

Appendix: Reading and Briefing Cases

Introduction

A unique aspect of studying criminal procedure is that you have the opportunity to read actual court decisions. Reading cases likely will be a new experience, and although you may encounter some initial frustrations, in my experience students fairly quickly master the techniques of legal analysis.

The case method was introduced in 1870 by Harvard law professor Christopher Columbus Langdell and is the primary method of instruction in nearly all American law schools. This approach is based on the insight that students most effectively learn the law when they study actual cases. Langdell encouraged instructors to employ a question and answer classroom technique termed the **Socratic method**. The most challenging aspect of this approach involves posing hypothetical or fictitious examples that require students to apply the case material to new factual situations.

The study of cases assists you to

- understand the principles of criminal procedure.
- improve your skills in critical reading and thinking.
- acquaint yourself with legal vocabulary and procedures.
- appreciate how judges make decisions.
- learn to apply the law to the facts.

The cases in this textbook have been edited to highlight the most important points. Some nonessential material has been omitted to assist you in reading and understanding the material. You may want to read the entire, unedited case in the library or online.

The Structure of Cases

In law school, students are taught to divide a case into two parts, an *introduction* and a *judicial opinion*. These two sections have several component parts, which you should keep in mind.

Introduction

The initial portion of a case is divided into title, citation, and identification of the judge.

Title. Cases are identified by the names of the parties involved in the litigation. At the trial level, this typically involves the prosecuting authority, either a city, a county, a state, or the federal government followed by “versus” and the name of the defendant. On appeal, the introduction is slightly different. The first name refers to the appellant who is bringing the appeal, and the second to the appellee who is defending against the appeal. On a collateral attack, remember that the -parties are termed petitioners and respondents. You will notice that judicial decisions in some cases utilize a shorthand version of a case and only refer to one of the parties, much like calling someone by his or her first or last name.

Citation. Immediately following the names, you will find the citation, which directs you to the book or **legal reporter** where you can find the case in a law library. Cases also increasingly are available online. The standard form for citations of cases, statutes, and law journals is contained in *The Bluebook* published by the Harvard Law Review Association.

Judge. The name of the judge who wrote the opinion typically appears at the beginning of the case. An opinion written by a respected judge may prove particularly influential with other courts. The respect accorded to a judge’s decisions may be diminished by the fact that his or her decisions frequently are reversed by appellate courts.

Outline. The full, unedited cases in legal reporters typically begin with a list of numbered paragraphs or **headnotes** that outline the main legal points in the case. There also is a summary of the case and of the decisions of other courts that have heard the case. These outlines have been omitted from the edited cases reprinted in the text.

Judicial Opinions

The judge's legal discussion is referred to as the opinion, judgment, or decision. Students are taught to divide the opinion into history, facts, law, and reasoning. These component parts are not always neatly distinguished, and you may have to organize the material in your mind as you read the case.

- **History.** The initial portion of a case typically provides a summary of the decisions of the lower courts that previously considered the case and the statutes involved.
- **Facts.** Each case is based on a set of facts that present a question to be answered by the judge. This question, for instance, may involve whether the police were required to read the defendant his or her *Miranda* rights. This question is termed the *issue*.
- **Law.** The judge then applies the legal rule to the facts and reaches a **holding** or decision.

The **reasoning** is the explanation offered by the judge for the holding. Judges also often include comments and observations (in Latin, **obiter dicta** or comments from the bench) on a wide range of legal and factual concerns that provide important background, but which may not be central to the holding. These comments may range from legal history to a discussion of a judge's philosophy of punishment.

As noted in Chapter 1, judges typically rely on *precedents* or the holdings of other courts. Precedent is an application of the principle of *stare decisis*, which literally translates as "to stand by precedent and to stand by settled points." The court may follow a precedent or point out that the case at hand is *distinguished* from the precedent and calls for a different rule.

Appellate courts typically are composed of a multiple-judge panel consisting of three or more judges, depending on the level of the court. The judges typically meet and vote on a case and issue a *majority opinion*, which is recognized as the holding in the case. Judges in the majority may choose to write a *concurring opinion* supporting the majority, which typically is based on slightly different grounds. On occasion, a majority of judges agree on the outcome of a case, but are unable to reach a consensus on the reasoning. In these instances there typically is a *plurality opinion* as well as one or more *concurring opinions*. In cases in which a court issues a plurality opinion, the decisions of the various judges in the majority must be closely examined to determine the precise holding of the case.

A judge in the minority has the discretion to write a *dissenting opinion*. Other judges in the minority also may issue separate opinions or join the dissenting opinion of another judge. In those instances in which a court is closely divided, the dissenting opinion with the passage of time may come to reflect the view of a majority of the members of the court. The dissent also may influence the majority opinion. The judges in the majority may feel compelled to answer the claims of the dissent or to compromise in order to attract judges who may be sympathetic to the dissent.

A *per curiam* opinion, as noted, is a brief opinion by an entire appellate court in which no judge is identified as the author.

In reading the edited cases reprinted in this text, you will notice that the cases are divided into various sections. This has been done to help you in understanding the court's judgment. The facts of the case and the issue to be decided by the court are typically followed by the court's reasoning or justification and holding or decision. A number of questions appear at the end of the case to help you understand the opinion.

Briefing a Case

Your instructor may ask you to *brief* or summarize the main points of the cases reprinted in the text. A student brief is a concise, shorthand, written description of the case and is intended to assist you in understanding and organizing the material and in preparing for class and examinations. A brief generally includes several standard features. These, of course, are only broad guidelines, and there are differing opinions on the proper form of a brief. Keep in mind that a particular case that you are reading also may not be easily reduced to a standard format. You should ask your instructor how he or she would like you to brief the assigned cases.

A general outline of a brief is as follows:

1. **The name of the case and the year the case was decided.** The name of the case will help you in organizing your class notes. Including the year of decision places the case in historical context and alerts you to the fact that an older decision may have been revised in light of modern circumstances.

2. ***The state or federal court deciding the case and the judge writing the decision.*** This will assist you in determining the place of the court in the judicial hierarchy and whether the decision constitutes a precedent to be followed by lower-level courts.
3. ***Facts.*** Write down the relevant facts. You should think of this as a story that has a factual beginning and conclusion. The best approach is to put the facts into your own words.
4. ***Determine the issue that the court is addressing in the case.*** This customarily is in the form of a question in the brief and typically is introduced by the word “whether.” For instance, the issue might be “whether the police may search a home without a search warrant where the occupant freely and voluntarily consents to the search.”
5. ***Holding.*** Write down the legal principle formulated by the court to answer the question posed by the issue. This requires only a statement; for example, “The police may conduct a search of a home based on the occupant’s free and voluntary consent to the search. The consent may not be the product of duress or coercion, express or implied. In this case, the court held that the search was constitutional, because the occupant voluntarily consented to the search.”
6. ***Reasoning.*** State the reasons that the court provides for the holding. Note the precedents that the court cites and relies on in reaching its decision. Ask yourself whether the court’s reasoning is logical and persuasive. Consider how a change in the facts may result in a judgment that consent was not given voluntarily.
7. ***Disposition.*** An appellate court may affirm and uphold the decision of a lower court or reverse the lower court’s judgment. The appellate court may reverse the lower court’s decision and remand or return the case for additional judicial action. You will want to pay attention to the sentence received by the defendant. Take the time to understand the precise impact of the court decision.
8. ***Concurring and dissenting opinions.*** Note the arguments offered by judges in concurring and dissenting opinions.
9. ***Public policy and psychology.*** Consider the impact of the judgment on society and the criminal justice system. In considering a court decision, do not overlook the psychological, social, and political factors that may have affected the judges’ decision.
10. ***Personal opinion.*** Sketch your own judicial opinion, and note whether you agree with the holding of the case and the reasoning of the court.

Approaching the Case

You most likely will develop a personal approach to reading and briefing cases. There are some points that you might keep in mind.

Skim the case to develop a sense of the issue, facts, and holding of the case.

Read the case slowly a second time. You may find it helpful in the beginning to read the case out loud and to write notes in the margin.

Write down the relevant facts in your own words.

Identify the relevant facts, issue, reasoning, and holding. You should not merely mechanically copy the language of the case. Most instructors suggest that you express the material in your own words in order to improve your understanding. You should pay careful attention to the legal language. For instance, there is a significant difference between a legal test that states that consent is involuntary in those instances in which a defendant “reasonably believes” that the police are coercing him or her to consent and a legal test that states that consent is considered involuntary where a defendant “personally believes” that she or he is being attacked. The first is an objective test measured by a “reasonable person” and the second a “subjective test” measured by the defendant’s personal perception. You should incorporate legal terminology into your brief. The law, like tennis or music, possesses a distinctive vocabulary that is used to express and communicate ideas.

Consult the glossary in the text or a law dictionary for the definition of unfamiliar legal terms, and write down questions that you may have concerning the case.

The brief should be precise and limited to essential points. You should bring the brief to class, and compare your analysis to the view of your instructor. Modify the brief to reflect the class discussion, and provide space for insights developed in class.

Each case commonly is thought of as “standing for a legal proposition.” Some instructors suggest that you write the legal rule contained in the case as a “banner” across the first page of the brief.

Consider why the case is included in the textbook and how the case fits into the general topic covered in the chapter. Remain an active and critical learner, and think about the material you are reading. You also should consider how the case relates to what you learned earlier in the course. Bring a critical perspective to reading the case, and resist mechanically accepting the court’s judgment. Keep in mind that there are at least two parties involved in a case, each of whom may have a persuasive argument. Most important, briefing is a learning tool and should not be so time-consuming that you fail to spend time understanding and reflecting on the material.

Consider how the case may relate to other areas you have studied. The court’s decision may be based on one of several possible legal rules. Thinking broadly about a case will help you integrate and understand criminal law.

Outline the material. Some instructors may suggest that you develop an outline of the material covered in class. This then can be used to assist you in preparing for the examinations.

Apply the legal rule to hypothetical situations that you develop. This will help you understand the law and identify aspects of the decision that may be unclear.

Legal Citations

The name of each case is followed by a set of numbers and alphabetical abbreviations. These abbreviations refer to various *legal reporters* in which the cases are published. This is useful in the event that you want to read an unedited version in the library. An increasing number of cases also are available online. The rules of citation are fairly technical and are of immediate concern only to practicing attorneys. The discussion below presents the standard approach followed by lawyers. Those of you interested in additional detail should consult *The Bluebook: A Uniform System of Citation* (2005).

The first number you encounter is the volume in which the case appears. This is followed by the abbreviation of the reporter and by the page number and year of the decision. State cases are available in “regional reporters” that contain appellate decisions of courts in various geographic areas of the United States. These volumes are cited in accordance with standard abbreviations: Atlantic (A.), North East (N.E.), Pacific (P.), South East (S.E.), S. (South), and South West (S.W.). The large number of cases decided has necessitated the organization of these reporters into various “series” (e.g., P.2d and P.3d).

Individual states also have their own reporter systems containing the decisions of intermediate appellate courts and state supreme courts. For example, decisions of the Nebraska Supreme Court appear in the *Northwest Reporter* (N.W. or N.W.2d) as well as in the *Nebraska Reports* (Neb.). The decisions of the Nebraska Court of Appeals are reprinted in *Nebraska Court of Appeals Reports* (Neb. Ct. App.). These decisions usually are cited to the *Northwest Reporter*, for example, “*Nebraska v. Metzger*, 319 N.W.2d 459 (Neb. 1982).” New York and California cases appear in state and regional reporters as well as in their own national reporter.

The federal court reporters reprint the published opinions of federal trial courts as well as appellate courts. District court (trial) opinions appear in the *Federal Supplement Reporter* (F. Supp.), and appellate court opinions are reprinted in the *Federal Reporter* (F.), both of which are printed in several series (F. Supp. 2d; F.2d and F.3d). These citations also provide the name of the federal court that decided the case. The United States Court of Appeals for the Second Circuit in New York, for instance, is cited as “*United States v. MacDonald*, 531 F.2d 196 (2d Cir. 1976).” The standard citation for U.S. Supreme Court decisions is the *United States Report* (U.S.). For example, *Papachristou v. Jacksonville*, 405 U.S. 156 (1971). This is the official version issued by the U.S. Supreme Court; the decisions also are available in two privately published reporters, the *Supreme Court Reporter* (S. Ct.) and *Lawyer’s Edition* (L. Ed.).

There is a growing trend for cases to appear online on commercial electronic databases. States also are beginning to adopt public domain citation formats for newly decided cases that appear on state court web pages. These are cited in accordance with the rules established by each state’s judiciary. The standard format includes the case name, the year of the decision, the state’s two-digit postal code, the abbreviation of the court in the event that this is not a state supreme court decision, the number assigned to the case, and the paragraph number. A parallel citation to the relevant regional reporter also is provided. *The Bluebook* provides an example of this format: “*Gregory v. Class*, 1998 SD 106, ¶ 3, 584 N.W.2d 873, 875.”

LEGAL TERMINOLOGY

appellate courts
headnotes
holding
legal reporter
obiter dicta
reasoning
Socratic method

BIBLIOGRAPHY

Editors of the Columbia Law Review, the Harvard Law Review, the University of Pennsylvania Law Review, and the Yale Law Journal, *The Bluebook: A Uniform System of Citation*, 18th ed. (Cambridge, MA: The Harvard Law Review Association, 2005).