

**“IN A CASE, IN A BOOK, THEY WILL NOT TAKE A
SECOND LOOK!”
CRITICAL READING IN THE LEGAL WRITING
CLASSROOM**

DEBRA MOSS CURTIS*
JUDITH R. KARP**

“STUDENT I AM”

Students need to learn to read
But students want to read with speed
Every week from fall to May
This is what you hear them say:
“I do not like to read things twice.
I just want *you* to give advice.
I will not read another book.
I will *not* take a second look.
How courts reason is so dense.
Cases, statutes, make no sense.
In a contract or in a tort,
In a state or federal court
I will not read another line,
Reading is a waste of time.”¹

I. INTRODUCTION

This Article is based on a presentation that was first assembled
for the Southeastern Regional Legal Writing Conference in Septem-

* J.D., Boston College Law School, 1993; Assistant Professor of Law, Nova Southeastern University Shepard Broad Law Center; B.A., Tufts University, 1990.

** J.D., University of Miami, 1986; Associate Professor of Law, Nova Southeastern University Shepard Broad Law Center; Director, Lawyering Skills and Values Program; M.L.S., Emory, 1978; B.A., SUNY Buffalo.

1. Created by Debra Moss Curtis and Judith R. Karp, September 2003. Our gratitude is extended to Abigail Mario, William Lazarchick, and Jennifer Tuby for their research assistance.

ber 2003.² The theme of that conference was “The Basics and Beyond: Building Solid Skills on Flawed Foundations.” As legal writing professors with nine years of teaching experience between us, we immediately honed in on “reading” as a core lawyering skill—though it is the one that seemed most flawed in the first-year legal writing class.³ We determined that case analysis, statute analysis, synthesis, and application were not possible unless students *critically* read the material with which they were working. Many students in our classes were not actively engaging in the material that they were reading.⁴ As we spoke with colleagues nationwide, we found this to be the case elsewhere as well. These anecdotal experiences reflect a nationwide trend in the decline in the number of adult literary readers in the United States.⁵ Over the past twenty years, literary reading has declined among all education levels and age groups, with the steepest decline among readers within the age group of 18- to 24-year-olds.⁶ The rate of decline for these young adult readers is 55% greater than those of the total adult population.⁷ Furthermore, the decline in reading correlates to an increase in the use of electronic media devices, including the Internet, video games, and other digital devices.⁸ This decline in interest in literary reading is consistent with the lack of critical active reading that we observed within our classes. Given the intended use of legal materials—for them to be understood, synthesized, and applied in legal memo format—a lack of cognitive process in reading has great implications. We decided to address them.

2. The Southeastern Regional Legal Writing Conference was hosted by Stetson University School of Law on September 20, 2003.

3. At Nova Southeastern University Shepard Broad Law Center, the first-year legal writing program is a “Lawyering Skills and Values” (LSV) program. The program consists of a full year of study divided into two three-credit courses and encompasses drafting, negotiation and mediation skills, research, and writing.

4. It is acknowledged that while a reader’s purpose may influence the depth and level of engagement in the reading, there is no question that academic material should be read critically. See *Writing About Literature*, Saskatchewan Indian Federated College, First Nation’s University of Canada, at http://www.sifc.edu/english/writersguide/76TRRdCrit_1Strategies.htm (last visited Nov. 9, 2004).

5. NATIONAL ENDOWMENT FOR THE ARTS, *READING AT RISK: A SURVEY OF LITERARY READING IN AMERICA* 21 (June 2004), available at www.nea.gov/pub/ReadingatRisk.pdf (last visited Nov. 9, 2004).

6. *Id.* at xi.

7. *Id.*

8. *Id.* at xii.

The use of the word “critical” can be misunderstood.⁹ In the context of analysis and learning, “being critical” involves “probing and questioning,” which is not always a negative approach to material.¹⁰ Critical reading has transformed from being considered an “enrichment” skill to a core skill.¹¹ Experts have noted that our learning process changes as we grow older—from seeing “what” is said, to understanding the “bias, assumptions, and perspectives” that are incorporated into a writing.¹² In addition, the concept of teaching critical reading is central to the concept of teaching *thinking* skills, which is a fundamental part of education.¹³

Critical reading absolutely encompasses the concept of “critical thinking.”¹⁴ These two skills marry the finding of meaning with the evaluating of meaning, and indivisibly work together.¹⁵ Overall, critical skills should not be treated as something to be isolated—such as with specific courses or texts—but rather should be treated as a part of the atmosphere of every classroom by every teacher.¹⁶

To meet our goals of preparing for the Southeastern Regional Legal Writing Conference in 2003, and later both for our updated and expanded presentation at the national Legal Writing Institute conference¹⁷ and for the ultimate goal of teaching our students to read criti-

9. See Camille Wells, *Reading Critically* (Sept. 1, 1989), at <http://departments.mwc.edu/hipr/www/101-01/critread.htm> (last visited Nov. 9, 2004).

10. See *id.* However, Wells notes that this process often may allow the reader to see the flaws in an argument, which the authors would propose is a necessary step in legal analysis. In addition, some authors have described the critical perspective as reading with the assumption that a wrong has occurred, and that the writer is attempting to address that wrong. James R. Elkins, *Lawyers and Literature: Strategies for Reading*, at www.wvu.edu/~lawfac/jelkins/lawyerslit/readstrategies.htm (last visited Nov. 9, 2004).

11. Norma Decker Collins, *Teaching Critical Reading Through Literature*, World of Education (Aug. 1993), at <http://library.educationworld.net/a7/a7-100.html> (last visited Nov. 9, 2004).

12. *The Need to Improve Your Reading*, at www.critical-reading.com/improve_reading.htm (last visited Nov. 9, 2004).

13. Kathryn S. Carr, *How Can we Teach Critical Thinking?*, at www.risd.k12.nm.us/instruction/criticalthinking.htm (last visited Nov. 9, 2004).

14. See *id.*

15. *Critical Reading v. Critical Thinking*, at www.criticalreading.com/critical_reading_thinking.htm (last visited Nov. 9, 2004) (acknowledging that, while critical reading and thinking operate together, discussing the two separately can remind the reader to evaluate a piece of writing on its own merit without allowing personal viewpoint to overrun critical reading).

16. See Kathryn S. Carr, *How Can we Teach Critical Thinking?*, at www.risd.k12.nm.us/instruction/criticalthinking.htm (last visited Nov. 9, 2004).

17. The Legal Writing Institute Conference “Horizons: Marking the Twentieth Anniversary of the Founding of The Legal Writing Institute, 1984-2004” was hosted by Seattle University School of Law in July 2004.

cally, we began a year-long examination of critical reading. We specifically analyzed what “critical reading” is, why it is necessary to teach and use it in the legal writing classroom, and what sorts of exercises could be used to incorporate this important skill in the first-year writing curriculum. This Article explains the concept of critical reading, how it may be taught in the legal writing classroom, and guides the reader through exercises developed to teach these skills.