

Briefing Results in Better Learning
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As a law student in the 1970s, I was told by my professors to "brief" each case. I dutifully toiled over difficult appellate decisions, struggling to do as my professors had directed. My early briefs sometimes exceeded the length of the cases on which I was working. Eventually, after diligent practice, I was able to be more concise. By the end of the first semester, however, I noticed that many classmates had stopped briefing cases. At the end of the first year it sometimes seemed as if I was the only one doing so. Most of my classmates preferred to "book-brief" by color hi-lighting relevant passages.

As a law professor, I now preach the importance of briefing cases. The legal research and writing teachers at my university spend the first week of each new school year discussing and practicing the best ways to do it. Even so, by year's end most students have abandoned written briefs just as my classmates did years ago. This scenario is a familiar one at many, if not all, American law schools.

Part of the problem is that in their attempts to convince students to brief cases, law teachers fail to act like lawyers. A noted jurist once defined a lawyer's job "as convincing someone to do something they do not want to do." A lawyer utilizes well-reasoned persuasive arguments to convince a party to undertake desired conduct. Law professors should adopt the same methods with our students. When I was in law school, I was told that briefing cases would help me prepare for class discussion. Yet this was not a compelling argument. Because the majority of law teachers gives either minimal or no credit for class participation, there is little incentive for students to brief for the purpose of facilitating class discussion.

A more persuasive reason for briefing cases is that it helps develop much-needed analytical skills. Written briefs force a student to extract important aspects from an opinion. This is a skill that practicing lawyers need since clients often present disputes that involve numerous parties, documents and facts. A skilled advocate must be able to extract and rank the relevant material from this mass of information. It is critical to identify key facts before choosing a strategy or cause of action to pursue, and knowledge of the facts helps to determine what additional inquiries need to be made. These same skills are directly applicable to the law school exam process. The smart law student identifies and ranks relevant information before even beginning to answer an exam question.

Students will often suggest that they can develop these analytical skills by merely making margin notes. They overlook the fact that our minds often mislead us. It's not uncommon for anyone, law professors and students alike, to read something and believe that we understand it better than we actually do. Reducing our understanding of a case to a written brief forces us to crystallize our understanding in the same way that explaining a difficult concept helps us clarify the issue in our own minds.

Analytical speed is also enhanced by briefing cases. This is particularly important for exams since most law school exams, and the various bar exams, have time limitations. Speed is likewise critical in practice, where the ability to work efficiently often relates directly to income. The marketplace typically puts limits on client fees. In any event, clients are not likely to pay unlimited amounts for legal services. A slower attorney may simply have to "write-off" some of the time spent working for a client.

Briefs are also useful in developing an understanding of the fundamental policies underlying a particular area of law. I tell students when they have completed studying a particular area of law - such as inter vivos gifts or consideration - they should attempt to analyze all of the cases in this area as a group. First, they should consider whether the cases are consistent with each other. This exercise forces them to examine the underlying policies in a specific area of law since often this is the only level on which the cases are consistent. Then I tell them to attempt to distinguish the results in all of the cases. This forces students to focus on the specific facts of the different cases. Next, I tell students to determine what can be extrapolated about the subject area from the group of cases studied. Finally, I advise students to think about how this learning fits into the larger subject area. This analytical exercise is facilitated by written briefs, which allow students to quickly review the various cases. Without briefs, students would have to rely on memory, which is fallible, or they would have to re-read the cases, which is time consuming.

By explaining to students how briefing cases helps foster the development of their analytical skills, law professors can persuade students that the task is worth the added time and effort. Once students understand that improved analytical skill directly improves exam performance, and that it will enhance their subsequent ability to practice law, they should be more willing to consider this time-honored practice.