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# BRIDGING THE READING GAP IN THE LAW SCHOOL CLASSROOM

PATRICIA GRANDE MONTANA\*

## I. INTRODUCTION

Many students struggle in law school, particularly in the first year, because they are weak readers.<sup>1</sup> They do not know how to read text closely and have limited practice in reading complex or lengthy pieces of writing.<sup>2</sup> Nor are they accustomed to reading works that demand deep thinking and reflection.<sup>3</sup>

Yet legal analysis and writing depends on a careful reading and thoughtful understanding of the authority on which a lawyer relies.<sup>4</sup> Without strong reading and critical thinking skills, it is no surprise that incoming law students have difficulty following a structured analysis and mastering legal writing. As the gap between what entering law students know and what legal educators expect them to know widens, it's time to further study the sources of the problem and adjust not only teaching expectations, but also the manner in which professors teach.<sup>5</sup>

To that end, this article explores how to close the gap in the reading skills of entering law students so they can develop the competencies in legal reading, analysis, and writing required to excel in law school. The “underprepared law student,” a term commonly used to describe today’s law student, has many attributes that need attention<sup>6</sup>. But this article focuses solely on the student’s reading ability because it is the foundation to building

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<sup>1</sup> Ian Gallacher, “*Who Are Those Guys?*”: *The Results of a Survey Studying the Information Literacy of Incoming Law Students*, 44 CAL. W. L. REV. 151, 151, 180–86 (2007) (studying the literacy skills of 740 students from seven different law schools and finding, among other things, that incoming law students read substantially more than the national average, but will experience some reading problems in their first year).

<sup>2</sup> *Id.* at 185.

<sup>3</sup> Ruth Vance & Susan Stuart, *Of Moby Dick and Tartar Sauce: The Academically Underprepared Law Student and the Curse of Overconfidence*, 53 DUQ. L. REV. 133, 139 (2015).

<sup>4</sup> Susan Stuart & Ruth Vance, *Bringing a Knife to the Gunfight: The Academically Underprepared Law Student & Legal Education Reform*, 48 VAL. U. L. REV. 41, 46–47 (2013).

<sup>5</sup> *See id.* at 48.

<sup>6</sup> *See, e.g.*, Vance & Stuart, *supra* note 3, at 133–34 (exploring the relationship between overconfidence and the underprepared law student and suggesting strategies to address the problem).

competency in all other areas.<sup>7</sup> Law students need to be able to read legal text to understand rules, explain legal principles, identify issues, solve legal problems, and advocate persuasively.<sup>8</sup> Without a strong basis in reading, a law student's success in these tasks is compromised.<sup>9</sup>

Though there are a unique group of forces that might contribute to the underprepared law student, this article concentrates on two sources specifically: (1) the student's prior educational experience<sup>10</sup> and (2) the student's relationship with technology.<sup>11</sup> The article first discusses how students are learning in their undergraduate studies and how technology has transformed the reading experience for many.<sup>12</sup> It also describes the characteristics of a typically underprepared law student.<sup>13</sup> Next, it explores the implications a student's unpreparedness has on his or her ability to succeed in law school.<sup>14</sup> Finally, it suggests ways to better prepare students so they develop into strong readers and critical thinkers.<sup>15</sup> Specifically, it proposes that professors use more guided reading exercises to ensure students master these skills, which are critical to not only performing in law school, but also to becoming practice-ready attorneys.<sup>16</sup> Thus, by demonstrating to students how expert legal readers read, professors can help tremendously in closing the reading gap for beginning law students.

## II. THE UNDERGRADUATE LEARNING EXPERIENCE

The sentiment seems to be that undergraduate education is in crisis. A growing number of critics contend that undergraduate education lacks both academic rigor and inflates student achievement, not only underpreparing students, but also misleading them into believing they have acquired the critical reading and complex reasoning skills needed for higher learning.<sup>17</sup> In a landmark study published in a book titled *Academically Adrift: Limited Learning on College Campuses*, sociologists Richard Arum and Josipa Roksa extensively studied the extent and quality of college-level learning, analyzing 2,322 undergraduates at twenty-four four-year colleges and

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<sup>7</sup> Stuart & Vance, *supra* note 4, at 47.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 48.

<sup>10</sup> *See infra* Part II.

<sup>11</sup> *See infra* Part III.

<sup>12</sup> *See infra* Parts II, III.

<sup>13</sup> *See infra* Part II.

<sup>14</sup> *See infra* Part IV.

<sup>15</sup> *See infra* Part V.

<sup>16</sup> *See infra* Part V.

<sup>17</sup> RICHARD ARUM & JOSIPA ROKSA, *ACADEMICALLY ADRIFT: LIMITED LEARNING ON COLLEGE CAMPUSES* 1 (2011).

universities, and concluding that students were doing and learning very little in their undergraduate studies.<sup>18</sup>

Arum and Roksa's study measured students' improvement over several semesters in terms of critical thinking, complex reasoning, and writing, and also assessed how much they studied and how many papers they wrote for their courses.<sup>19</sup> Alarming, they found there was a "barely noticeable impact on students' skills in critical thinking, complex reasoning, and writing" after three semesters of college education.<sup>20</sup> They also found that most students do not read or write extensively in their classes.<sup>21</sup> In fact, "[f]ifty percent of students in [their] sample reported that they had not taken a single course during the prior semester that required more than twenty pages of writing, and one-third had not taken one that required even forty pages of reading per week."<sup>22</sup> This study suggests that undergraduate courses are not adequately challenging students in the areas of reading, analysis, and writing.

Studies on the reading aptitudes of adults confirm that undergraduate education has failed to cultivate a lasting interest in reading.<sup>23</sup> For example, "the U.S. Department of Education report[ed] that only 31% of U.S. [college] graduates scored at the 'proficient level' for high-level English skills . . . , meaning that 'the graduates were able to read lengthy, complex English texts and draw complicated inferences.'"<sup>24</sup> Additionally, a report by the National Endowment of the Arts, *Reading at Risk: A Survey of Literacy Reading in America*, published in July 2004, found that the number of adult Americans reading literature of any kind is dropping.<sup>25</sup> Tellingly, at the time, approximately 37% of college-educated readers and 25% of those with a graduate education did not read a single novel, play, or poetry in the previous year.<sup>26</sup> Yet, reading entails active attention and engagement with

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<sup>18</sup> *Id.* at 1, 145.

<sup>19</sup> *Id.* at 30, 69–71.

<sup>20</sup> *Id.* at 35.

<sup>21</sup> *Id.* at 69–73.

<sup>22</sup> *Id.* at 71.

<sup>23</sup> See Cathaleen A. Roach, *Is the Sky Falling? Ruminations on Incoming Law Student Preparedness (and Implications for the Profession) in the Wake of Recent National and Other Reports*, 11 J. LEGAL WRITING INST. 295, 297 (2005) (discussing reports on literacy levels of students and their implications on law student preparedness).

<sup>24</sup> *Id.* at 300 (citing Sam Dillon, *Literacy Falls for Graduates from College, Testing Finds*, N.Y. TIMES (Dec. 16, 2005), [http://www.nytimes.com/2005/12/16/education/literacy-falls-for-graduates-from-college-testing-finds.html?\\_r=0](http://www.nytimes.com/2005/12/16/education/literacy-falls-for-graduates-from-college-testing-finds.html?_r=0) [<https://perma.cc/EUN9-ZDVR>]).

<sup>25</sup> *Reading at Risk: A Survey of Literacy Reading in America, Research Division Report #46*, NAT'L ENDOWMENT FOR THE ARTS i, ix–x (June 2004) [hereinafter *Reading Report*], <https://www.arts.gov/sites/default/files/ReadingAtRisk.pdf> [<https://perma.cc/SHJ6-VRKF>].

<sup>26</sup> See *id.* at 12.

the text; therefore, these skills must be introduced and nurtured in school.<sup>27</sup> With fewer opportunities to practice reading and writing in undergraduate education, adult literacy is unlikely to improve.

At the same time undergraduate education is concentrating less on reading and writing, “students’ academic motivation, interest, and engagement” has also decreased.<sup>28</sup> As a result, fewer students are electing to take classes that demand a lot of reading or writing.<sup>29</sup> Thus, in the end, undergraduate education has become a far less rigorous experience than it was previously.

The most common explanation for undergraduate education’s lack of rigor is student satisfaction, which directly influences the workload assigned by professors and their methods of grading student performance.<sup>30</sup> High tuition costs have led students to focus not just on the quality of the academics when selecting a school, but also on the quality of their overall experience at that school.<sup>31</sup> As a consequence, student happiness has become a new priority for undergraduate institutions.<sup>32</sup> They are under increased pressure from students to provide a learning environment that does not overtax students’ time or stress them emotionally.<sup>33</sup> Students want to be intellectually challenged, but do not want to be burdened with a heavy workload.<sup>34</sup> Indeed, they are most happy when they are not working hard.<sup>35</sup> Thus, it is not surprising that students will complain when they are tasked with lengthy or complex reading and writing assignments.<sup>36</sup>

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<sup>27</sup> See *id.* at vii.

<sup>28</sup> Courtney G. Lee, *Changing Gears to Meet the “New Normal” in Legal Education*, 53 DUQ. L. REV. 39, 63 (2015) (analyzing the “new normal” in legal education where beginning law students lack the credentials and skills expected of them).

<sup>29</sup> See *id.* at 63–64 (describing the Collegiate Learning Assessment study that found 32% of college students each semester did not enroll in classes in which they were assigned forty or more pages of weekly reading and half of the students did not take a course requiring more than twenty pages of writing); Stuart & Vance, *supra* note 4, at 59–60.

<sup>30</sup> Lee, *supra* note 28, at 65–66.

<sup>31</sup> See Mary Ann Becker, *Understanding the Tethered Generation: Net Gens Come to Law School*, 53 DUQ. L. REV. 9, 10 (2015) (examining the Net Gens’ cultural experiences so that law professors can better teach them); Scott Jaschik, *Grade Inflation, Higher and Higher*, INSIDE HIGHER ED. (Mar. 29, 2016), <https://www.insidehighered.com/news/2016/03/29/survey-finds-grade-inflation-continues-rise-four-year-colleges-not-community-college> [<https://perma.cc/LNG2-XZ7V>] (describing survey by Stuart Rojstaczer and Christopher Healy on grade inflation).

<sup>32</sup> Becker, *supra* note 31, at 29.

<sup>33</sup> *Id.*

<sup>34</sup> Vance & Stuart, *supra* note 3, at 140.

<sup>35</sup> Becker, *supra* note 31, at 30.

<sup>36</sup> Vance & Stuart, *supra* note 3, at 140.

Moreover, student complaints, especially if widespread and persistent, inevitably affect how professors structure their courses and grade their assignments.<sup>37</sup> For professors who do not have job security, such as untenured or adjunct professors, this is particularly true, as poor student evaluations can jeopardize their positions and hinder promotion.<sup>38</sup> Even when job security is not an issue, student complaints can be extremely draining on a professor's time and morale.<sup>39</sup> Consequently, many professors are incentivized to lower their expectations and make their courses easier so there are fewer complaints and more favorable course evaluations.<sup>40</sup> When it comes to reading specifically, professors "have succumbed to student complaints of not being able to concentrate on reading long texts, giving them book excerpts, essays, and short articles instead."<sup>41</sup> Less work for students also means less work for professors, allowing professors to spend more time on their research and other professional interests.<sup>42</sup> Since both students and faculty benefit from a less rigorous curriculum, a resurgence of intensive reading and writing in undergraduate courses is unlikely to happen anytime soon.

Students' difficulty with and resistance to intensive reading and writing in undergraduate education likely stems from their secondary education experience where teachers primarily taught to standardized tests, rather than teaching the fundamental skills of reading, writing, and problem solving.<sup>43</sup> Many scholars believe that the No Child Left Behind Act of 2001,<sup>44</sup> which tied a state's ability to receive federal funding to its students' performance on standardized tests, had a perverse effect on teachers' learning objectives for their students.<sup>45</sup> Teachers "'taught to the test' so that their students could meet the short-term goal of passing the standardized tests."<sup>46</sup> This goal drove teachers to focus on factual knowledge over mastery of the

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<sup>37</sup> *Id.*

<sup>38</sup> Becker, *supra* note 31, at 30.

<sup>39</sup> Vance & Stuart, *supra* note 3, at 140.

<sup>40</sup> Becker, *supra* note 31, at 30; Vance & Stuart, *supra* note 3, at 140 (discussing how college professors appear to "no longer create high expectations for their students").

<sup>41</sup> Vance & Stuart, *supra* note 3, at 140.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.* at 137; Lee, *supra* note 28, at 53–55; Becker, *supra* note 31, at 18–19 (explaining how teachers "felt forced" to teach students "memorization and testing strategies" rather than "comprehension, critical thinking, or applied learning").

<sup>44</sup> Pub. L. No. 107–110, 115 Stat. 1425 (2002).

<sup>45</sup> Vance & Stuart, *supra* note 3, at 137; Lee, *supra* note 28, at 53–55; Becker, *supra* note 31, at 18–19.

<sup>46</sup> Vance & Stuart, *supra* note 3, at 137. *See also* Lee, *supra* note 28, at 53–55; Becker, *supra* note 31, at 18–19.

fundamental skills that would better prepare them for a lifetime of learning.<sup>47</sup> As these standardized tests did not require significant reading and writing, the importance of these skills was often marginalized.<sup>48</sup>

Another trend in undergraduate education, which relates to students' proficiency in reading and writing upon graduation, is grade inflation.<sup>49</sup> Students today are receiving much higher grades than they did in the past.<sup>50</sup> In fact, a recent survey analyzing grades at colleges that collectively enroll about one million students shows grade point averages at four-year colleges are rising at the rate of 0.1 points per decade and have been doing so for thirty years.<sup>51</sup> More striking, an "A" is by far the most common grade, comprising more than 42% of all grades.<sup>52</sup> At four-year schools, awarding of "A's" has been increasing five to six percentage points per decade, and "A's" are now three times more common than they were in 1960.<sup>53</sup>

Student satisfaction is believed to be mostly responsible for this trend as well.<sup>54</sup> Again, the rise in tuition has driven students to expect to be treated like consumers, which means they are happiest when they get good grades.<sup>55</sup> Even more problematic, students expect good grades, regardless of whether their work product justifies them.<sup>56</sup> Many students believe they should be rewarded for simply trying their best or putting in the effort.<sup>57</sup> In short, students are more focused on grades than on learning.<sup>58</sup> Thus, with grade inflation, students have become accustomed to doing less while receiving more.

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<sup>47</sup> Vance & Stuart, *supra* note 3, at 137; Lee, *supra* note 28, at 54; Becker, *supra* note 31, at 18–19.

<sup>48</sup> Vance & Stuart, *supra* note 3, at 137; Lee, *supra* note 28, at 53–55; Becker, *supra* note 31, at 18.

<sup>49</sup> "One study of over 100 four-year colleges and universities found that 43% of grades given were at the 'A' level." Lee, *supra* note 28, at 65–66.

<sup>50</sup> "In fact, Millennials have received more *As* compared to Boomer high school students in 1967, and twice as many high school students in 2010 graduated with A averages than prior generations." Becker, *supra* note 31, at 31 (emphasis added).

<sup>51</sup> Jaschik, *supra* note 31.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *Id.* (explaining how the "idea of 'student as consumer' has encouraged colleges to accept high grades and to effectively encourage faculty members to award high grades").

<sup>55</sup> *Id.*

<sup>56</sup> Becker, *supra* note 31, at 31.

<sup>57</sup> *Id.* at 30–31.

<sup>58</sup> Susan D. Landrum, *Drawing Inspiration from the Flipped Classroom Model: An Integrated Approach to Academic Support for the Academically Underprepared Law Student*, 53 DUQ. L. REV. 245, 255–56 (2015) (examining how a law school academic support program can draw inspiration from the "flipped classroom" pedagogical model to improve new law students' academic success).

Grade inflation contributes to a related problem: students' increasingly pronounced sense of entitlement.<sup>59</sup>

“[F]aculty members have spoken anecdotally about “students” increasing sense of entitlement—their attitude that good grades should not be too hard to come by and that teachers should give them a “break,” often accompanied by what teachers see as disrespectful and unreasonable behavior.’ This behavior includes demanding higher grades and expecting professors . . . to do whatever is necessary to meet their unique needs.”<sup>60</sup>

If professors do not meet their needs, students will complain, which, as discussed earlier, can coerce professors to lessen the workload, grade higher, or worse, do both.<sup>61</sup>

The most damaging aspect of the grade inflation trend, however, is that students have a distorted view of their own knowledge and skills, making them harder to instruct in law school.<sup>62</sup> The inflated grades reinforce their misconception that they are exceptional at critical thinking, reading, and writing.<sup>63</sup> Thus, when they are pushed to revisit these skills as part of their basic legal training, they either resist or collapse under the pressure.<sup>64</sup> In the end, as Arum and Roksa so aptly explain, undergraduate education has become more of “a social experience” than an academic or intellectual one.<sup>65</sup>

### III. THE INFLUENCE OF TECHNOLOGY

The surge in technology use by students is another major contributing factor to the underprepared law student. Students are much more connected than ever before. They are not only engaging with new types of technology, but they are also using them for many different purposes.<sup>66</sup> For countless students, devices like the smartphone have become an extension of them, keeping them perpetually connected to others through a digital world.<sup>67</sup> Constant connectivity to technology has become necessary to complete even

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<sup>59</sup> Becker, *supra* note 31, at 30.

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> *Id.* at 30–31.

<sup>64</sup> *See id.* at 31.

<sup>65</sup> ARUM & ROKSA, *supra* note 17, at 59.

<sup>66</sup> *See* Becker, *supra* note 31, at 10.

<sup>67</sup> *Id.*



the most ordinary tasks.<sup>68</sup> These traits are not surprising, as they are reflective of the digital world in which they were raised.

As a matter of fact, researchers use the term “digital natives” to describe “the first generation [of individuals] to grow up with access to information through Google and to use social media from a [very] young age, including Facebook, Twitter, and blogs.”<sup>69</sup> This generation, commonly known as “Millennials” or “Generation Y,” is born somewhere between the early 1980s and late 1990s.<sup>70</sup> Those individuals born toward the end of this time period, between 1994 through 2003, are referred to as the “Net Gens” because they grew up not just with home computers, but also with laptops, mobile phones, and other portable devices that kept them continually connected to the Internet.<sup>71</sup>

For this group, who entered the first-year of law school as recently as Fall 2016, social networking via the Internet is vitally important to their functioning.<sup>72</sup> As one scholar described, they are a “tethered generation” because they are constantly tethered to their technology.<sup>73</sup> They need constant connectivity to social media, their phone apps, digital music, games, and more.<sup>74</sup> In some ways, their dependency on technology has become an addiction.

Studies support the idea that technology has an addictive nature.<sup>75</sup> For example, in one study, “[r]esearchers found that Millennials spend [seventy-two] hours per week of connect time by phone and IM, seeking advice and input on the smallest decisions.”<sup>76</sup> That would mean that “Net Gens are spending an average of ten hours a day online.”<sup>77</sup> Further, another study of Millennials “in undergraduate programs showed that 38% of those surveyed said that they could not go ten minutes without checking their phone.”<sup>78</sup> They are constantly using their phones and tablets, often

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<sup>68</sup> *Id.*

<sup>69</sup> *Id.* at 33.

<sup>70</sup> *Id.* at 15 n.44.

<sup>71</sup> *See id.* at 10–12 (finding that Net Gens have “grown up in a completely wired culture with constant access to social media”).

<sup>72</sup> *See id.* at 11, 33.

<sup>73</sup> *Id.* at 33.

<sup>74</sup> *Id.*

<sup>75</sup> *See id.* at 34.

<sup>76</sup> *Id.* at 33 (citing Kristi A. Dyer, *Challenges of Maintaining Academic Integrity in an Age of Collaboration, Sharing and Social Networking*, TCC 2010 PROC. 168, 172 (2010)).

<sup>77</sup> *Id.*

<sup>78</sup> *Id.* at 33 n.153 (citing CourseSmart, *Digital Dependence of Today's College Students Revealed in New Study from CourseSmart*, PR NEWSWIRE (June 1, 2011), <http://www.prnewswire.com/news-releases/digital-dependence-of-todays-college-students-revealed-in-new-study-from-coursesmart-122935548.html> [<https://perma.cc/Q5PK-ETPU>]).

simultaneously, while working on other tasks, including school work.<sup>79</sup> For instance, one study showed that “[n]early one-third of students, ages fourteen to twenty-one, attend five to eight open media sites while doing their homework.”<sup>80</sup> Thus, technology is extremely distracting, leading to obsessive and compulsive behaviors among many students.

Hence, “[t]oday’s students operate in a state of distractedness.”<sup>81</sup> Because “technology leads students to try to perform many activities at the same time, . . . their attention becomes divided.”<sup>82</sup> A short attention span makes it difficult to work through lengthy or complex tasks, particularly when they involve reading and writing.<sup>83</sup> As a matter of fact, research shows that “heavy media multitaskers . . . [are] suckers for irrelevancy . . . [because] everything distracts them.”<sup>84</sup> “[Students] with short attention spans become bored and easily distracted.”<sup>85</sup> Thus, multitasking detracts from their ability to process information and ultimately learn.<sup>86</sup> Indeed, “[m]ultitasking is not really concentrating on several things at once. What . . . students are doing is switching their attention quickly, which ‘saps attention from full, concentrated engagement.’ [Consequently,] students are losing or missing skills in critical reading, critical thinking, and problem-solving.”<sup>87</sup>

Therefore, “[w]hile students believe they are able to simultaneously attend to many things at once, research indicates this is not true; rather than simultaneously processing all the information, the brain is actually toggling

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<sup>79</sup> Vance & Stuart, *supra* note 3, at 138.

<sup>80</sup> *Id.*

<sup>81</sup> Shailini Jandial George, *The Cure for the Distracted Mind: Why Law Schools Should Teach Mindfulness*, 53 DUQ. L. REV. 215, 217, 220 (2015) (proposing that law schools teach mindfulness training to improve attention and learning of law students).

<sup>82</sup> *Id.* at 218. “Experts believe that multitasking has produced a shortened attention span.” Vance & Stuart, *supra* note 3, at 139; *but see* Tracy L. McGaugh, *Generation X in Law School: The Dying of the Light or the Dawn of a New Day*, 9 J. LEGAL WRITING INST. 119, 123–25 (2003) (asserting that it is a myth that Generation Xers have short attention spans).

<sup>83</sup> Vance & Stuart, *supra* note 3, at 138.

<sup>84</sup> George, *supra* note 81, at 218 (alteration in original) (citing Adam Gorlick, *Media Multitaskers Pay Mental Price, Stanford Study Shows*, STAN. REP. (Aug. 24, 2009), <http://news.stanford.edu/2009/08/24/multitask-research-study-082409/> [<https://perma.cc/73FC-SVCH>]).

<sup>85</sup> Vance & Stuart, *supra* note 3, at 139.

<sup>86</sup> Shailini Jandial George, *Teaching the Smartphone Generation: How Cognitive Science Can Improve Learning in Law School*, 66 ME. L. REV. 163, 171 (2013) (arguing the application of cognitive learning theory to law school teaching). “All of this multitasking comes with a price: the habit of attending to many things has implications for the way students learn and process . . .” *Id.*

<sup>87</sup> Vance & Stuart, *supra* note 3, at 138.

among tasks, ‘leaking a little mental efficiency with every switch.’<sup>88</sup> The problem has also been described as the “pruning of [the] brain circuits used for sustained, deep thinking” in order “to make way for the strengthening of the brain circuits used for the quick shifts of attention that enable multitasking.”<sup>89</sup> As such, multitasking involves only a superficial engagement with a task. Therefore, it is highly inefficient, increasing the risk of mistakes and impeding students’ command over each individual task.<sup>90</sup> Even though students might be good at quick switching between routine tasks, like keeping up with smart-phones, iPads, texting, and social media, they “cannot competently handle work that requires focus, deep thinking, or critical analysis.”<sup>91</sup>

In addition to distracting students, the increased use in technology has weakened students’ ability to absorb and organize information.<sup>92</sup> The fact that students can “rapidly type notes on a computer has resulted in students not fully processing what is going on in the classroom.”<sup>93</sup> Rather than distilling the important information from a class discussion and summarizing it in their own words, students transcribe everything that is said, including information that is irrelevant or happens to be incorrect.<sup>94</sup> This approach results in unwieldy notes, making the shift to studying and writing extremely tedious and cumbersome.<sup>95</sup>

The increased use in technology has also affected students’ proficiency in reading. Today’s students have read fewer books and have different reading skills than those in the past.<sup>96</sup> “Previous generations of students developed text-based reading strategies because they read mostly from books, whereas twenty-first century students have developed reading skills

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<sup>88</sup> George, *supra* note 86, at 171 (citing Sam Anderson, *In Defense of Distraction*, N.Y. MAG. (May 17, 2009), <http://nymag.com/news/features/56793/index2.html> [<https://perma.cc/ZV2Y-5FGJ>]).

<sup>89</sup> Vance & Stuart, *supra* note 3, at 134.

<sup>90</sup> “The brain processes different kinds of information using different ‘channels’: ‘a language channel, a visual channel, an auditory channel . . . each one of which can process only one stream of information at a time.’ Once a channel becomes overburdened, it will more easily become inefficient and make mistakes.” George, *supra* note 86, at 178 (citing Anderson, *supra* note 88).

<sup>91</sup> Vance & Stuart, *supra* note 3, at 138.

<sup>92</sup> George, *supra* note 81, at 219; Landrum, *supra* note 58, at 255.

<sup>93</sup> Landrum, *supra* note 58, at 255.

<sup>94</sup> Pam A. Mueller & Daniel M. Oppenheimer, *The Pen Is Mightier than the Keyboard: Advantages of Longhand Over Laptop Note Taking*, 25 PSYCHOL. SCI. 1159, 1160 (2014).

<sup>95</sup> See Landrum, *supra* note 58, at 255.

<sup>96</sup> Laurel Currie Oates, *Leveling the Playing Field: Helping Students Succeed by Helping Them Learn to Read as Expert Lawyers*, 80 ST. JOHN’S L. REV. 227, 250 (2006) (describing a study of several law students and a professor to assess how reading skills and beliefs about text affect success in law school).

that allow them to decode and understand text that is embedded in or supplemented by graphics as a result of reading from the Internet.”<sup>97</sup> Thus, “current students may view reading as the process of locating and following links.”<sup>98</sup> Also, significantly, they are unaccustomed to the “active attention and engagement” that reading entails.<sup>99</sup>

Further, today’s students do not read a text from the beginning to the end because they are so used to receiving information passively from their devices or reading on a screen, clicking on hyperlinks and jumping from text to text.<sup>100</sup> Rather, they scan the text, reading out of sequence so they can quickly retrieve the information they need.<sup>101</sup> In hunting for information, they often overlook context and miss meaning.<sup>102</sup> Consequently, reading on screen ill-prepares students for the rigors of reading dense, analytical text.

Not only are students less capable, but they also lack the discipline and motivation to read denser, more analytical texts. There is “a general decline in the desire to read long texts.”<sup>103</sup> The “use of the Internet . . . emphasizes images over words.”<sup>104</sup> “Moreover, the text found on the Internet is generally either photography captions or short articles.”<sup>105</sup> As such, “students have developed a predominately passive relationship to information and an expectation of instant gratification.”<sup>106</sup> In fact, in his book *The Shallows: What the Internet Is Doing to Our Brains*, Nicholas Carr writes about how the internet has impaired reading performance and affected the way people retain and process information.<sup>107</sup> Here is how he describes his own experience:

Over the last few years I’ve had an uncomfortable sense that someone, or something, has been tinkering with my brain,

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<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> *Reading Report*, *supra* note 25, at vii (explaining how interactive electronic media “foster shorter attention spans and accelerated gratification”).

<sup>100</sup> “[S]ince students often read on a screen, they tend to click hyperlinks and move on to other cross-referenced material, jumping from text to text, sometimes without reading the original document even once all the way through.” George, *supra* note 86, at 169.

<sup>101</sup> *Id.* (describing how students have become “‘skilled hunters’ for information”).

<sup>102</sup> *Id.*

<sup>103</sup> Stuart & Vance, *supra* note 4, at 65.

<sup>104</sup> *Id.* at 66.

<sup>105</sup> *Id.*

<sup>106</sup> Joan Catherine Bohl, *Generations X and Y in Law School: Practical Strategies for Teaching the “MTV/Google” Generation*, 54 LOY. L. REV. 775, 780 (2008) (describing the characteristics of Generation X and Y students and the problems they present for law school teaching).

<sup>107</sup> NICHOLAS CARR, *THE SHALLOWS: WHAT THE INTERNET IS DOING TO OUR BRAINS* 3 (2010).

remapping the neural circuitry, reprogramming the memory. . . . I feel it most strongly when I'm reading. I used to find it easy to immerse myself in a book or a lengthy article. My mind would get caught up in the twists of the narrative or the turns of the argument, and I'd spend hours strolling through long stretches of prose. That's rarely the case anymore. Now my concentration starts to drift after a page or two. I get fidgety, lose the thread, begin looking for something else to do. I feel like I'm always dragging my wayward brain back to the text. The deep reading that used to come naturally has become a struggle.<sup>108</sup>

Law students face the same struggle when reading for their classes and assignments. "The lack of motivation to read and difficulty concentrating for long periods" certainly compounds the problem and, in the end, "compromise[s] . . . law students' learning."<sup>109</sup>

Likewise, the use of technology has impaired students' writing skills. "Students' use of texting and social media platforms like Twitter has created a new abbreviated language that makes for quick and efficient communication of social information . . . ."<sup>110</sup> Correct grammar, spelling, and punctuation is not required, nor are complete or thorough explanations of one's thoughts. Instead, emojis and other images are used to communicate feelings and express ideas. Yet this type of communication does not "translate to competent academic and professional writing."<sup>111</sup> Legal writing especially requires a thorough explanation of one's position. "The end result is that students do not always understand what is required of formal writing."<sup>112</sup> They not only "lack fluency" in the "writing conventions that are required in law school and the legal profession[.]" but students lack

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<sup>108</sup> *Id.* at 5–6. Carr writes:

[W]hat the Net seems to be doing is chipping away my capacity for concentration and contemplation. Whether I'm online or not, my mind now expects to take in information the way the Net distributes it: in a swiftly moving stream of particles. Once I was a scuba diver in the sea of words. Now I zip along the surface like a guy on a Jet Ski.

*Id.* at 6–7.

<sup>109</sup> Stuart & Vance, *supra* note 4, at 66.

<sup>110</sup> Landrum, *supra* note 58, at 255.

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

practice in writing the type of in-depth analysis that formal legal writing demands.<sup>113</sup>

#### IV. THE UNDERPREPARED LAW STUDENT AND IMPLICATIONS FOR LAW SCHOOL SUCCESS

Students' undergraduate education has not adequately prepared them for the rigorous reading and other academic demands of law school. Their relationship with and increased dependence on technology has further hindered their ability to learn and develop the reading, writing, and problem-solving skills essential to the study and practice of law. Indeed, law schools have been complaining for some time about how law students are "less prepared for [law school's] academic demands than in the past."<sup>114</sup> Many students struggle to read text closely and are unaccustomed to reading anything requiring deep thinking or reflection.<sup>115</sup> Nor are they used to focusing their attention on a complex task or engaging in sustained periods of reading.<sup>116</sup> "That kind of attention is antithetical to the disruptions and quick thinking students are used to in this digital age."<sup>117</sup>

Hence, one of the most significant deficiencies is their ability to read critically.<sup>118</sup> "[S]trong fundamental reading abilities are essential" to the study of law.<sup>119</sup> "Reading for law school is notably different than other disciplines" because students need to examine what they read and understand its relationship to prior readings as well as its impact on current and future problems.<sup>120</sup> In other words, students need "to read with vigor and with accuracy, critically examining words in the context of action taken by the courts and legislatures, challenging assumptions, finding patterns, [and] generating new ideas."<sup>121</sup> Therefore, "[m]erely adequate reading—

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<sup>113</sup> *Id.*

<sup>114</sup> *Id.* at 251–52.

<sup>115</sup> See Gallacher, *supra* note 1, at 180–86.

<sup>116</sup> "The kind of deep thinking and analysis necessary in law school is not possible without focused attention for a sustained time period." Vance & Stuart, *supra* note 3, at 141.

<sup>117</sup> *Id.*

<sup>118</sup> Lee, *supra* note 28, at 42.

<sup>119</sup> Christine P. Bartholomew, *Time: An Empirical Analysis of Law Student Time Management Deficiencies*, 81 U. CIN. L. REV. 897, 905 (2013) (presenting the results of a study on time management problems of law students).

<sup>120</sup> *Id.*

<sup>121</sup> RUTH ANN MCKINNEY, *READING LIKE A LAWYER: TIME-SAVING STRATEGIES FOR READING LAW LIKE AN EXPERT* 53 (2d ed. 2012) (explaining seven skills a law student needs to read effectively). McKinney adopted the acronym E.M.P.O.W.E.R. to help students remember the seven skills. *Id.* at 54. They include engaging with energy, monitoring your reading, reading with a purpose, getting oriented, identifying the Five "Ws" (Who, What, When, Where and Why), evaluating what you've read, and reviewing. *Id.*

reading for flat information—just won't do."<sup>122</sup> It's simply not enough to read for the gist or general meaning of a text.

In doctrinal classes, professors assign hundreds of pages of reading with the goal that students will organize and synthesize the materials into a clear outline of the legal principles governing that body of law.<sup>123</sup> Through their reading of primary and secondary authorities, they are expected to become proficient in the doctrine and capable of solving legal problems that implicate it.<sup>124</sup> In legal writing courses, professors expect students to read statutes and cases to distill rules of law so they can apply them to real-world problems and either inform or persuade the legal reader depending on the task.<sup>125</sup> “Law students must [be able] to read with a deep level of comprehension—yet with a certain alacrity” as well.<sup>126</sup> The ability to read a statute and case carefully is thus critical to understanding the law and applying it appropriately.

Therefore, when a law student is a weak reader, that student's overall learning is diminished. That student's understanding of the law is compromised, which, in turn, jeopardizes the student's ability to accurately and completely synthesize the law, organize it, and apply it. In the end, that student's written analysis of legal problems will be flawed, which will be reflected in poor exam performance and poor legal writing.<sup>127</sup>

Additionally, “[a] deficit in basic reading skills forces law students to devote extra time to meet even baseline expectations.”<sup>128</sup> “While these reading skills can be taught, they are only truly developed with practice.”<sup>129</sup> “This practice takes time, and during the first few months of law school, many students struggle to keep up with the reading.”<sup>130</sup> Because many students enter law school without an understanding of its demands and rigor, they are oftentimes not able to keep up with and “engage[] in its challenges”.<sup>131</sup>

In addition to lacking basic reading skills, law students lack the analytical and problem-solving skills that are needed to make sense of their reading and apply it in the future.<sup>132</sup> “In short, students often do not know

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<sup>122</sup> *Id.* at 53.

<sup>123</sup> *See* Bartholomew, *supra* note 119, at 905–06.

<sup>124</sup> *See id.*

<sup>125</sup> *See id.* at 907.

<sup>126</sup> *Id.* at 905.

<sup>127</sup> Landrum, *supra* note 58, at 254.

<sup>128</sup> Bartholomew, *supra* note 119, at 905.

<sup>129</sup> *Id.*

<sup>130</sup> *Id.*

<sup>131</sup> Landrum, *supra* note 58, at 258.

<sup>132</sup> *Id.* at 253–54.

how to employ higher-level cognitive processes.”<sup>133</sup> Compounding the problem is the reality that law students typically “suffer from low self-efficacy, which is [the] failure to exert a sufficient level of effort and persistence in any given task.”<sup>134</sup> Students with high self-efficacy “search for solutions in the face of obstacles” and “approach difficult tasks as challenges to be mastered.”<sup>135</sup> They “create goals and maintain pursuit of them.”<sup>136</sup> In contrast, students with low self-efficacy “shy away from difficult tasks.”<sup>137</sup> This is significant because a student’s struggles in reading and problem-solving will become even more overwhelming and ultimately insurmountable if that student lacks sufficient energy and determination.<sup>138</sup>

Finally, the effort that students need to exert in law school is far greater than anything that was needed or expected in undergraduate school. “Because [students] have experienced academic success thus far with minimal effort, they believe the same amount of effort should continue to yield success in law school.”<sup>139</sup> “When minimal effort does not yield success, it must be because their instructor failed to teach them.”<sup>140</sup> Thus, students have a hard time seeing and believing that their academic difficulties stem from basic problems in reading and analysis, not the instruction.

Moreover, “[l]egal educators generally operate under the assumption that entering law students already have some foothold” on the necessary critical reading, analysis, and writing skills “via their formative and undergraduate education.”<sup>141</sup> They assume that “students’ post-college literacy skills include the ability to read and comprehend complex legal

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<sup>133</sup> *Id.* at 254.

<sup>134</sup> Jason S. Palmer, “*The Millennials Are Coming!*”: *Improving Self-Efficacy in Law Students Through Universal Design in Learning*, 63 CLEV. ST. L. REV. 675, 676 (2015) (describing how millennial students suffer from low self-efficacy and describing steps that educators can take to adapt learning environments to expand students’ self-efficacy and improve their ability to succeed in law school).

<sup>135</sup> *Id.* at 691.

<sup>136</sup> *Id.*

<sup>137</sup> *Id.* at 692. These types of students view difficult tasks “as threats to their image and ability,” and therefore, “give up quickly when faced with adversity, and dwell on personal deficiencies.” *Id.*

<sup>138</sup> *Id.*

<sup>139</sup> Vance & Stuart, *supra* note 3, at 141.

<sup>140</sup> *Id.*

<sup>141</sup> Lee, *supra* note 28, at 42.



opinions.”<sup>142</sup> As such, “[i]t follows logically that most legal educators view their roles as refining—rather than introducing—these skills.”<sup>143</sup>

When taken together, there is a clear disparity between what entering law students know and what law professors assume they know.<sup>144</sup> The difference in students’ actual reading competencies and what they need to successfully navigate the first year of law school is most striking.<sup>145</sup> Law professors build their instruction on a false belief that new law students have the foundation in critical reading and stamina to get through complex and lengthy reading assignments.<sup>146</sup> Accordingly, law school instruction does not line up with students’ true abilities. As such, the reading gap is not addressed. Even though law professors might expect (and for some insist) that students should be stronger readers before coming to law school, the reality is that they are not.<sup>147</sup> Only when professors accept that reality and work to realign class instruction to match students’ actual abilities will the reading gap shrink. By adjusting their curriculum to support students’ critical reading skills and increase their stamina, professors can help bridge the gap.

#### V. PREPARING THE UNPREPARED

“[T]he increasing academic underpreparedness is becoming systemic rather than singular.”<sup>148</sup> Thus, there needs to be a “systemic approach” to solving the problem as well as clear guidance on how best to arm students with the reading tools needed to succeed.<sup>149</sup> Academic support, though certainly beneficial and still necessary to enhancing students’ academic success, is not enough. Law professors across the curriculum need to take part in helping students become more expert readers. They can fix the reading gap by making simple changes to their teaching methodologies and reading assignments.

One of the simplest ways to aid a student’s understanding of a text is to be explicit about its relevance to the subject being taught and its relationship

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<sup>142</sup> *Id.* Some scholars refer to this notion as the “skills deployment assumption.” See Leah M. Christensen, *Legal Reading and Success in Law School: An Empirical Study*, 30 SEATTLE U. L. REV. 603, 606 (2007) (presenting results of a study on how law students read legal text).

<sup>143</sup> Lee, *supra* note 28, at 42.

<sup>144</sup> Christensen, *supra* note 142, at 603–04.

<sup>145</sup> *Id.* at 605.

<sup>146</sup> *Id.* at 605–06.

<sup>147</sup> *Id.* at 605.

<sup>148</sup> Stuart & Vance, *supra* note 4, at 46.

<sup>149</sup> *Id.*

with past and future readings.<sup>150</sup> In fact, practice shows that “[w]hat [professors] present to students before they read complex text can greatly influence subsequent understanding of the material.”<sup>151</sup> In other words, explaining the relevancy of and context for an assigned reading in advance will help students better grasp its meaning. Therefore, rather than demanding that students figure out the relevancy of a text on their own or assuming they will get the context from the syllabus, a textbook’s table of contents, or elsewhere, professors should take the time to outline the relevancy of the material they assign and point out its context relative to other reading assignments. It is important to do this before the reading assignment is due so students have an anchor to which they can affix the text’s meaning. It is easier for students to move through a text, particularly a complex and lengthy one, when they already have some indication about what it might stand for.<sup>152</sup>

Additionally, professors should create explicit objectives for each class and share them with the students beforehand. Students benefit greatly from a roadmap explanation of where they are and where the professor expects them to be at the end of a class discussion based on the assigned readings.<sup>153</sup> For example, when teaching the topic of burglary, a professor could explain the objective in this way:

For next class, we will be exploring what the state must prove to establish the crime of second-degree burglary. This crime typically involves three elements: (1) entering a dwelling (2) with the intent to commit a crime therein and (3) unlawful entry. The six cases that you will read for next class all examine this crime and address the elements in some way. Specifically, the first three cases speak to what is considered a dwelling, the next two address what intent to commit a crime entails, and the last case addresses the meaning of unlawful entry. The goal is for you to synthesize and master the rules for these elements so that you can apply them to future problems addressing the crime of burglary in the second-degree.

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<sup>150</sup> Rogelio Lasso, *From the Paper Chase to the Digital Chase: Technology and the Challenge of Teaching 21st Century Law Students*, 43 SANTA CLARA L. REV. 1, 29 (2002) (explaining how professors can “provide students with the foundation knowledge or context” to facilitate their reading of legal texts).

<sup>151</sup> *Id.*

<sup>152</sup> *Id.* at 37.

<sup>153</sup> *Id.* at 41.

Professors should remind students of their objectives before teaching the lesson as well. Further, at the end of each class, professors should be explicit in summarizing what the students should have learned from their reading and class lecture. To continue with the example from above, a professor could summarize the discussion of the six cases in this way:

Today, we discussed how the courts interpret the meaning of all three elements of the crime of second-degree burglary. First, we learned that what constitutes a dwelling generally turns on whether the structure is usually occupied by someone lodging there at night. Next, we saw how the question of intent to commit a crime requires an examination of the evidence. In the cases we read, the defendant either removed items from the premises or damaged property upon entry, making for a fairly clear case of intent. Finally, the question of unlawful entry appears quite straightforward. Courts look at whether the defendant had permission or authorization to enter the structure and, if not, the entry will be deemed unlawful. You will need to remember the rules for each of these elements and apply them to a new set of facts when faced with a second-degree burglary problem on the exam or, more importantly, in practice.<sup>154</sup>

Instead of the professor presenting this summary, professors can call on students to summarize in their own words what they have learned from the readings and lecture. In addition to making the lesson more learner-focused, it is an effective way to assess whether the professor has met his or her objectives.<sup>155</sup> If students are able to clearly describe the main points, the professor can comfortably move on and introduce more challenging material.

Moreover, professors can help create enthusiasm for reading and increase students' engagement with a text by being upfront about its "relevance to legal problems, clients, or, pragmatically, to the student's overall success in the course."<sup>156</sup> This includes assigning reading that is relevant to the practice of law and creating assignments based on real-world

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<sup>154</sup> This explanation is based on an assignment I give my first-year legal writing students in which they analyze whether a tree house is a dwelling within the meaning of New York's second-degree burglary statute.

<sup>155</sup> Lasso, *supra* note 150, at 43.

<sup>156</sup> Bohl, *supra* note 106, at 796.

examples.<sup>157</sup> The more realistic assignments are, and the more connected they are to what students will encounter in practice, the more time they will commit to their reading and understanding of the law.<sup>158</sup> Students naturally will be more engaged if they “perceive” what they are learning to be “useful, relevant, and timely.”<sup>159</sup> In particular, students appreciate hearing about current events that deal with the same topic or learning about the professor’s own experience handling such matters.<sup>160</sup> If students can see how their reading and study of a topic will practically apply to their pursuit of a legal career, they will be more invested in the process and more careful and thorough when reading.<sup>161</sup>

Further, professors can help students build their stamina for lengthy and complex reading by “introduc[ing] . . . cases or other materials gradually.”<sup>162</sup> Instead of assigning a steady amount of materials throughout the course, professors should assign fewer cases at the beginning and slowly increase the amount of reading as students become more proficient in the skill.<sup>163</sup> When students are assigned too much reading, especially when they are still new to law school, they read fast, or worse, only skim the text.<sup>164</sup> Their objective is to get through the reading, rather than fully comprehend what they have read.<sup>165</sup> They read to get the gist, not to synthesize rules.<sup>166</sup> They read haphazardly, not carefully with attention to every word and every detail. As a result, they fail to see patterns in the law, miss out on important nuances, and struggle to apply the law to new scenarios.<sup>167</sup>

Another way to help students build reading stamina is for professors to explain and demonstrate how students should approach the material they assign.<sup>168</sup> Professors should devote class time, particularly at the beginning of the semester, discussing reading strategies and sharing their method for

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<sup>157</sup> Gerald F. Hess, *Listening to Our Students: Obstructing and Enhancing Learning in Law School*, 31 U.S.F.L. REV. 941, 957 (1997).

<sup>158</sup> Kathleen Tarr, *Teach a Law Student to Fish: A Tutor’s Perspective on Legal Writing*, 49 U.S.F.L. REV. FORUM 53, 54 (2015).

<sup>159</sup> Bohl, *supra* note 106, at 796 (encouraging faculty to use strategies that will “capitalize on current law students’ profound enthusiasm for learning that which they perceive as useful, relevant, and timely”).

<sup>160</sup> Afra Afsharipour, *Integrating the Financial Crisis in the Business Associations Course: Benefits and Pitfalls*, 5 J. BUS. & TECH. L. 5, 7 (2009).

<sup>161</sup> *Id.* at 8.

<sup>162</sup> Bohl, *supra* note 106, at 796.

<sup>163</sup> *Id.*

<sup>164</sup> See Gallacher, *supra* note 1, at 185.

<sup>165</sup> See *id.* at 166.

<sup>166</sup> *Id.* at 352.

<sup>167</sup> *Id.* at 347–49.

<sup>168</sup> Lasso, *supra* note 150, at 36–37.

reading and dissecting cases and statutes.<sup>169</sup> It is important for students to know that legal reading is unlike any other reading.<sup>170</sup> Therefore, students should not assume that what worked for them in undergraduate school or in other disciplines will work in law school. Not only should professors caution students in this regard, but they should show them the difference.<sup>171</sup>

To that end, professors should model effective reading strategies in class and demonstrate specific ways expert legal readers engage with a text.<sup>172</sup> Professors can do this by having students follow along while they read aloud a case and explain their annotations or other notes they made in the textbook.<sup>173</sup> They can distribute a case with sample annotations or show one on a class PowerPoint too. One legal writing scholar suggests using a two-columned handout to give students a visual of how experienced legal readers read.<sup>174</sup> The left-hand column would include the actual text of the opinion and the right-hand column would “indicate[] what an expert legal reader might think.”<sup>175</sup> Using a chart to synthesize cases is another valuable visual that can give students insight into how experienced legal readers meticulously synthesize rules from several authorities.<sup>176</sup> Professors can assign a charting exercise or chart cases in class on the screen or on a handout. The process of charting cases emphasizes the importance of careful reading as a precursor to developing sound and reliable rules.<sup>177</sup>

In my legal writing classes, when students are working on synthesizing several cases to develop a rule for their first single-issue assignment, I will explain how I annotated each case with that issue in mind. I will take one of the assigned cases and walk through each paragraph of the opinion and ask questions about whether the text is relevant to the issue and, if so, how, and if not, why not. Together we will annotate the opinion based on whether the text corresponds to background or pertinent facts, the court’s holding, or the court’s reasoning. We will also discuss what information should be included in the analysis and what information should be omitted. The students benefit tremendously from knowing my process in reading the material and reaching the understanding of the law that I did.

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<sup>169</sup> *Id.* at 37.

<sup>170</sup> Oates, *supra* note 96, at 251.

<sup>171</sup> *See id.*

<sup>172</sup> *See id.* at 252.

<sup>173</sup> *Id.* (explaining the technique of having students “listen to an expert’s think-aloud while the students read a case”).

<sup>174</sup> *Id.*

<sup>175</sup> *Id.*

<sup>176</sup> *See id.* at 253 (showing an example of the concept, and what an expert reader may get from the material).

<sup>177</sup> *See id.* at 252–53.

Simultaneously, this transparency takes the mystery out of the process and helps students see that it is doable.

Moreover, professors can encourage students to read more carefully by providing questions the students should be able to answer afterwards. For example, the questions can ask the students to identify the most relevant facts and the court's reasoning for each decision they read. The questions can ask the students to discuss how a decision builds on prior decisions or impacts future cases, considering, for example, whether it creates an exception, or limits or expands a rule. These types of questions challenge students to think more critically about the text, rather than just skimming it for its general meaning.<sup>178</sup> They also force students to think about the text's place in the broader context, rather than its significance in isolation.<sup>179</sup>

Professors must emphasize the importance of a text's context as well. In the absence of guided questions and explicit summaries of a text's meaning, students will need to use contextual clues to shed light on a text's meaning.<sup>180</sup> In fact, expert legal readers will look at the historical context of the case and information, such as the date of the opinion, location, and presiding judge to evaluate the court's decision.<sup>181</sup>

Likewise, expert legal readers will not begin annotating a text until after they have read it through once and have a general sense as to what is important.<sup>182</sup> Therefore, professors should instruct students to not highlight or otherwise mark up a decision until after they have read it once. Without first knowing what a decision is about, it is hard to determine what is important. As such, novice legal readers tend to over-highlight or over-annotate, including information that is irrelevant or inconsequential.<sup>183</sup> They "march with determination through a text—methodically and carefully reading for detail that may be superfluous or unimportant in the end."<sup>184</sup> Therefore, during their first read, students should be reading solely for the purpose of understanding the issues and main points. It's only during the second and subsequent reads should students begin marking up and annotating the text for its specifics. Though this process takes time, it also ensures that students distill the important information from the text from the

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<sup>178</sup> See *id.* at 254 (based on methods used by Laurel Currie Oates to test students reading comprehension).

<sup>179</sup> See *id.*

<sup>180</sup> *Id.* (describing exercises that require students to place a case in its historical and legal context).

<sup>181</sup> Christensen, *supra* note 142, at 637 (asserting that legal experts use the strategy of contextualizing when reading).

<sup>182</sup> MCKINNEY, *supra* note 121, at 63.

<sup>183</sup> Christensen, *supra* note 142, at 646.

<sup>184</sup> MCKINNEY, *supra* note 121, at 83.

start.<sup>185</sup> Further, as students become more expert in reading, it will take less effort to do multiple reads.<sup>186</sup>

Finally, professors should teach students to “read with a clear purpose.”<sup>187</sup> While students have been programmed to read for the main idea, they have not been trained in reading with a purpose.<sup>188</sup> “It is hugely inefficient—and often counterproductive—to read a text for one purpose when you ought to be reading it for another.”<sup>189</sup> One way to drive home this point is for professors to give students two or more decisions that address multiple issues, but assign only one issue for the students to analyze.<sup>190</sup> In other words, professors should use unedited or lightly edited decisions as part of their teaching. Students should be instructed to dive into the cases with the singular, clear purpose in mind—to understand and synthesize a rule on the one issue.<sup>191</sup> Through this exercise, students will see how a focused approach to reading yields better and faster results.<sup>192</sup>

Though most of these suggestions are more critical in the first year of law school when the reading gap is at its widest, they should be used throughout all three years of law school.<sup>193</sup> Further, while legal writing and skills courses might be a more natural place to explain reading strategies and connect the skills to real-world practice, doctrinal courses can and should make the same associations. All faculty—skills and doctrinal alike—are needed to assist in bridging the reading gap for all students. With some simple adjustments to instruction, that focuses on the process and empowers students to debug the material on their own, law schools can create a closer nexus between students’ reading capabilities and what they will need to do in practice.

## VI. CONCLUSION

“Law school professors must meet the needs of th[e] new demographic entering their classrooms; they cannot simply continue teaching as they have

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<sup>185</sup> Christensen, *supra* note 142, at 634.

<sup>186</sup> MCKINNEY, *supra* note 121, at 82–83 (“Exceptional readers with experience in a particular field cut to the chase as they read.”).

<sup>187</sup> *Id.* at 97–98.

<sup>188</sup> *Id.* at 98.

<sup>189</sup> *Id.* at 97. See Christensen, *supra* note 142, at 633 (studying the reading strategies of first-year law students using the think aloud procedure and concluding that “connecting to a practical . . . purpose is a particularly important reading strategy that may affect how students read legal text”).

<sup>190</sup> See MCKINNEY, *supra* note 121, at 100.

<sup>191</sup> See *id.* at 102–04 (describing a non-legal exercise that requires students to read a passage two times but with a different purpose each time).

<sup>192</sup> *Id.* at 100.

<sup>193</sup> See Christensen, *supra* note 142, at 633.

for years and expect their students and their schools to succeed.”<sup>194</sup> Law professors have the unique opportunity to work with students in showing them what is expected of them in the practice of law and in preparing them to meet those expectations to succeed as lawyers. Law professors should step up to the challenge and find ways in the classroom and beyond to help narrow the reading gap. With a strong basis in reading, student success in all areas of law practice is more likely.

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<sup>194</sup> Lee, *supra* note 28, at 68.



