

HOW TO WRITE A LEGAL BRIEF

Analyzing Case Law and Briefing a Case

Case law is the accumulation of court decisions which in essence, shapes and develops new law and clarifies old law. It is important that you read, evaluate and brief cases in order to acquire a complete understanding of the law in the particular area. As the basic rule of thumb, when analyzing and/or briefing a case you should read through the case in detail at least three times. On the first reading, identify the type of case, the court, and acquire a basic understanding of the case type. In the second reading, you should identify the basic issues, facts, and holding of the decision as well as any dissenting opinion. In the third reading of the case, you should take notes with regards to the actual brief of the case which you will be referring to at some later point in time. It is essential that you take good notes and brief your case extremely well in order that you may refer to the brief and refresh your memory at some later point in time in your studies.

I.

Finding the Case

Finding the case in the library is often one of the most difficult parts of your total analysis. As can be seen from the various cases provided in this text, other cases are referenced and numerous "cites" are provided throughout this text. All reported decisions of cases in the United States judicial system are listed according to the publication in which the case appears (called a reporter), the volume in which the case is located and the initial page number. For example, 36 S.E. 2d 924. If you were searching for this case, you would go to the South Eastern Reporter, second edition, look

for volume number 36 and find the case at page 924. In the federal judicial system, the publications tend to be in accordance with the region of the country and in most state judicial systems the location will be in a state reporter. It should be noted that not all cases are reported and published. Generally, trial court decisions are not published because these decisions do not serve as mandatory precedent for other courts to follow. Usually only decisions of federal and state appellate courts are published.

Statutes, regulations, and standards tend to be within other publications such as the Code of Federal Regulations. This system is set up utilizing the same publication, volume, and page number as with the judicial court decisions. However, the series numbers may reflect the particular regulation or standard. For example, 29 C.F.R. 1910.120 is the Occupational Safety and Health Administration's Standard with regards to hazardous waste operation and emergency response. If you were searching for this particular standard, you would go to the Code of Federal Regulations, which is signified by the C.F.R. designation, volume 29 and section 1910.120.

In addition to the normal procedure in locating a case, some law offices and many law libraries also provide an electronic database through which to locate cases. The two major databases are WESTLAW and LEXIS. *[NOTE: Eastern Kentucky University's library in the Stratton Building (College of Justice & Safety) has two computers with WESTLAW access]* Each of these databases normally provide training and publications to assist you in locating the particular case. As a general rule, these databases provide a basic menu of the various areas where the law is located and numerous sub-databases which guide your search. For example, if you were searching for a federal decision, you may enter the federal database and then narrow your search to the particular

area of law which you are seeking. If you should possess the case name, the case name can normally be utilized to pull up the case. If you are searching for a particular issue of the law, these databases will provide the case cites for your review and evaluation. It is highly recommended that you acquire the particular training or assistance from the librarian at the law library prior to conducting any search on WESTLAW or LEXIS.

It is also recommended that you become familiar with the particular library which you will be using during this course. Please take a few minutes out of your busy schedule and walk through the library to locate the different publications which are available and note the location of each of these publications. Please thumb through a few of the publications and test your skill at locating particular cases in order that you are able to find cases in a timely manner in the future.

II.

Briefing the Case

The basic purpose for briefing a case is to help you understand the particular legal issues of the case and their significance. There are various methods of briefing a case and the following format is only meant to be an example of one of the methods. Your instructor may suggest an additional format for you or you may devise your own system which helps you analyze these cases. No matter what method you should adopt, insure that you read the case thoroughly prior to beginning to take notes for your brief.

The basic framework in which we would recommend you brief a case includes the following:

- A. Issues
- B. Facts

- C. Holding (Decision)
- D. Dissent
- E. Your Opinion
- F. Underlying Policy Reason

Issues

Identify the basic issue or issues that are in question before the court. In order to find the basic issue or issues involved, you have to identify the rule of law that governs the dispute and ask how it applies to the particular facts of the case. In most circumstances, you will be writing the issue for your case brief as a question that combines the rule of law with the material facts of the case. For example, does the arson statute in the state of Kentucky apply to a minor child?

Facts

The facts of the particular case describe the events between the conflicting parties that led to this particular litigation and tells how the case came before the court that is now deciding it. Often included in the facts are the relevance to the issue the court must decide and the basic reasons for it's decision. When you first read through the case, you will not know which facts are relevant until you know what the issue or issues are in the particular case. Thus, it is vitally important that you read the case thoroughly prior to beginning to summarize the facts of the particular case.

In addition to the specific facts of the situation, it is important to see what court decisions have come prior to the case which you are currently reviewing. Often, the decisions which are published are appellate decisions and thus a district court or circuit court has decided the matter previously and now the matter is on appeal. If the particular facts of the situation in an appellate

case are not provided in detail, you may want to research and review the district or circuit court decisions in order to acquire the particular facts in your case.

In this section, you should also include the relevant background for this case. You should identify who the plaintiff and the defendant are, the basis of the plaintiff's suit, and the relief the plaintiff is seeking. You may also want to include the procedural history of the case such as Motions to Dismiss and other motions that are relevant to the case. In an appeals case, the decisions of the lower courts, grounds for those decisions, and the parties who appealed should also be noted.

Within this facts section, you should be as brief as possible. However, all pertinent points should be noted. Although this is a judgement call, most statement of facts in a brief should not be more than two or three paragraphs in length. Given the fact that you would have read the case at least three times while briefing the case, the facts provided in your brief of the case should be the major points used to refresh your memory.

Holding

The holding is the courts decision on the question that was actually presented before it by the parties. The court, in a split decision, may provide the minority's decision or dissent also. The holding can normally be identified by the statement the court has decided or the majority decision. A holding, in essence, provides the answer to the question you were asking in your issue statement. If there is more than one issue involved in the case, there may be more than one holding in any given case.

Dissent

Often with U.S. Supreme Court cases and appellate cases, the majority decision is the

decision of the court. However, the minority position is also provided an opportunity to give their reasoning as to their dissent in the decision making process. Although the dissenting opinion is not law and has no bearing on the case, the dissent provides another point of view on the particular issue of the case and also may be referred to in some later case.

Opinion

After you have reviewed the case thoroughly and have analyzed the court decision and briefed your case, you should have a good idea whether you agree or disagree with the court's opinion. In this section, you should provide your personal opinion as to whether you agree or disagree with the court and the reasons why you agree or disagree with the decision.

Policy

In many cases, there is an underlying social policy or particular social goal which the court wishes to further. When a court explicitly refers to those policies in a particular case, this information should be included in your brief since it will provide to you a better understanding of the court's decision. For example, in the historic case of Brown v. Board of Education, the decision of the court was formed through an underlying social policy to eliminate discrimination in our school system. This underlying social policy is often very important in appellate and Supreme Court decisions. Attached is an example brief for your review and evaluation. It is highly recommended that you "test" your skills by briefing several of the cases within this text or other cases prior to your initial briefing of a case for a class. In addition to the above stated information, below are several other helpful hints which may assist you in briefing the case:

1. It is best to try and confine your brief to a maximum of one page. If your brief is

over two pages, you have probably provided too much information. Remember, a brief is to refresh your memory at the time you need to recall this information for class or other purposes.

2. The case that is printed in this textbook have been edited by the author for the purposes of this book. In many cases, the full court opinion may run twenty or more pages. If you find that you are having difficulty understanding the case in the edited format, you may want to go to the library and read the full text opinion.
3. During your first couple of attempts at briefing a case, it is often difficult to extract the important elements and issues of a case. Please keep in mind that not all judges are expert writers so the opinions may often be confusing or difficult to understand. Additionally, you should realize that all courts do not follow the same format in writing opinions thus you may find some decisions more difficult to understand than others. So, you may find that judges sometimes go off on a tangent and discuss other rules and points of law that are not essential to the determination of the particular case. It is your job to be able to filter through this information to identify the particular issues and laws that are applicable to the case.
4. You may often run across latin or "legal" terms which you are not familiar. Since you will need to have a clear understanding of the terminology utilized in the particular case, it is advisable to look up the term in a legal dictionary. A good idea is to have a Black's Law Dictionary, Ballantine Law Dictionary, Gilmer's Law Dictionary, or other law dictionary available while you are reading and briefing the

case. Standard dictionaries often do not provide these terms or the explanation provided may be incomplete.

5. When reading the cases provided in this text, you may want to look at the particular chapter and section headings of the textbook in which the case appears. If you are having difficulty identifying the particular issue of the case, the issue is normally related to the topic discussed in the chapter or section heading. The cases in this text have been inserted to illustrate the subject matter being discussed in each of the chapters.
6. Remember, the issue or issues in the particular case should always be stated in the form of a question. You should never begin your issue with the words, "whether or not" because this will not frame the question properly. Also, the terminology, "should plaintiff win" or "is there a contract" are not correct forms of stating the particular issue.
7. In determining the particular rule of law, ask yourself, "If I had to tell someone who knew nothing about this case what this case is about or what it stands for in one sentence, what would I say?" Often, the rule of law can be determined by taking the issue and putting it in to the form of a declaration. For example, in the case of Miranda v. Arizona, 384 U.S. 436 (1966), the issue and rule may be as follows:

Issue: When a person is taken into police custody, or otherwise deprived of his freedom of action in a significant way, must his constitutional rights to remain silent and to have an attorney present be explained to him prior to questioning?

Rule: When a person is taken into police custody, the following warnings must be given prior to questioning:

1. That he has the right to remain silent.
 2. That any statement he makes may be used against him as evidence.
 3. That he has the right to have an attorney present.
 4. If he cannot afford an attorney, one will be appointed for him.
8. Lastly, do not use other people's briefs. Without having read a particular case and analyzed the court decision yourself, use of another individual's brief of a case is essentially worthless. A brief is simply the codification of your thoughts and work that you will refer to in the future in order to refresh your memory.

Example Case Brief

Case Name: Marshall v. Barlow's, Inc., 436 U.S. 307 (1978)

Issue: Is Section 8(a) of the Occupational Safety and Health Act unconstitutional in that it violates the Fourth Amendment?

Facts: Appellee (Barlow's, Inc.) initially brought this action to obtain injunctive relief against a warrantless inspection of its business premises by Appellant (Secretary of Labor Marshall). The inspection was permitted under Section 8(a) of the Occupational Safety and Health Act of 1970 which authorizes agents of the Secretary of Labor to search the work area of any employment facility within OSHA's jurisdiction for safety hazards and OSHA violations without obtaining a search warrant or other process. A three judge Idaho District Court ruled in favor of Barlow's and concluded that the Fourth Amendment required a warrant for this type of search and that the statutory authorization for warrantless inspections was unconstitutional. This appeal resulted.

Holding: Yes, Section 8(a) of the Occupational Safety and Health Act of 1970 was unconstitutional in that it violated the Fourth Amendment. The U.S. Supreme Court affirmed the decision of the Idaho District Court and granted Barlow's an injunction enjoining the enforcement of the act to that extent.

The court states that the rule against warrantless searches applies to commercial premises as well as private homes. Although an exception to this rule is applied to

certain "carefully defined classes of cases" including closely regulated businesses such as the firearm and liquor industries, this exception does not automatically apply to all businesses engaged in interstate commerce, as the Secretary alleges.

Opinion: I agree with the court in this case. I feel that requiring search warrants insures that the search is a reasonable one and that the particular business being inspected is not merely being singled out (for one reason or another). I agree with the court in that requiring search warrants will not make inspections less effective nor will it prevent necessary inspections, but rather will serve to insure fairness in inspections.

Policy: Although no specific public policy was mentioned in the case, the implied policy was that of pro-business, anti-regulation.

Reprinted with Permission from *A Fire & Emergency Law Casebook* by Thomas D. Schneid, Delmar Publishers (1997). Mr. Schneid is a Professor at Eastern Kentucky University in the Loss Prevention & Safety Department.