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How to Brief a Case

A case brief is a written summary of a decided case. Each professor and lawyer has their own format for briefing a case. A case brief will focus on the main issue(s) of the case and is a valuable tool when conducting legal research. Not only does the act of briefing a case help you to isolate the issue, it can clarify the facts that were instrumental in coming to the conclusion that the Judges or Justices did. When asked to prepare a brief for someone, it is a good idea to ask for a sample first to make sure you comply with their format requirements. It is also vital for you to obtain a copy of the actual case. What is in your textbook is usually a very abbreviated version of the case, which may or may not even contain all of the issues decided in that case.

For the purposes of this class, you will use the following format:

Citation: The citation is the name, reporter and date the case was decided. It is also a good idea to list the actual court if it is not apparent from the citation. For example:
Marbury v. Madison 5 US 137 (1803).

Facts: The facts section will only include the facts important to the actual holding in the case. While you need to provide enough information so that the reader will know who is doing what, you should exclude any matters which did not have an effect on the outcome of the case. You do not want to copy of the facts straight from the case, it will be very obvious and prevent your case brief from being “brief.”

You should make sure you know what the issue and reasoning is before you set down the facts. You should indicate which party was the plaintiff and which was the defendant at trial and refer to them by name throughout the brief. This is because at the appellate level the winner will be called the appellee and the loser, the appellant. It gets confusing

if you continue to call them plaintiff and defendant or appellant and appellee.

Procedural History: The procedural history will indicate what happened in the trial level (and appellate level if it made it to the Supreme Court). You should also indicate which trial court the case came from. You would need to indicate what the causes of actions were and how the court ruled on them. You will then indicate who brought the appeal and why.

Issue: Unless the decision is very clear, this may be the most difficult part of the brief. You need to indicate in question form, what the appellate court is being asked to decide. If there is more than one question to be answered, you need to list them all.

Holding: This is the answer to the question(s). You will tell the conclusion of the appellate court and what they have ordered: affirmed, reversed, or remanded.

Reasoning: This is the most important part of your brief. It is in this section that you explain why the appellate court decided the way it did and include citations to any cases they relied on in their decision-making. You will give the reasoning behind the answers to the questions posed in the issues section and apply the facts to the rule of law. Do not quote from the case (unless there is an important rule of law quoted from a prior citation). Summarize the reasoning given in the opinion.

Dissents: What did the dissenting justices think and why?

Thoughts: Here you will give your personal impression of the case. Was it fair? Was it

decided incorrectly? Did the dissenting justices have a better position?

Instructions: Choose one of the cases other than Marbury v. Madison for your paper.

Additionally, at the end of the paper, you must also provide a brief reflection paper of the case Marbury v. Madison, providing your personal thoughts on the case. This is not a case brief and it does not need to follow the format of your research paper.

There is a **full** 3-page minimum for this assignment. Format is 3/4" margins, 12pt font, double spaced. Please provide a cover sheet, and ensure your work is stapled. Your cover sheet should **only** have the case name and class title on the front. Your name should be handwritten on the back of the cover sheet, along with the statement, "I <insert your name> actually read this whole case. This is my original work."

You are turning in both a digital version on blackboard in .pdf format and a paper copy.

On the following page is a sample brief.

CITATION: Korematsu v. United States, 323 U.S. 214 (1944)

FACTS: In 1942, FDR passed Executive Order 9066 permitting the internment of Americans of Japanese descent and empowering the military to make orders to enforce it. The army passed their own orders, one of which required Korematsu to leave his home, and possibly submit for relocation into an internment camp. Fred Korematsu was an American, born in California to Japanese parents. He refused the order and was arrested and then convicted of violating these orders.

PROCEDURAL HISTORY: Korematsu lost in the federal district court. The case was appealed to the 9th circuit where he lost again. The case then went to the Supreme Court.

ISSUE: Was Executive Order 9066 and the follow-on orders from the army violative of Korematsu's 5th amendment due process right?

HOLDING: No. They applied strict scrutiny for racially discriminatory laws, but still found the orders within the limitations of the 5th amendment.

REASONING: The court justified their opinion on several grounds. First and foremost, they cited precedent in *Hirabayashi v. United States* which had permitted curfews to be placed on minority groups. Next, they argued that since we're at war, they should be wary to second guess military decisions. The court then cites 5,000 Americans of Japanese descent that refused to swear allegiance to the U.S. They also argue that this isn't about the executive order, but rather an exclusionary order. They say that the 5th amendment does require strict scrutiny, but being at war made this an emergency, which justified the orders and kept it in line with strict scrutiny requirements.

CONCURRENCE: Justice Frankfurter concurred, stating that Congress can pass laws that support military orders, so long as they are constitutional.

DISSENT: Justice Roberts dissented, stating that Korematsu was subject to conflicting orders and therefore was stuck violating one no matter what, which violated his due process rights. He also expressed a need to differentiate from *Hirabayashi* since that case was a curfew rather than an exclusion and detention order.

THOUGHTS: It seems to me that using *Hirabayashi v. United States* is absurd, given that it'd only been decided a year earlier. However, that also means that we shouldn't have been surprised by the outcome, either because of the prior decision or because the Supreme Court was already unwilling to take a stand against FDR due to his "court packing" threat years before.

But none of this really matters. The court points out explicitly that there was no actual concern of disloyalty by Korematsu. Had there been evidence of disloyalty that'd be one thing, but even then, unless it was a direct threat, the justification that 5,000 Americans of Japanese descent failed to swear "unqualified allegiance" to the U.S. is no justification at all. One should never swear unqualified allegiance to anything, ever, especially at a time when your nation is rounding

up people who look like you.

This is a clear and spectacular violation of the 5th amendment, even if it's about an exclusionary order instead of relocation. People will do and justify nearly anything when they are afraid. We're fortunate that this case has been overturned.



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