

HOW TO BRIEF A CASE

(Adapted from David M. O'Brien, *Constitutional Law and Politics: Struggles for Power and Governmental Accountability*, W.W. Norton and Company: New York, 2000: 991-993.)

Why Brief Cases?

“Briefing cases has immediate and long-term benefits; the student will have read the case carefully and thoroughly and will have a permanent condensed record of the case. The exercise itself forces the student to come to terms with his or her understanding of the case, prepares the student for lectures and discussion, and will prove an invaluable aid in studying”¹

The appropriate length of a written case brief is a function of the complexity of the case, the sophistication of the briefer, and the purposes for which the brief is made. If the student needs to “brief the case brief” in order to have a workable tool, then the case brief is too long. On the other hand, if upon subsequent review, the case brief does not contain enough information to permit sufficient recall of the case, then the case brief is too short.

Students should read the case in its entirety at least once before beginning to brief. Experience suggests the following format (or something close to it) because of its logical flow and universal applicability

Title and Citation

Case titles generally take on the names of the parties involved in the case. For example, in the case *Smith v. Jones*, Smith is the party asking the Court to reverse a lower court’s holding; Jones wants the Court to affirm that holding.

A citation acts as the case’s “address.” Prior to 1874, Supreme Court decisions were issued under the names of the individual court reporters who published the decisions. Since that year, however, a standard format has been followed and all cases are contained in the United States Reports (abbreviated U.S. in case citations). Therefore, in the 1976 case, *Buckley v. Valeo*, the citation is 424 U.S. 1. This means that this case is found on page 1 of the 424th volume of the United States Reports. The citation appears at the beginning of all cases in the O’Brien book.

In addition to noting the citation, it is also useful to note the page numbers of each case in this section of the brief.

Facts of the Case

Facts are exactly what they would appear on first glance to be – the record of the dispute established in the courts below. Basically, you should answer the questions of who did what to whom and why. The facts of the case are often presented at the outset of an opinion of the Court, although sometimes they may be described throughout the opinion. Here, it is also important to note the holdings of the lower court(s) (i.e., the legal history of the case) so that you understand the decision of the Supreme Court when it “reverses” or “affirms.”

¹ David M. O'Brien, *Constitutional Law and Politics: Struggles for Power and Governmental Accountability*, W.W. Norton and Company: New York, 2000: 993.

Legal Questions/Issues

Since Supreme Court decisions involve the interpretation of the Constitution, laws, and/or court precedents, in this section it is important to note just what the Court is being called upon to interpret. Identify the specific question or questions before the Court in terms of the constitutional issues raised. What are the issues that the Court is being asked to address? These should generally be posed as yes-no questions.

Holding

This addresses the court's disposition of the issue(s) before it. Since issues are always phrased as questions (e.g., "Does provision of maternity leave solely to women violate the equal protection clause of the Fourteenth Amendment?"), the holding for each question identified above is stated dichotomously as either "yes" or "no." There should be one holding for each legal question/issue noted on your brief.

Reasoning/Opinion of the Court

In this section, reconstruct and summarize *in your own words* the decision of the Court and its justifications for that ruling. It is crucial that you note and explain the reasoning that the Court uses to arrive at its decision. Therefore, how does the Court answer the questions identified in the "legal questions" section of the brief and what reasoning does it use to arrive at those answers.

Decision

Describes the final action of the court (e.g., reversed, remanded, affirmed, vacated, etc.).

Concurrences

The reasoning in all concurring opinions should be summarized in this section of the brief. *Justices can concur in the majority position in one (or both) of two ways and precisely how they concur is very important.*

1. First, they can concur in the **opinion** of the court. This means that they agree with the **reasoning** used by the majority in settling the issue in the case.
2. Second, they can concur in the **judgment** of the court. This means that they agree with the result of the majority's **disposition** of the case (e.g., reverse, affirm, etc.), but for reasons different from those offered by the majority. Because of this disagreement with the reasoning of the majority, the votes of these justices do not count as an endorsement of the result reached by that opinion.

Traditionally, the establishment of a controlling doctrine requires that at least five members of the court agree to the reasoning offered by the majority. You will find that, over time, not only do written concurrences increase, but that their centrality to the meaning of any given Court decision (e.g., Does it establish a precedent binding on lower state and federal courts?) grows more important as well. They are also significant indicators of the decision-making dynamics on the Court (e.g., coalitions, voting behaviors, tensions over the substance and direction of doctrinal development).

Dissents

A *dissenting* opinion is authored by a justice (or justices) when he/she (or they) believes that the decision of the Court is wrong. The basis of the dissent may derive from a different reasoning in the case, or from a different understanding of the facts of the case or the relevant precedents. In this section, discuss the reasoning of the dissenting justice(s) and how it differs from the majority opinion or concurrences.

It is also important to note in your brief who writes which opinions, and who joins which blocs. Shifts in judicial alignments will often influence the outcome of a given case or string of cases.

Significance/Analysis

- What is important or significant about this decision?
- Are the arguments sound?
- How does it fit with previous decisions of the Court?
- What were/are the possible legal, political, and historical implications of this decision?
- If the case is narrowly decided, what are the differences noted by the dissenters and what bearing might they have on future cases?

Notes

What do you think about the outcome of the case? What theories of interpretation can you identify in the opinion? How compelling do you find the arguments in the opinions? Leave yourself room to make notes about the case during lectures or class discussions.