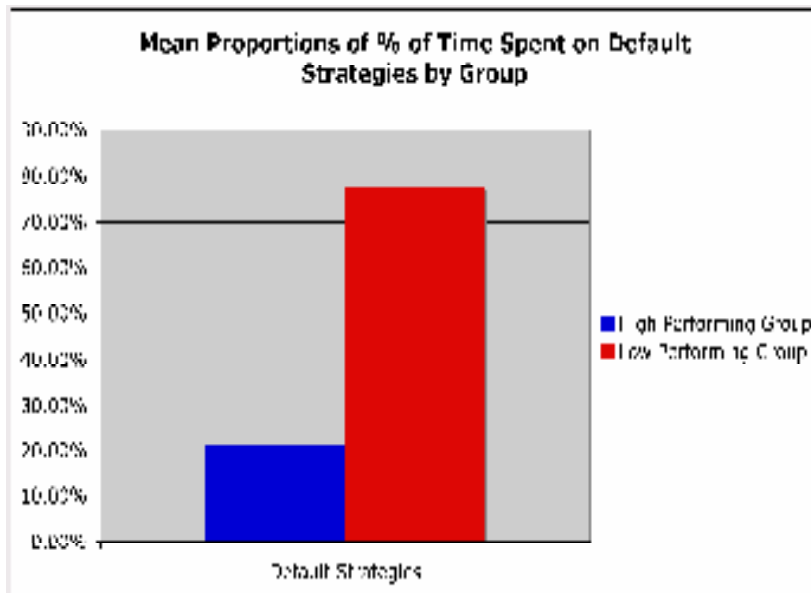
We can learn something from these examples. Students who take the time and effort to read critically and to resolve their confusion before moving on have more success with legal reading. Quite simply, these students work to comprehend the text. We need to remind our students that reading the law is not easy. We can give students permission to be novice readers in their new discourse. Remind them that they will have to look up new terms and reread confusing paragraphs. These simple strategies go a long way toward producing competent legal readers.

4. The Overuse of Default Strategies

One final observation is the different ways in which HP and LP students used and/or overused default strategies. Although both groups spent some time underlining, paraphrasing and making notes as they read, the LP students relied upon default strategies far more frequently. In some cases, LP students relied almost exclusively on highlighting the text or “book briefing” as they read the opinion.

¹⁶⁶ Transcript 102 at 2.

Table 6: Christensen Study: HP and LP Students Using Default Strategies



The heavy reliance on default reading strategies seemed to prevent some students from engaging in any meaningful case analysis. Students seemed to be “filling in the blanks” of a case brief: facts, issue, holding, and reasoning. Once students found the right “part” of the case, their analysis was complete. Consider the following example of a female LP near the beginning of her protocol:

Ok. I have my headnotes in my computer and I’ll probably read over them again so that I understand what important rules or professional conduct that they are talking about. [reporting typical process]// . . . The respondent in this attorney disciplinary matter is charged with . . . [omitted text] So I would underline that what he was charged with [underlining]// and then in the margin I would put – I would just write the words “charge.” [marking action]// “Charged.” And then I’d put “failure to disclose.” [paraphrasing]// And I wouldn’t write out the whole thing because I’m going to go back. [planning to reread]// I’m just putting in the margin so that I have kind of like reference points [margin notes]// and I go back to the case. . . .¹⁶⁷

As this reader made notes, she predominantly paraphrased the text. Although she clearly had a system for reading a case, it is unclear whether her system actually improved her understanding of the case. She spent 85.44% of her time using default reading strategies; only 2.91% of her time using problematizing strategies and 11.65% of her time using rhetorical strategies. Although she recognized all the parts of the case, she failed to

¹⁶⁷ Transcript 116 at 1.

hypothesize, synthesize facts with rules, evaluate the result, or connect with the underlying purpose of the reading. In this sense, she over-relied upon default reading strategies. Following the think aloud, I asked her what she thought about the case. This was her response:

It was nice and short. It was ok. It was a little confusing at times because he was a part of one case and cited another case so it was confusing as to which one he was supposed to cite and which ones weren't.¹⁶⁸

Although she may have gotten the general flavor of the case, her analysis was simplistic. Her comprehension never went beyond the basic structural components of her case brief.

Similarly, a male student in the LP group over-relied on the use of “highlighting.” This student had a very intricate system for using different colored highlighters to represent the structural components of a case. A representative portion of his protocol is as follows:

[T]his is going to get a green line again because it's a ruling. [highlighting]//So the ruling in *Fletcher* was adverse to the argument that the respondent offered on appeal to the client's case. [synthesizing] //That is in green. [highlighting] *The respondent had served as counsel of record for the defendant in Fletcher in the appeal before this Court. The court ruling in Fletcher was issued on May 1, 1995. So now I'm going to use a big yellow highlighter [highlighting]// for May 1, 1995 and I'm going to put a line through the court's ruling of Fletcher that was issued on that date and that way I can look on this page [stating process]// and there is only a few spots where there is big yellow line [highlighting]and only two of them are numbered, so it is very easy for me to see that this was a year apart [noting important detail].*¹⁶⁹

Although this student used other reading strategies during his protocol, he highlighted every aspect of the decision. His copy of the case had relatively few unmarked sentences. Again, the students who tended to over-rely upon a particular reading strategy likely fell within the LP group and these students over-relied upon default reading strategies. In contrast, the HP students relied more extensively on reading strategies from the problematizing and rhetorical categories, and limited their use of default strategies.

What can we learn from these protocols? We can remind students that we want them to have their own opinions about the law. Successful law students (and lawyers) question the decisions, evaluate the results of any case, and consider the implications of any rule. Reading the law is far more than making notes or highlighting text. We want our students to read the law creatively, as well as critically. The best students (and lawyers) are open to the possibility that there may be several different interpretations of any given text. You can show your students this reading strategy. Begin class by

¹⁶⁸ *Id.* at 9.

¹⁶⁹ Transcript 114, p. 5.

“thinking aloud” as you read through a case. Show your students how you interpret the text, how you confront confusion, and how you evaluate the decision. We *can* teach our students to be more successful, creative and competent legal readers.

CONCLUSION

The purpose of this study was to explore whether there was a correlation between the way in which first year law students read legal text and law school grades. The results support the conclusion that more successful law students read judicial opinions differently than less successful students, and that there is a correlation between reading strategies and law school success. Law students that spent more time using problematizing and rhetorical reading strategies and less time using default strategies were more successful after the first semester of law school. Certainly, there are limitations to the generalizability of these findings. This study relied exclusively on the verbal reports of law students for the research data. Although verbal reports are considered to be a reliable data source, they can alter regular cognitive processes and even affect the very process, i.e., reading, that we are attempting to study. In addition, this study involved a relatively small sample size, i.e., 24 students, mostly due to the labor-intensive work of conducting, transcribing and interpreting the think aloud data. Another limitation is that only a single text was used. Additional research could involve using different types of legal text to determine if reading strategies change depending on what students are reading. In addition, further research might examine a more narrowly defined purpose and an assessment of student comprehension. Finally, although this study focused on the types of reading strategies students used, it did not take into account how consistently readers used a particular strategy or how well they used a strategy. Again, this could be an important area of additional research.

Despite these limitations, however, the results of the present study are significant. Legal educators can no longer assume that all law students are good “legal” readers simply because they were successful before law school. In addition, just because students did well before law school does not mean they will be successful in the “study” of law. Traditional predictors of student success, i.e., LSAT scores, do not tell us the whole story. How a student reads a legal case may actually tell us more about a student’s potential for success. Minimally, the results of this study support that legal reading is very important to a law student’s career. Law schools need to invest time and energy into teaching this skill. Although it is often tempting to assume that students come to us either intellectually equipped or unequipped to study the law, this is an oversimplification. We can teach students how to read and analyze the law more efficiently and effectively. The challenge is to guide our students by teaching them the strategies used by their successful peers. In the end, we will produce not only better law students, but better lawyers as well.

APPENDIX A

Listing of “moves” identified in the think-aloud protocols

D = Default Reading Strategy

P = Problematizing Reading Strategy

R= Rhetorical Reading Strategy

O=Other

Analogizing	P
Clarifying	D
Commenting on Difficulty	D
Confirming Understanding	D
Confusion re: Term	D
Connecting with Prior Text	R
Connecting with Prior Knowledge	R
Connecting with Purpose	R
Contextualizing	R
Disconnection with Purpose	D
Distinguishing	P
Drawing conclusion	P
Drawing tentative conclusion	P
Evaluating	P
Hypothesizing	P
Highlighting	D
Identifying Holding	D
Locating information	D
Making Assumption	D
Marking action	D
Making margin notes	D
Noting aspect of legal structure	D
Noting purpose	R
Noting important detail	D
Noting structural signal	D
Paraphrasing	D
Planning	P
Predicting	P
Questioning	D
Reevaluating Tentative Conclusion	P
Reporting distraction	O
Reporting typical process	O
Rereading	D
Reviewing text	D
Synthesizing	P
Skimming	D
Stating purpose	R
Summarizing	D
Voicing Confusion	D
Voicing Lack of Knowledge	D

