

ACADEMIC SUPPORT PRESENTATION: "EVEN MORE ABOUT CASE BRIEFING AND NOTE TAKING"

I. INTRODUCTION

I'M GOING TO TALK A BIT ABOUT **ACADEMIC SUPPORT GENERALLY** AS AN INTRODUCTION, THEN I'M GOING TO TALK ABOUT **READING AND BRIEFING CASES**, AND FINALLY I'M GOING TO TALK ABOUT **NOTE TAKING**

THE PROBLEM WITH TRYING TO TEACH ACADEMIC SUPPORT PRINCIPLES IS THAT THEY ARE ABSTRACT THE REAL LEARNING OF THE PRINCIPLES OCCURS WHEN YOU TRY TO APPLY THEM, BUT WE STILL NEED TO BE TALKING ABOUT THEM SO THAT YOU KNOW WHAT TO TRY.

IT'S LIKE **TEACHING SOMEONE TO RIDE A BICYCLE**, THERE IS A CERTAIN AMOUNT OF DISCUSSION THAT HAS TO TAKE PLACE BEFORE YOU TRY TO RIDE, BUT THE PROCESS CAN'T REALLY HAPPEN UNTIL YOU GET ON THE BIKE AND (SOMETIMES) FALL DOWN A FEW TIMES.

WE ARE TALKING ABOUT LEARNING HOW TO LEARN IN A NEW WAY, AND THAT IS PRETTY TOUGH TO WRAP YOUR MIND AROUND IN THE ABSTRACT.

How can you make practical use of academic support principles that are based on psychology, neurology and learning theory?:

REALIZE THAT THE METHODS DISCUSSED ARE BASED ON WHAT IS LIKELY TO WORK FOR MOST PEOPLE NOT EVERYONE

IN A WORKSHOP/INFORMAL SETTING DON'T BE EMBARRASSED TO DISCUSS ISSUES THAT YOU ARE HAVING NOBODY GETS A HANDLE ON THIS STUFF WITHOUT PRACTICING AND TRYING DIFFERENT STUFF THE FIRST SEMESTER IS THE PERFECT TIME TO BE ASKING

IF SOMETHING BEING DISCUSSED JUST WON'T GET THROUGH TO YOU IN THE ABSTRACT, COME SEE ME (OR GO SEE YOUR PROFESSOR) WITH SPECIFIC PROBLEMS YOU ARE HAVING IN THE CONCRETE AS YOU ARE EXPERIENCING THEM. FEEL FREE TO BRING CASE BRIEFS, NOTES, OUTLINES OR ANYTHING ELSE YOU ARE HAVING TROUBLE WITH TO ME. I'LL HELP ANYWAY I CAN

I'M GOING TO DISCUSS CASE BRIEFING AND NOTE TAKING. THIS MAY SEEM REPETITIOUS, AND I HOPE THAT IT IS. BUT HERE ARE TWO POINTS I'D LIKE TO MAKE ABOUT REPEATEDLY THINKING ABOUT BASIC IDEAS:

1) THE IDEAS MAY BE PRESENTED SLIGHTLY DIFFERENTLY AND YOU MAY GAIN A DEEPER INSIGHT ABOUT THEM

2) REPETITION IS NECESSARY TO BECOME REALLY, REALLY GOOD AT SOMETHING

THE FIRST REQUIREMENT FOR EFFECTIVE CASE BRIEFING IS EFFICIENT READING

There are three primary first-year reading mistakes:

1) SKIMMING

2) PASSIVE READING

3) OVERREADING (READING ENTIRE CASES OVER AND OVER AGAIN)

Note: There is very little evidence that "speed reading" will help you to read at the depth that is necessary to understand legal doctrine. You may read faster but less efficiently speed and efficiency are not the same things.

These Mistakes Can Be Overcome By Using:

- **SQ3R Survey, Question, Read, Recite, Review**

Survey

-entire reading assignment for 5-10 minutes

- review casebook headings, topics and subtopics paying attention to what is bold-faced, italicized, numbered or underlined

Question:

- Initial reading (Finding stuff that is to be briefed but don't brief yet)

- Pre-determined by briefing format

- May be other preliminaries depending on course (broad themes, etc. Professor Johnson: learning to read criminal statutes, how to argue hard cases, what facts are likely to play a role in determining whether an actor is guilty; Professor Romero: tensions between public and private uses of land, very interested in policy extensions to unknown cases; Professor Burman: identify loss, question of reallocation of loss should we do it and how)

Read: The Entire Case

- Better not to highlight because should be actively reading and highlighting tends to be passive

- Jot simple stuff in the margins with pencil, rule of law, issue, holding, etc., as you go along

- Read again, but this time read only the marginal notes you have made

- If you think you really need to (to convince yourself that you really understand the case), read the case

again, particularly any dense sections you found really confusing (you will have to do this less and less as time goes on)

Recite

- This is the point at which you can actually start doing the brief
- Say OUT LOUD (or think as if you were talking out loud) the elements of the brief and what should be included under those elements AS YOU ARE WRITING: the operative facts are, the rule of law is, the holding is, etc.
- You can look back at the case as you do this but try to put the entries in your brief in your own words don't just recite the words

Review

- Quickly reread the pencil notations you made in the case book
- Review the brief to make sure everything necessary has been included
- Adjust your brief if necessary

II. CASE BRIEFING

Sections of the Case Brief:

THIS WILL DIFFER ACCORDING TO THE COURSE IF YOUR PROFESSOR IS MORE INTERESTED IN POLICY, YOU WOULD FOCUS ON THE RATIONALE SECTION, IF MORE INTERESTED IN PROCEDURE, ON THE PROCEDURE SECTION. OBVIOUSLY, PROFESSOR WELLE HAS GIVEN YOU A VERY SPECIFIC MODEL FOR BRIEFING CASES AND YOU SHOULD FOLLOW THAT IN HER CLASS.

Citation usually explains who the parties and the courts are and provides year of decision

Parties Who is involved? How are the formal titles different at trial versus on appeal

Relief Sought and Disposition Who wanted what? Who got what?

Legal Theories of Parties What are the parties' arguments? Don't waste time on arguments the court dismissed out of hand (unless it is puzzling).

Significant Facts Not all facts are important. E.g., who cares what race the parties are unless it is a discrimination case or a Constitutional case? On the other hand, at the appellate level completely irrelevant facts are less likely to be present

Issue One way to think of this is the legal question presented

Holding The answer to the legal question. Often, you can simply turn the legal issue (phrased as a question) around to make a statement containing the court's answer)

Rule The legal principle the court relies on to answer the legal question

Rationale The way the court gets from the legal question to the legal answer. This will be a blend of facts, holdings of prior cases, rules from statutes, restatements, treatises, etc., and policies.

Dicta From "Obiter Dictum", literally meaning in passing. Language used in the decision that is not necessary to the holding. Remember that today's dicta may be tomorrow's holding.

Separate Opinions Pay attention to concurring and dissenting opinions because they are fertile ground for professors' classroom discussions. (Me: Do mini brief of arguments if you have time. Pay attention if the separate opinion emphasizes different facts, frames a different issue or states a different rule of law. This is a great source for learning how to frame your arguments and counter arguments. Also compelling dissents can sometimes change the law: **Oliver Wendell Holmes is a paramount example.**

Appellate Disposition What happens next? Remand? Enter judgment below consistent with opinion? Enter judgment contrary to the trial level right there?

III. NOTE TAKING

Lawyers always need to take notes and you must become superior at the practice

Notes are taken:

To create a personal record of what happened

To keep focused

For keeping track of what you missed in the reading, what you need to look up (terms, etc.), and questions you need answered

Writing notes and working with them soon after taking them dramatically increases retention

As the best source of information for your outline

Understand why using someone else's transcript (script) for a class may not be beneficial. Scripts that are second-hand are efficient but are not as effective as self-generated notes for actual learning.

Self-generated notes **force you to understand** the material rather than just read a script.

Scripts without authorship **may be by students who received poor grades** in the course.

Scripts may be from students who have **different learning styles** than the users, for example more visual images than words.

Scripts **may not track the current professor**, the **current edition of the book**, or the **current emphases of the professor**.

Scripts **may tempt users not to focus** in class because they think they already have all they need to know.

Scripts **may tempt users to focus on the wrong things** in a class because they are **not using independent judgment** on the essentials.

Scripts **tend to be more detailed** than is really needed for success in most courses or may be more or less detailed in the wrong areas of the subject.

Scripts **may contain errors** that other students made at the time of transcription.

Before Class (What to do to prepare for taking notes)

Review your briefs and notes for cases that you have read before you go to class. If you spend ½ hour reviewing what you have read and your notes before you go to class, you will be able to follow the class more easily; to understand what is important for note-taking; to be more comfortable if called on; and be more willing to ask questions because you will know they are not "dumb" questions. You will have seen the material **twice before class** and will increase your memory of the material.

Good notes depend on good listening skills true in the classroom and in practice

Plan your seating in class to increase your learning whenever possible. If a seat proves to be in the wrong location for your learning, talk to the professor and see if you can move.

If you become distracted by sitting in the back of the room (noise from the hallway; watching your classmates below you in the tiers; surfing on the web; etc.), then you need to move farther forward in the classroom.

If "chatterers" are seated near you who distract your ability to listen, diplomatically ask them not to talk during class or ask to be moved.

If you cannot hear because of "dead spots" in the room, ask to move to a better acoustical location.

If you can't hear the professor, raise your hand and ask the professor to repeat what you could not hear.

(TRIAL ATTORNEY ANALOGY NEED TO HEAR EVERYTHING IN THE COURT ROOM
WITNESSES SHOULD NOT BE ANSWERING QUESTIONS THEY DID NOT HEAR, ETC.:
LISTENING IS VERY IMPORTANT IN THE LAW)

Method (How to take the notes):

Evaluate whether handwritten or laptop notes are best for you. Despite the appeal of technology, it may not be the best method of note-taking for some students. You may consider switching from laptop to long-hand notes if any of the following pertain to you:

You are a slow typist or are unfamiliar with your word processing program you may be losing concentration on the important points in class while you "fight" with your laptop.

You learn more from the act of handwriting than you do when typing.

You are prone to play computer games, surf the web, or instant message and not pay attention to class at least disable your internet capability.

You are prone to transcribe verbatim and not truly listen and learn in class when you use a laptop.

Make use of "visuals" in your note-taking if "a picture is worth a thousand words" and helps you to learn. Keep a pad and paper handy if you use a laptop so that you can sketch out the professor's graphs and other visuals that you may think of during class.

Develop a consistent system of abbreviations, symbols, and other shorthand. You can speed your note-taking abilities by using these "shorthand" methods.

Consistency is important so that you always know what an abbreviation means with changing context.

Beware of shortening words in any way that two abbreviations look the same but mean different things

Develop a symbol that indicates what the professor has stressed so you know what s/he thought was important.

Decide whether color can be part of your shorthand to show importance, hierarchy of material, etc.

Decide whether type fonts, underlining, bold, all capital letters, etc. can be used effectively for shorthand to show importance, hierarchy of material, etc. (If you are word processing challenged, add these after class when you review your notes.)

Whatever method you use, handwriting or typing, leave left margin clear for later labeling

Organize and label each page

What to write essentials:

Legal terminology/buzz words

EVERYTHING ON THE BOARD/POWER POINT SCREEN

Every flow chart or diagram on the board

All hypotheticals: closest thing to an actual exam question reveals much about the style of the professor

*The words used by YOUR PROFESSOR in setting out rules, definitions, tests, standards and exceptions:
THE WAY YOUR PROFESSOR THINKS OF THE NUTS AND BOLTS OF THE DOCTRINE*

Anything your professor says about how to ANALYZE a particular issue or how to SOLVE A PROBLEM

Interesting student comments especially those the Professor openly praises (include student's name to

help you remember later or to listen up if that student says something else in class again about the issue)

Policy: Anything the Professor mentions about the philosophy underlying a legal rule: is it based on simply sticking to prior precedent, economic efficiency, sociology, fairness, judicial economy?

Constitutional: Anything mentioned about the Constitution is important write it down

Any relationship between the case you are discussing and any other case or rule (alike, different harmonizing or distinguishing cases)

Anything about a case you briefed that is different from your brief make adjustment on the brief so you won't have to look for it in your notes

Regularly evaluate whether you are efficient and effective in your note-taking.

Critique your notes often during the semester.

Do they focus on the essentials from class or transcribe everything? (Some students feel more comfortable writing down everything)

Do they distinguish among the parties speaking: what the professor said; what other students said; what you thought at the time (may be hard to figure out later);

Do they contain repetition of your briefs or reading notes that is not necessary;

Can you understand them several days or weeks later;

After Class - Note Editing and Structuring:

Review your notes for each class within 24 hours of taking them.

Studies show that you will lose 80% of what you learned in class unless you immediately (if possible) begin to actively work with the information

One of the best ways to work actively with classroom information is to edit your notes right away:

First, *fill in any gaps in your notes right after class* work out a system with a class mate to complete anything you missed (maybe you were spacing out or maybe the professor was moving fast through a section). Be aware whether you miss notes when you are called on in class. If you remember nothing of what happened for the minutes you were answering questions, ask a classmate to borrow her/his notes as soon after class as possible so that you can fill in any gaps.

Then, *highlight the concepts you think were the most important* (which is something you know better at the end of the class than as you are taking the notes) (Mention Professor Johnson's journaling exercise you can transfer the journaling exercise right into your notes)

Insert short subject headings in the left hand column of the page as you work through the notes

Conceptualization from Notes developing big picture:

For each day's notes: *a summary of the basic principles from the class using technical legal terms*

Some type of visual representation: flow chart, cartoon, diagram doesn't matter whatever you can do. Why? This is actually activating other areas of your brain in ways that I am not qualified to explain

Questions: 1) What is not clear? 2) How does this stuff fit in with this course, other courses, or personal experience? 3) How might this show up on an exam? (Again, like the journaling exercise)

Working with the "Conceptualized" Notes:

Answer the questions you just asked

1) Any specific rule, term or case not clear: If you have read, briefed cases, and attended and taken notes in class and still don't understand:

ASK YOUR PROFESSOR NOW, DON'T WAIT UNTIL A WEEK BEFORE THE FINAL

Consult your casebook it almost always is there.

Avoid commercial study aids it is the "struggle" that produces the deepest understanding

2) To determine how material fits into other courses or personal experience:

You can do cross reading in other classes

Deep Reflection: Not much I can offer here you just have to do it

3) To determine how the class information might be covered in an exam:

Identify *tensions, ambiguities, uncertainty* or *vulnerability* in doctrine. For example, in contract the rules binding parties to contracts may be conditioned by inequality of bargaining power resulting in contracts of adhesion (boilerplate contracts). In property, the freedom to attach covenants or conditions to the transfer of ownership of real property is conditioned by prohibitions on racially restrictive

covenants.

Obviously you can't reach these depths of thinking about the class information immediately. It takes time and patience. The point is to make the attempt AS PART OF THE NOTE TAKING AND EDITING PROCESS IF YOU ARE DOING THIS ALL ALONG IT WILL BE MUCH EASIER TO GET TO WHERE YOU NEED TO BE AT EXAM TIME. THIS IS THE PART OF THE PROCESS THAT TAKES FURTHER THAN SUPERFICIAL UNDERSTANDING AND LEADS TO MASTERY.

As one physical method of converting this conceptual development to edited notes consider using a two-page format for beginning to build your outline from your class notes. You can write or print out your notes on only one side of the paper. On the blank backside of the previous page of notes you can condense your facing note page when you review your notes.

This method has several advantages:

You can leave out repetition on the notes page by including the material just once on the blank page.

You can list clear steps of analysis or tests that will need to go into your outline later.

You can add insights or clarification from talking with your professor or classmates, reading your casebook or a treatise, or thinking more about the class material.

You can use a different organization to understand the material better.

You can focus on the essentials that you need to know instead of detail that is not important.

You can begin to build the "big picture" for your outline.

From notes to outline

Condense your notes into an outline every week beginning about 6 weeks into the semester. If you wait too long to outline, you will need to relearn some material and will likely not remember many points and discussions reflected in your notes. If you get up to speed in your outlining by about mid-semester, you can be very effectively reviewing for your exams for the remainder of the semester.

Ideally, much of the work for your outline has already been carried out in the process of taking good notes and editing them in the way I have proposed.