

# CASE BRIEF PREPARATION-A CRITICAL THINKING EXERCISE FOR UNDERGRADUATE LEGAL STUDIES STUDENTS

by

*Paul D. Asfour, JD, MBA, CPA\**

My law school Contracts professor told his students how insulted he was when he, as a new professor, was required to attend a lecture given by the law school dean on how to prepare case briefs. After all, he stated, he was graduated Cum Laude from Harvard Law School and did not need anybody telling him how to analyze cases and prepare case briefs. He admitted, however, that he learned a great deal about the educational value of properly preparing case briefs from the dean's lecture. Consequently, he insisted that his students prepare them, not for assignments to be turned in, but for critical thinking purposes.

The purpose of this article is to encourage legal studies teachers to consider utilizing case briefing projects to enhance the critical thinking skills of their students. A case brief format is discussed, which can be used as is, or modified to suit the teacher's personal preference. The focus, however, should be on the benefits of briefing cases, and not on any specific format.

Grading a large number of case briefs can be very time consuming. However, the benefits of enhancing the critical thinking ability of students far outweigh the additional work required of the teacher. In addition to enhancing critical thinking skills, students are also learning about the law, which is the ultimate goal of legal studies courses.

Although there are many definitions for critical thinking, I prefer the following: "The mental process of actively and skillfully conceptualizing, applying, analyzing, synthesizing, and evaluating information to reach an answer or conclusion."<sup>1</sup>

It is well accepted that critical thinking exercises should be employed at all levels of education.<sup>2</sup> Legal Studies programs should be no exception. That is why students are required to prepare case briefs in my legal studies courses at Florida Gulf Coast University. A case brief is a written summary of a court opinion and should not be confused with an appellate brief, which is a written argument submitted to an appellate court. Appellate briefs can be quite lengthy. A case brief, on the other hand, should not exceed one page in length.

Requiring students to prepare case briefs helps improve their critical thinking skills through an analysis of facts, the formulation of issues, a study of relevant law, and an analysis of a court's reasoning, which supports its decision. It

---

\* Assistant Professor, Legal Studies, Florida Gulf Coast University.

<sup>1</sup> WEBSTER'S NEW MILLENNIUM DICTIONARY OF ENGLISH, preview edition (v 0.9.7). Dictionary.com, LLC.

<sup>2</sup> Carrol M. Tama, *Critical Thinking Has a Place in Every Classroom*, J. READING 64 (Oct. 1989).

also helps improve their writing skills; a necessity in almost all professions.<sup>3</sup> In other words, “case briefing gives students the framework within which to enter the discourse of law.”<sup>4</sup>

Some may argue that requiring undergraduate legal studies students to prepare case briefs is unnecessary, especially since they are not training to become lawyers. Bear in mind, however, that critical thinking skills, such as the ability to clarify issues, engage in deductive reasoning and support conclusions, are not unique to lawyers.<sup>5</sup> Business executives engage in those activities daily.

Undergraduate legal studies students may decide to forego law school, but nevertheless enter the legal profession as paralegals. Paralegals, among other things, help lawyers prepare cases for court, or prepare legal documents that could end up in court. Therefore, they should also be able to analyze the law. A paralegal who cannot question why something is being done the way it is being done is no more than a document preparer, i.e., a clerk.

As a course project, my students are required to prepare five case briefs, with a due date a couple of weeks before the end of the semester. One of the case briefs that will become part of their project is required to be submitted two weeks before the project is due. It is critiqued and returned to the students to correct any deficiencies. The students can then use what they learned from the critique to prepare and/or refine the remainder of their case briefs.

The required case brief format is explained in detail at the beginning of the semester. Some cases included in the textbook are assigned to be briefed as homework, and are discussed in class. *Bush v. Gore*<sup>6</sup> is an excellent case for briefing, not only because of its historical significance, but also because of its complex legal issues. Volunteers are asked to read their case briefs aloud in class, while other students are provided with an opportunity to critique them, based upon the case brief requirements and their own analysis of the cases.

Students are provided with my version of the case brief at the end of class, which enables them to compare theirs to the one provided, and make corrections for the next case briefing homework assignment. Of course, the practice case briefs serve as a learning tool for their course projects.

Students are not provided with cases to brief for their projects. They are required instead to use library resources, both online and in print, to find relevant cases. That requires them to have some ability to research the law, which is covered briefly in the Introduction to Law course. More extensive research training is provided in the Legal Research and Writing course. However, basic research ability

---

<sup>3</sup> Lucy V. Katz., *The Packaged Brief Writing Assignment-Teaching Writing In A Business Law Course*, J. LEGAL STUD. EDUC. 329, 335 (1991).

<sup>4</sup> Leah M. Christensen, *The Psychology Behind Case Briefing: A Powerful Cognitive Schema*, 29 CAMPBELL L. REV. 5, 13 (2006).

<sup>5</sup> Brenda E. Knowles, *Research Assignments and Case Studies As Teaching/Learning Devices In a Governmental Regulation Course*, J. LEGAL STUD. EDUC. 1, 78 (1986).

<sup>6</sup> *Bush v. Gore*, 531 U.S. 98 (2000).

is all this is needed to find cases to be briefed for this project.

In the Introduction to Law course, students are required to find cases in five different areas of the law that they study during the semester, *e.g.*, criminal law, torts, contracts, etc. It is their choice. The case briefs are more subject matter specific in the upper level courses. For example, students in the Contracts course may be required to brief five cases on an assigned area of contract law, such as contract clauses the court may find unenforceable because they are unconscionable.

### CASE BRIEF FORMAT

There are differing opinions about what should be included in a case brief, and how long it should be. My students are required to prepare case briefs that are no longer than one typewritten page, single spaced, and contain the following sections: Facts, Issue, Rule of Law (Rule), Rationale (Reasoning) and Holding. What is required in each section will be discussed, with student prepared case briefs used for illustration purposes.

A case brief should always begin with the correct citation. My preference is *The Bluebook*,<sup>7</sup> primarily because that is what was used in my law school. However, alternatives are acceptable, such as ALWD<sup>8</sup>.

#### *Facts*

A court opinion includes both substantive and procedural facts. Substantive facts include what occurred to cause one party to file a lawsuit against another. Procedural facts consist of the actions taken by the lower court or administrative agency. Unlike some teachers, my preference is to include procedural facts in this section of the case brief, rather than in a separate section. Since “facts is facts” after all, all of them should be included in one section of the case brief.

The facts section should only include those that were relevant to the court’s decision. Filtering out irrelevant facts and obiter dicta<sup>9</sup> can sometimes present a challenge, especially for those just learning to analyze cases and prepare case briefs. However, that analysis is part of the critical thinking process.

Students are asked to consider the following question as they write the facts section of their case briefs: Will the reader understand what the case is about, and why it is being appealed? If the answer is no, they must rewrite the facts section

---

<sup>7</sup> THE BLUEBOOK, A UNIFORM SYSTEM OF CITATION (Columbia Law Review Ass’n et al. eds., 18<sup>th</sup> ed. 2005).

<sup>8</sup> ALWD & DARBY DICKERSON, ALWD CITATION MANUAL (3d ed., 2006).

<sup>9</sup> BLACK’S LAW DICTIONARY 1102 (8th ed. 2007) defines obiter dictum as “[a] judicial comment made while delivering a judicial opinion, but one that is unnecessary to the decision in the case and therefore not precedential.” That definition, coupled with some examples, would be beneficial to the students at this stage of explaining case briefing requirements.

until they can answer the question in the affirmative.

One Introduction to Law student submitted a case brief for *Rollins v. State*<sup>10</sup>. This was the student's first attempt at preparing a case brief.

The case involved a head on traffic accident caused by Rollins in which the only two people (Mr. and Mrs. Humphrey) in the other vehicle died. Rollins was charged with two counts of manslaughter after witnesses testified that he was tailgating other vehicles and otherwise driving erratically. One of those witnesses, who helped Rollins remove his passenger from the vehicle following the accident, also testified that she saw Rollins drop some green pills onto the ground. The witness collected some of the pills and turned them over to the authorities. The pills were found to be hydrocodone and acetaminophen. Rollins was convicted on both counts of manslaughter. He appealed his convictions, claiming that the trial court erred when it denied his motion in limine and admitted into evidence the pills, blood sample tests and three glass pipes found at the scene.

The following is the student's initial version of the facts.

**Facts:** Just before the accident, Rollins tailgated a vehicle driven by O.J. Williams for approximately fifteen miles. Rollins also drove erratically, repeatedly coming up on Williams's bumper and then falling back a long distance when Williams slowed in hopes that Rollins would pass. Williams eventually pulled off the road at a CCC camp so that Rollins would pass him. Linda Brewer, who is a nurse, testified that she was traveling north on Highway 7 behind the Humphreys' vehicle at the time of the collision. She observed Rollins's vehicle in the oncoming lane of traffic. She noted that Rollins neither slowed nor swerved prior to the collision. Faith Miller, Ms. Brewer's daughter who was traveling with her, testified that, just prior to the collision, she saw Rollins look over his right shoulder. Following the collision, Brewer and Miller exited their vehicle to render aid. Brewer assisted Rollins in his attempt to free his passenger from the wreckage. Later, Brewer observed Rollins walking and looking around. After she approached him, she saw him drop some green pills onto the ground. Brewer suggested that Rollins lie down; she saw green pills underneath him at one point after he raised up. Brewer collected several of these pills and tendered them to the police who arrived on the scene.

My notes to the student asked if there were any casualties, who the Humphreys were, and for what crime was the defendant convicted. Finally, it was suggested that the student eliminate some facts due to their irrelevancy, without specifically identifying the facts. That required her to re-examine the facts and include only those that were relevant to the court's decision. The student noted my

---

<sup>10</sup> *Rollins v. State*, ---S.W.3d--- (Ark. Ct. App. 2009).

questions and suggestions and rewrote the facts section of her case brief. It is clearer and more concise, a noticeable improvement. Her revised facts section follows.

Vance Rollins appeals his two manslaughter convictions that followed an automobile accident resulting in the deaths of Nina and Lawrence Humphrey. Linda Brewer, who is a nurse, testified that she was traveling behind the Humphrey's vehicle at the time of the collision. She noted that Rollins neither slowed nor swerved prior to the collision. Faith Miller, Ms. Brewer's daughter, testified that, just prior to the collision, she saw Rollins look over his right shoulder. Following the collision, Brewer and Miller exited their vehicle to render aid. Later, Brewer observed Rollins walking and looking around. After she approached him, she saw him drop some green pills onto the ground. Brewer saw green pills underneath him at one point. Brewer collected several of these pills and tendered them to the police who arrived on the scene. Rollins raised several arguments, including insufficiency of evidence, erroneous denial of a motion in limine, and improper admission of evidence.

The second version clearly demonstrates that she learned from her mistakes and was on the right path to enhancing her ability to analyze and summarize relevant facts, thereby improving her critical thinking skills. In addition, she could answer the previous question posed in the affirmative, *i.e.*, whether the reader will have a general understanding of what the case is about and why it is being appealed. Other case briefs she wrote demonstrated a continued improvement in summarizing case facts.

### *Issue*

Published cases are generally appellate, primarily because it would be too burdensome to publish every trial court case. Therefore, the issue section of a case brief should begin with a question that centers around what happened in the lower court.

The following question is posed to the students when this section of the case brief is explained: "Why was this case appealed?" The first few answers vary, but students eventually narrow the focus by stating it is because the person who lost in the lower court did not like the decision.

That leads into the next question. "Does the person who lost at the lower court believe an error was made by that court?" Of course, the answer is always yes. The students are then instructed that since the individual who lost at the lower court believed that court made a mistake, the issue should begin with: "Did the lower court err", or "Did the lower court abuse its discretion," by deciding the way it did and why?

Quite often, the court will phrase the issue exactly the way the students are required to present it, which makes their job much easier. For example, in *State v. Bixby*,<sup>11</sup> the court framed the issue as follows: “Did the lower court err by finding respondent ineligible for the death penalty under South Carolina law because she was merely charged with accessory before the fact of murder?”

Unfortunately for the students (or fortunately, depending upon how one looks at it), the majority of opinions do not state the issues that clearly. Therefore, students are required to carefully analyze what question(s) the court must resolve, and phrase the issue(s) accordingly. That, of course, is another critical thinking exercise.

Many students just learning to write case briefs will cut off the issue prematurely. For example, the student who prepared the case brief for *Rollins* above stated the issue as follows:

Did the lower court err in denying Rollin’s motion in limine and admitting certain items into evidence?

Her phrasing of the issue was unacceptable because it was incomplete, i.e., what items were admitted into evidence? The following is how she correctly stated the issue:

Did the lower court err in denying Rollin’s motion in limine and admitting certain items into evidence, namely, the results of tests performed on his blood samples, three glass pipes found in his vehicle, and the green pills found at the scene?

That statement of the issue is more specific. Therefore, it is much easier for the reader to comprehend how the court must answer the question.

Some students believe they must solve problems, or complete projects, in a linear manner. In other words, step one before step two, step two before step three, etc. That thought process also holds true when preparing case briefs. Linear thinking students believe they must complete the Facts section of a case brief before the Issues section, and so on. That approach could result in a disconnect between the Facts and Issue(s) since students will quite often include facts that are not relevant to the court’s decision.

To overcome that potential problem, students are encouraged to identify the relevant facts by first identifying, and then framing, the issue. Once the issue is identified and properly framed in the form of a question, students are better able to pinpoint those facts relevant to the court as it answers the question(s) posed.

This approach should be encouraged, not only in the preparation of case briefs, but also to emphasize to students that it is sometimes easier to solve a problem by backing into a solution. In other words, it is not always necessary to

---

<sup>11</sup> *State v. Bixby*, 644 S.E.2d 54 (S.C. 2007).

complete step one before step two, etc. Linear thinking students become so focused on “beginning at the beginning,” that they lose sight of the goal, which is to solve the problem.

### *Law*

The law (rule of law) section of the case brief requires the students to determine what law, e.g., cases, statutes, etc., the court used in making its decision. It is generally very short and includes the citation of the law, plus a brief explanation of what that law says, addressing the issues previously stated.

Case briefs that do not include a brief explanation of the law, with the correct cite, will not be accepted. Students must understand that they are preparing case briefs for somebody to read, and it is a benefit to the reader to have the cite of all relevant authority the court used in making its decision readily available. Although the reader of the case brief may eventually want (need) to read the case in its entirety, including the relevant law in the case brief enables the reader to locate that authority without first having to read the case, an obvious time saver.

The following is a very good example of how the law section of the case brief should be prepared. The student, who is now in her first year of law school, had a knack for writing case briefs. The facts and issue are included for comprehensiveness. The case is *Dalk v. Allen*.<sup>12</sup>

**Facts:** Personal representative of estate, who was also a beneficiary in contested will, sought to admit will to probate. The Circuit Court, Marion County, Victor J. Musleh, J., found that will was invalid but imposed constructive trust in favor of beneficiaries named in will. Contestant appealed.

**Issue:** Whether the lower court erred when it imposed a constructive trust in place of an invalid will.

**Law:** In order to make a valid will, the testator must strictly comply with the provisions for formal execution, section 732.502, Florida Statutes (1999), which, among other things, requires that every will be signed at the end or that the testator’s name be subscribed at the end of the will by some other person in the testator’s presence and at his direction. In *In re Estate of Tolin*, 622 So.2d 988 (Fla.1993), the court imposed a constructive trust on the assets of a decedent’s estate in favor of the beneficiary of decedent’s will after decedent destroyed a copy of a codicil to that will, believing it to be the original. The Supreme Court held that section 732.506, Revocation by Act, had not been complied with,

---

<sup>12</sup> *Dalk v. Allen*, 774 So.2d 787 (Fla. Dist. Ct. App 2000).

making the revocation ineffective. However, it imposed a constructive trust to prevent unjust enrichment and acknowledged that no fraud was involved.

Note that the student cited the applicable statutes and a relevant case, with a brief explanation of what the statutes and case said, rather than just citing the authority. This permits the reader to tie the facts and issue together with the court's reasoning.

#### *Rationale (Reasoning)*

By the time students get to this section of the case brief, they have analyzed and summarized the facts, formulated the issue(s) and cited the law the court used to make its decision. In other words, they should know the case very well.

This section requires the student to articulate why the court ruled the way it did. That, in turn, provides them with some insight about how that court, and lower courts within its jurisdiction, will decide future cases with similar facts.

Continuing with *Dalk v. Allen*, the student wrote the following:

**Reasoning:** The will was not signed by the decedent and, thus, not properly executed in accordance with the requirements of section 732.502, Florida Statutes. The will is deemed invalid on those grounds. There is no similarity between the "unique" facts in *Tolin* and those here. Ordering a constructive trust here would, in effect, be validating an invalid will, and there is no case law found which supports such result.

This student did a very good job of addressing why the court ruled the way it did in this case. It is clear and concise, providing the reader with an excellent synopsis of the court's rationale.

#### *Holding*

This part of the case brief is generally very short. It does not require any critical thinking on the part of the students, but is merely a restatement of the court's disposition of the case, i.e., its answer to the question(s) stated in the issue section of the case brief. The following is the holding in the *Dalk* case.

**Holding:** Reversed and remanded to the trial court with directions to consider the counter petition for intestate administration.

#### *Critique (Criticism)*

This section of a case brief requires the student to critique the court's opinion. As some teachers have discovered, a simple critique is ineffective for

critical thinking purposes because students do not find much wrong with the courts' decisions, and simply agree with them.

To overcome that obstacle, the critique section can be changed into a negative critique, which requires students to "present the best argument they could muster that the court's decision was wrong"<sup>13</sup>. It is an excellent addition to any case briefing format because it requires the students to read the opinions with a critical eye. That, in turn, improves both their critical thinking skills and their ability to formulate logical, legal arguments.

The facts, issue, law, rationale and holding sections are sufficient to enable novice legal studies students to improve their critical thinking ability. Consequently, the negative critique section of the case brief is not required for the Introduction to Law students. However, it is required of the upper level students, from whom is expected a bit more...of everything.

### CONCLUSION:

Case briefing formats are similar to attorneys' opinions. Ask twelve attorneys what they think of a matter and you will likely receive twelve different opinions. The same holds true for teachers and the case briefing formats they believe work best. Teachers, many of whom have written textbooks that include a section on briefing cases, will have their own style, depending on what they want the students to learn from the exercise and, quite frankly, how much work they are willing to undertake grading the case briefs. Regardless of which format is used, the goal for the student is the same--"to learn how to focus on the important part of the case in order to obtain a thorough understanding of the case and its reasoning,"<sup>14</sup> in other words, to improve a student's critical thinking ability.

I am not a proponent of busy work, especially since I have to grade it. Therefore, students are occasionally asked to provide feedback about their assignments in order to determine whether they thought the assignments were worthwhile to their learning of the material. The following are student responses, in their own words, to my request to provide feedback about case briefing assignments.

Preparing case briefs was a fabulous exercise in critical thinking. I think that having the ability to 'pick apart' a case and identify the issue at hand, the law on which it is based and the reasoning behind the decision is vital in being able to fully understand the law. Since there are multiple ways of interpreting the laws, each case presents a variation on the application of the laws that pertain. Being able to "pull" a case brief from the rather lengthy

---

<sup>13</sup> Charles R. McGuire, *Critical Thinking and Writing in Law Classes: A Suggested Briefing Technique*, J. LEGAL STUD. EDUC. 73, 77 (1988).

<sup>14</sup> DEBORAH E. BOUCHOUX, LEGAL RESEARCH EXPLAINED 89 (2008).

case presentations also allows each individual to determine if they are in agreement with the findings or have an opposing view. They are forced to think for themselves rather than simply rely on what the judges hand down. Either way, students are encouraged to actually think their way through the material rather than simply read it and regurgitate. Looking at what seem to be exact cases but with different rulings allows the student to see cases from different angles which, in my opinion, should result in a more competent attorney.<sup>15</sup>

I went through almost the entire semester putting off doing case briefs and barely reading the chapters, because I associated the briefing of a case with the near chore of reading the text. Basically, I enjoyed the class discussions, and was beginning to appreciate the logic and the precision of legal theory and the legal mind, but the actual beauty of the law as a product of argument and rationale was missing. Everything changed when I began doing case briefs. I do not want to overstate this hyperbolically, so assume I am simply in earnest when I say I would not be going to law school were it not for case briefs. I read the actual law, and the wonderful logic it contained, and it was like a breath of fresh air. Trying to decipher the core elements of a case was the kind of critical thinking for which so many classes aspire to engender in their students, and for which (in my limited experience) too many fall short. The intricacy was appealing to me, and engaging in a way that made the general discussion of a text pale in comparison. Case briefs give practical, real world examples of the law to students, challenging them to comprehend and summarize the issues, and are the perfect introduction to what the law looks like, how it behaves, and why.<sup>16</sup>

I feel that case briefs are an extremely important and valuable learning tool. Briefing a case forces a student of law to fully comprehend the scope and nature of a case, and what precedent, if any, the case is setting. Briefing a case teaches a student how to analyze all aspects of a case, what the strengths and weaknesses of that case are, and how to apply the case to any legal research that person is conducting. They also are a great preparation tool for students considering law school, as well as any student who plans on working in the legal field, as reading and understanding legal precedent is often a key factor in drafting motions, orders, legal

---

<sup>15</sup> Tammy Page, 1L, Ave Maria School of Law, Naples, Florida.

<sup>16</sup> Thomas L. Whigham, Jr., Senior, Florida Gulf Coast University.

memos, and other legal research or writing assignments.

Any student who is considering the legal field as a profession will benefit highly from learning to brief a case. Briefing is an effective teaching method involving clear and concise thinking, which some students, such as myself, have found helpful in their endeavors toward law school and beyond.<sup>17</sup>

When looking at a case for the very first time, and beginning to read it, I immediately became overwhelmed at the language and length of the documents. It's no secret that the judges who write these cases for review are in competition to use the most complex language and the biggest words possible so that anyone who tries to read it must do so three or four times before they begin to actually understand it. As you can imagine, with the number of cases law students have to read this would be a near impossible task to have to reread each one over and over again. Therefore, these case briefs, although daunting at the time, proved to be extremely beneficial for me. They forced me to sort through the complicated format of cases and the often overdone wordiness of the judges who write them to pick out the relevant issues (issue spotting) and understand how the law was applied to the issues and the decision was made. Through the assignment of case briefs I have become more familiar with how to approach reading the complicated cases as well as how to begin issue spotting. Any law school graduate will tell you that issue spotting is one of the most important things you learn in law school.

The case brief assignments throughout my undergraduate education may have been the best assignment the professors could have given me. I can honestly say, however, that I wish more teachers had assigned them on a broader range of topics. The frequent case briefs drilled a reading technique into my head that will be extremely helpful through my time in law school and my future career as an attorney, and I cannot help but think there was probably a lot more room for improvement in my own case briefs; improvement that could only have been accomplished by further assignments.<sup>18</sup>

Finally, let us not forget that many undergraduate legal studies students

---

<sup>17</sup> Beth Fraser, Senior, Florida Gulf Coast University. Ms. Fraser is also an experienced paralegal.

<sup>18</sup> Daniel S. Goggin, 1L, University of Miami School of Law.

decide to attend law school. Consequently, those who have had the opportunity to develop their critical thinking skills through the preparation of case briefs, are one step ahead of those who did not have that learning experience. Knowing how to prepare case briefs, and the purpose behind their preparation, is one less burden the 1L has to overcome.<sup>19</sup>

---

<sup>19</sup> Scott Turow, *One L: The Turbulent True Story of a First Year at Harvard Law School* (1977). Turow described his first assignment reading a case as “something like stirring concrete with my eyelashes”. 1L’s, who learn how to read and brief cases prior to attending law school will, therefore, be able to stir their concrete with something that has a bit more substance.