MEMORANDUM

To: Villanova Law Class of 2016
From: Christine G. Mooney, Associate Dean for Academic Affairs, Director of Legal Writing Programs, and Professor of Legal Writing
       Michael P. Moreland, Vice Dean and Professor of Law
Date: August 1, 2013
Re: Orientation

Welcome to Villanova Law! We look forward to your arrival in just a few weeks.

The second day of orientation (Thursday, August 22) will be partly devoted to a session with your legal writing professor, a law librarian, and another faculty member. This session will seek to introduce you to some basic aspects of legal analysis and reasoning in preparation for your first day of class and the start of your legal education.

There are four readings for this orientation session that you should prepare ahead of time in order to obtain the most benefit from your time with the faculty:


2. An essay by Professor Orin Kerr of the George Washington University Law School on how to read a case.

3. A chapter from a text by a Villanova Law faculty member, Lou Sirico, on how to brief a case. Please note that you are not required to complete the exercises in this chapter.

4. Remarks about the distinctive mission of a Catholic law school by Richard W. Garnett, Professor of Law at the University of Notre Dame.

You should read the assigned material carefully, which usually means reading it more than once (especially the case). But you should not be worried if some of the reading is difficult. The faculty is here to help you during orientation and throughout your time at Villanova. The more you put into these initial readings, however, the more you will get out of the session on the 22nd. In addition to the reading, please prepare a case brief of *Muscarello v. United States* applying what you learned from Professor Sirico’s chapter. There is no one correct way to brief a case, so do not be overly concerned about the format. We will discuss the purpose and methods for case briefs as a group during the session on August 22.
Supreme Court of the United States

Frank J. MUSCARELLO, Petitioner,

v.

UNITED STATES.

Donald E. CLEVELAND and Enrique Gray–Santana, Petitioners,

v.

UNITED STATES.


Justice BREYER delivered the opinion of the Court.

A provision in the firearms chapter of the federal criminal code imposes a 5–year mandatory prison term upon a person who “uses or carries a firearm” “during and in relation to” a “drug trafficking crime.” 18 U.S.C. § 924(c)(1). The question before us is whether the phrase “carries a firearm” is limited to the carrying of firearms on the person. We hold that it is not so limited. Rather, it also applies to a person who knowingly possesses and conveys firearms in a vehicle, including in the locked glove compartment or trunk of a car, which the person accompanies.

I

The question arises in two cases, which we have consolidated for argument. Petitioner in the first case, Frank J. Muscarello, unlawfully sold marijuana, which he carried in his truck to the place of sale. Police officers found a handgun locked in the truck’s glove compartment. During plea proceedings, Muscarello admitted that he had “carried” the gun “for protection in relation” to the drug offense, though he later claimed to the contrary, and added that, in any event, his “carr[y ing]” of the gun in the glove compartment did not fall within the scope of the statutory word “carries.”

Petitioners in the second case, Donald Cleveland and Enrique Gray–Santana, placed several guns in a bag, put the bag in the trunk of a car, and then traveled by car to a proposed drug-sale point, where they intended to steal drugs from the sellers. Federal agents at the scene stopped them, searched the cars, found the guns and drugs, and arrested them.

In both cases the Courts of Appeals found that petitioners had “carried” the guns during and in relation to a drug trafficking offense. We granted certiorari to determine whether the fact that the guns were found in the locked glove compartment, or the trunk, of a car precludes application of § 924(c)(1). We conclude that it does not.
We begin with the statute’s language. The parties vigorously contest the ordinary English meaning of the phrase “carries a firearm.” Because they essentially agree that Congress intended the phrase to convey its ordinary, and not some special legal, meaning, and because they argue the linguistic point at length, we too have looked into the matter in more than usual depth. Although the word “carry” has many different meanings, only two are relevant here. When one uses the word in the first, or primary, meaning, one can, as a matter of ordinary English, “carry firearms” in a wagon, car, truck, or other vehicle that one accompanies. When one uses the word in a different, rather special, way, to mean, for example, “bearing” or (in slang) “packing” (as in “packing a gun”), the matter is less clear. But, for reasons we shall set out below, we believe Congress intended to use the word in its primary sense and not in this latter, special way.

Consider first the word’s primary meaning. The Oxford English Dictionary gives as its first definition “convey, originally by cart or wagon, hence in any vehicle, by ship, on horseback, etc.” 2 Oxford English Dictionary 919 (2d ed. 1989); see also Webster’s Third New International Dictionary 343 (1986) (first definition: “move while supporting (as in a vehicle or in one’s hands or arms”); Random House Dictionary of the English Language Unabridged 319 (2d ed. 1987) (first definition: “to take or support from one place to another; convey; transport”).

The origin of the word “carries” explains why the first, or basic, meaning of the word “carry” includes conveyance in a vehicle. See Barnhart Dictionary of Etymology 146 (1988) (tracing the word from Latin “carum,” which means “car” or “cart”); 2 Oxford English Dictionary, supra, at 919 (tracing the word from Old French “carrier” and the late Latin “carricare,” which meant to “convey in a car”); Oxford Dictionary of English Etymology 148 (C. Onions ed. 1966) (same); Barnhart Dictionary of Etymology, supra, at 143 (explaining that the term “car” has been used to refer to the automobile since 1896).

The greatest of writers have used the word with this meaning. See, e.g., The King James Bible, 2 Kings 9:28 (“[H]is servants carried him in a chariot to Jerusalem”); id., Isaiah 30:6 (“[T]hey will carry their riches upon the shoulders of young asses”). Robinson Crusoe says, “[w]ith my boat, I carry’d away every Thing.” D. Defoe, Robinson Crusoe 174 (J. Crowley ed. 1972). And the owners of Queequeg’s ship, Melville writes, “had lent him a [wheelbarrow], in which to carry his heavy chest to his boarding-house.” H. Melville, Moby Dick 43 (U. Chicago 1952). This Court, too, has spoken of the “carrying” of drugs in a car or in its “trunk.”

These examples do not speak directly about carrying guns. But there is nothing linguistically special about the fact that weapons, rather than drugs, are being carried. Robinson Crusoe might have carried a gun in his boat; Queequeg might have borrowed a wheelbarrow in which to carry not a chest, but a harpoon. And, to make certain that there is no special ordinary English restriction (unmentioned in dictionaries) upon the use of “carry” in respect to guns, we have surveyed modern press usage, albeit crudely, by searching computerized newspaper databases—both the New York Times data base in Lexis/Nexis, and the “US News” data base in Westlaw. We looked for sentences in which the words “carry,” “vehicle,” and “weapon” (or variations thereof) all appear. We found thousands of such sentences, and random sampling suggests that many, perhaps more than one-third, are sentences used to convey the meaning at issue here, i.e., the carrying of guns in a car.


Now consider a different, somewhat special meaning of the word “carry”—a meaning upon which the linguistic arguments of petitioners and the dissent must rest. The Oxford English Dictionary’s twenty-sixth definition of “carry” is “bear, wear, hold up, or sustain, as one moves about; habitually to bear about with one.” 2 Oxford English Dictionary, at 921. Webster’s defines “carry” as “to move while supporting,” not just in a vehicle, but also “in one’s hands or arms.” Webster’s Third New International Dictionary, supra, at 343. And Black’s Law Dictionary defines the entire phrase “carry arms or weapons” as

“To wear, bear or carry them upon the person or in the clothing or in a pocket, for the purpose of use, or for the purpose of being armed and ready for offensive or defensive action in case of a conflict with another person.” Black’s Law Dictionary 214 (6th ed. 1990).
These special definitions, however, do not purport to limit the “carrying of arms” to the circumstances they describe. No one doubts that one who bears arms on his person “carries a weapon.” But to say that is not to deny that one may also “carry a weapon” tied to the saddle of a horse or placed in a bag in a car.

Nor is there any linguistic reason to think that Congress intended to limit the word “carries” in the statute to any of these special definitions. To the contrary, all these special definitions embody a form of an important, but secondary, meaning of “carry,” a meaning that suggests support rather than movement or transportation, as when, for example, a column “carries” the weight of an arch. 2 Oxford English Dictionary, at 919, 921. In this sense a gangster might “carry” a gun (in colloquial language, he might “pack a gun”) even though he does not move from his chair. It is difficult to believe, however, that Congress intended to limit the statutory word to this definition—imposing special punishment upon the comatose gangster while ignoring drug lords who drive to a sale carrying an arsenal of weapons in their van.

We recognize, as the dissent emphasizes, that the word “carry” has other meanings as well. But those other meanings (e.g., “carry all he knew,” “carries no colours”) are not relevant here. And the fact that speakers often do not add to the phrase “carry a gun” the words “in a car” is of no greater relevance here than the fact that millions of Americans did not see Muscarello carry a gun in his truck. The relevant linguistic facts are that the word “carry” in its ordinary sense includes carrying in a car and that the word, used in its ordinary sense, keeps the same meaning whether one carries a gun, a suitcase, or a banana.


B

We now explore more deeply the purely legal question of whether Congress intended to use the word “carry” in its ordinary sense, or
whether it intended to limit the scope of the phrase to instances in which a
gun is carried “on the person.” We conclude that neither the statute’s basic
purpose nor its legislative history support circumscribing the scope of the
word “carry” by applying an “on the person” limitation.

This Court has described the statute’s basic purpose broadly, as an
effort to combat the “dangerous combination” of “drugs and guns.”
*Smith v. United States*, 508 U.S. 223, 240 (1993). And the provision’s chief
legislative sponsor has said that the provision seeks “to persuade the man
who is tempted to commit a Federal felony to leave his gun at home.” 114
Cong. Rec. 22231 (1968) (Rep. Poff); see *Busic v. United States*, 446 U.S.
398, 405 (1980) (describing Poff’s comments as “crucial material” in
interpreting the purpose of § 924(c)); *Simpson v. United States*, 435 U.S.
6, 13–14 (1978) (concluding that Poff’s comments are “clearly probative”
and “certainly entitled to weight”); see also 114 Cong. Rec. 22243–22244
(statutes would apply to “the man who goes out taking a gun to commit a
crime”) (Rep. Hunt); *id.*, at 22244 (“Of course, what we are trying to do
by these penalties is to persuade the criminal to leave his gun at home”)
(Rep. Randall); *id.*, at 22236 (“We are concerned . . . with having the
criminal leave his gun at home”) (Rep. Meskill).

From the perspective of any such purpose (persuading a criminal “to
leave his gun at home”), what sense would it make for this statute to
penalize one who walks with a gun in a bag to the site of a drug sale, but
to ignore a similar individual who, like defendant Gray–Santana, travels to
a similar site with a similar gun in a similar bag, but instead of walking,
drives there with the gun in his car? How persuasive is a punishment that
is without effect until a drug dealer who has brought his gun to a sale
(indeed has it available for use) actually takes it from the trunk (or unlocks
the glove compartment) of his car? It is difficult to say that, considered as
a class, those who prepare, say, to sell drugs by placing guns in their cars
are less dangerous, or less deserving of punishment, than those who carry
handguns on their person.

We have found no significant indication elsewhere in the legislative
history of any more narrowly focused relevant purpose. We have found an
instance in which a legislator referred to the statute as applicable when an
individual “has a firearm on his person,” *ibid.* (Rep. Meskill); an instance
in which a legislator speaks of “a criminal who takes a gun in his hand,”
*id.*, at 22239 (Rep. Pucinski); and a reference in the Senate Report to a
“gun carried in a pocket,” S. Rep. No. 98–225, p. 314, n. 10 (1983); see
also 114 Cong. Rec. 21788, 21789 (1968) (references to gun “carrying”
without more). But in these instances no one purports to define the scope
of the term “carries”; and the examples of guns carried on the person are
not used to illustrate the reach of the term “carries” but to illustrate, or to
criticize, a different aspect of the statute.
Regardless, in other instances, legislators suggest that the word “carries” has a broader scope. One legislator indicates that the statute responds in part to the concerns of law enforcement personnel, who had urged that “carrying short firearms in motor vehicles be classified as carrying such weapons concealed.” Id., at 22242 (Rep. May). Another criticizes a version of the proposed statute by suggesting it might apply to drunken driving, and gives as an example a drunken driver who has a “gun in his car.” Id., at 21792 (Rep. Yates). Others describe the statute as criminalizing gun “possession”—a term that could stretch beyond both the “use” of a gun and the carrying of a gun on the person. See id., at 21793 (Rep. Casey); id., at 22236 (Rep. Meskill); id., at 30584 (Rep. Collier); id., at 30585 (Rep. Skubitz). * * *

In sum, the “generally accepted contemporary meaning” of the word “carry” includes the carrying of a firearm in a vehicle. The purpose of this statute warrants its application in such circumstances. The limiting phrase “during and in relation to” should prevent misuse of the statute to penalize those whose conduct does not create the risks of harm at which the statute aims.

For these reasons, we conclude that petitioners’ conduct falls within the scope of the phrase “carries a firearm.” The judgments of the Courts of Appeals are affirmed.

It is so ordered.

Justice GINSBURG, with whom THE CHIEF JUSTICE, Justice SCALIA, and Justice SOUTER join, dissenting.

Section 924(c)(1) of Title 18, United States Code, is a punishment-enhancing provision; it imposes a mandatory five-year prison term when the defendant “during and in relation to any crime of violence or drug trafficking . . . uses or carries a firearm.” In Bailey v. United States, 516 U.S. 137 (1995), this Court held that the term “uses,” in the context of § 924(c)(1), means “active employment” of the firearm. In today’s cases we confront a related question: What does the term “carries” mean in the context of § 924(c)(1), the enhanced punishment prescription again at issue.

It is uncontested that § 924(c)(1) applies when the defendant bears a firearm, i.e., carries the weapon on or about his person “for the purpose of being armed and ready for offensive or defensive action in case of a conflict.” Black’s Law Dictionary 214 (6th ed. 1990) (defining the phrase “carry arms or weapons”). The Court holds that, in addition, “carries a firearm,” in the context of § 924(c)(1), means personally transporting, possessing, or keeping a firearm in a vehicle, anyplace in a vehicle.

Without doubt, “carries” is a word of many meanings, definable to mean or include carting about in a vehicle. But that encompassing definition is not a ubiquitously necessary one. Nor, in my judgment, is it a
proper construction of “carries” as the term appears in § 924(c)(1). In line with Bailey and the principle of lenity the Court has long followed, I would confine “carries a firearm,” for § 924(c)(1) purposes, to the undoubted meaning of that expression in the relevant context. I would read the words to indicate not merely keeping arms on one’s premises or in one’s vehicle, but bearing them in such manner as to be ready for use as a weapon.

I

* * * Unlike the Court, I do not think dictionaries, surveys of press reports, or the Bible tell us, dispositively, what “carries” means embedded in § 924(c)(1). On definitions, “carry” in legal formulations could mean, inter alia, transport, possess, have in stock, prolong (carry over), be infectious, or wear or bear on one’s person. At issue here is not “carries” at large but “carries a firearm.” The Court’s computer search of newspapers is revealing in this light. Carrying guns in a car showed up as the meaning “perhaps more than one-third” of the time. Ante, at 1915. One is left to wonder what meaning showed up some two-thirds of the time. Surely a most familiar meaning is, as the Constitution’s Second Amendment (“keep and bear Arms”) (emphasis added) and Black’s Law Dictionary, at 214, indicate: “wear, bear, or carry . . . upon the person or in the clothing or in a pocket, for the purpose . . . of being armed and ready for offensive or defensive action in a case of conflict with another person.”

2 I note, however, that the only legal dictionary the Court cites, Black’s Law Dictionary, defines “carry arms or weapons” restrictively.

3 Many newspapers, the New York Times among them, have published stories using “transport,” rather than “carry,” to describe gun placements resembling petitioners’. See, e.g., Atlanta Constitution, Feb. 27, 1998, p. 9D, col. 2 (“House members last week expanded gun laws by allowing weapons to be carried into restaurants or transported anywhere in cars.”); Chicago Tribune, June 12, 1997, sports section, p. 13 (“Disabled hunters with permission to hunt from a standing vehicle would be able to transport a shotgun in an all-terrain vehicle as long as the gun is unloaded and the breech is open.”); Colorado Springs Gazette Telegraph, Aug. 4, 1996, p. C10 (British gun laws require “locked steel cases bolted onto a car for transporting guns from home to shooting range.”); Detroit News, Oct. 26, 1997, p. D14 (“It is unlawful to carry afield or transport a rifle . . . or shotgun if you have buckshot, slug, ball loads, or cut shells in possession except while traveling directly to deer camp or target range with firearm not readily available to vehicle occupants.”); N.Y. Times, July 4, 1993, p. A21, col. 2 (“[T]he gun is supposed to be transported
unloaded, in a locked box in the trunk."); Santa Rosa Press Democrat, Sept. 28, 1996, p. B1 (“Police and volunteers ask that participants . . . transport [their guns] to the fairgrounds in the trunks of their cars."); Worcester Telegram & Gazette, July 16, 1996, p. B3 (“Only one gun can be turned in per person. Guns transported in a vehicle should be locked in the trunk.”) (emphasis added in all quotations).

4 The translator of the Good Book, it appears, bore responsibility for determining whether the servants of Ahaziah “carried” his corpse to Jerusalem. Compare with, e.g., The New English Bible, 2 Kings 9:28 (“His servants conveyed his body to Jerusalem.”); Saint Joseph Edition of the New American Bible (“His servants brought him in a chariot to Jerusalem.”); Tanakh: The Holy Scriptures (“His servants conveyed him in a chariot to Jerusalem.”); see also id., Isaiah 30:6 (“They convey their wealth on the backs of asses.”); The New Jerusalem Bible (“[T]hey bear their riches on donkeys’ backs.”) (emphasis added in all quotations).


On lessons from literature, a scan of Bartlett’s and other quotation collections shows how highly selective the Court’s choices are. If “[t]he greatest of writers” have used “carry” to mean convey or transport in a vehicle, so have they used the hydra-headed word to mean, inter alia, carry in one’s hand, arms, head, heart, or soul, sans vehicle. Consider, among countless examples:

“[H]e shall gather the lambs with his arm, and carry them in his bosom.”
The King James Bible, Isaiah 40:11.

“And still they gaz’d, and still the wonder grew,
That one small head could carry all he knew.”

“There’s a Legion that never was ‘listed,
That carries no colours or crest.”
“There is a homely adage which runs, ‘Speak softly and carry a big stick; you will go far.’”


6 Popular films and television productions provide corroborative illustrations. In “The Magnificent Seven,” for example, O’Reilly (played by Charles Bronson) says: “You think I am brave because I carry a gun; well, your fathers are much braver because they carry responsibility, for you, your brothers, your sisters, and your mothers.” See http://us.imdb.com/M/search_quotes?for=carry. And in the television series “M*A*S*H,” Hawkeye Pierce (played by Alan Alda) presciently proclaims: “I will not carry a gun. . . . I’ll carry your books, I’ll carry a torch, I’ll carry a tune, I’ll carry on, carry over, carry forward, Cary Grant, cash and carry, carry me back to Old Virginia, I’ll even ‘hari-kari’ if you show me how, but I will not carry a gun!” See http://www.geocities.com/Hollywood/8915/mashquotes.html.

These and the Court’s lexicological sources demonstrate vividly that “carry” is a word commonly used to convey various messages. Such references, given their variety, are not reliable indicators of what Congress meant, in § 924(c)(1), by “carries a firearm.”

Noting the paradoxical statement, “‘I use a gun to protect my house, but I’ve never had to use it,’ ” the Court in Bailey, 516 U.S., at 143, emphasized the importance of context—the statutory context. Just as “uses” was read to mean not simply “possession,” but “active employment,” so “carries,” correspondingly, is properly read to signal the most dangerous cases—the gun at hand, ready for use as a weapon. 7 It is reasonable to comprehend Congress as having provided mandatory minimums for the most life-jeopardizing gun-connection cases (guns in or at the defendant’s hand when committing an offense), leaving other, less imminently threatening, situations for the more flexible Guidelines regime. As the Ninth Circuit suggested, it is not apparent why possession of a gun in a drug dealer’s moving vehicle would be thought more dangerous than gun possession on premises where drugs are sold: “A drug dealer who packs heat is more likely to hurt someone or provoke someone else to violence. A gun in a bag under a tarp in a truck bed [or in a bedroom closet] poses substantially less risk.” United States v. Foster, 133 F.3d 704, 707 (1998) (en banc). * * *

7 In my view, the Government would carry its burden by proving a firearm was kept so close to the person as to approximate placement in a pocket or holster, e.g., guns carried at one’s side in a briefcase or handbag, or strapped to the saddle of a horse. See ante, at 1915.
Section 924(c)(1), as the foregoing discussion details, is not decisively clear one way or another. The sharp division in the Court on the proper reading of the measure confirms, “[a]t the very least, . . . that the issue is subject to some doubt. Under these circumstances, we adhere to the familiar rule that, ‘where there is ambiguity in a criminal statute, doubts are resolved in favor of the defendant.’ ” Adamo Wrecking Co. v. United States, 434 U.S. 275, 284–285 (1978) (citation omitted); see United States v. Granderson, 511 U.S. 39, 54 (1994) (“[W]here text, structure, and history fail to establish that the Government’s position is unambiguously correct—we apply the rule of lenity and resolve the ambiguity in [the defendant’s] favor.”). “Carry” bears many meanings * * * . The narrower “on or about [one’s] person” interpretation is hardly implausible nor at odds with an accepted meaning of “carries a firearm.”

Overlooking that there will be an enhanced sentence for the gun-possessing drug dealer in any event, the Court asks rhetorically: “How persuasive is a punishment that is without effect until a drug dealer who has brought his gun to a sale (indeed has it available for use) actually takes it from the trunk (or unlocks the glove compartment) of his car?” Correspondingly, the Court defines “carries a firearm” to cover “a person who knowingly possesses and conveys firearms [anyplace] in a vehicle . . . which the person accompanies.” Congress, however, hardly lacks competence to select the words “possesses” or “conveys” when that is what the Legislature means. 14 Notably in view of the Legislature’s capacity to speak plainly, and of overriding concern, the Court’s inquiry 150 pays scant attention to a core reason for the rule of lenity: “[B]ecause of the seriousness of criminal penalties, and because criminal punishment usually represents the moral condemnation of the community, legislatures and not courts should define criminal activity. This policy embodies ‘the instinctive distaste against men languishing in prison unless the lawmaker has clearly said they should.’ ” United States v. Bass, 404 U.S. 336, 348 (1971) (quoting H. Friendly, Mr. Justice Frankfurter and the Reading of Statutes, in Benchmarks 196, 209 (1967)).

14 See, e.g., 18 U.S.C. § 924(a)(6)(B)(ii) (1994 ed., Supp. II) (“if the person sold . . . a handgun . . . to a juvenile knowing . . . that the juvenile intended to carry or otherwise possess . . . the handgun . . . in the commission of a crime of violence”); 18 U.S.C. § 926A (“may lawfully possess and carry such firearm to any other place where he may lawfully possess and carry such firearm”); § 929(a)(1) (“uses or carries a firearm and is in possession of armor piercing ammunition”); § 2277 (“brings, carries, or possesses any dangerous weapon”) (emphasis added in all quotations).

* * *

The narrower “on or about [one’s] person” construction of “carries a firearm” is consistent with the Court’s construction of “uses” in Bailey to
entail an immediacy element. It respects the Guidelines system by resisting overbroad readings of statutes that deviate from that system. See *McFadden*, 13 F.3d, at 468 (Breyer, C.J., dissenting). It fits plausibly with other provisions of the “Firearms” chapter, and it adheres to the principle that, given two readings of a penal provision, both consistent with the statutory text, we do not choose the harsher construction. The Court, in my view, should leave it to Congress to speak “‘in language that is clear and definite’” if the Legislature wishes to impose the sterner penalty. *Bass*, 404 U.S., at 347 (quoting *United States v. Universal C.I.T. Credit Corp.*, 344 U.S. 218, 222 (1952)). Accordingly, I would reverse the judgments of the First and Fifth Circuits.
HOW TO READ A LEGAL OPINION

A GUIDE FOR NEW LAW STUDENTS

Orin S. Kerr

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This essay is designed to help new law students prepare for the first few weeks of class. It explains what judicial opinions are, how they are structured, and what law students should look for when reading them.

I. What’s in a Legal Opinion?

When two people disagree and that disagreement leads to a lawsuit, the lawsuit will sometimes end with a ruling by a judge in favor of one side. The judge will explain the ruling in a written document referred to as an “opinion.” The opinion explains what the case is about, discusses the relevant legal principles, and then applies the law to the facts to reach a ruling in favor of one side and against the other.

Modern judicial opinions reflect hundreds of years of history and practice. They usually follow a simple and predictable formula. This

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section takes you through the basic formula. It starts with the introductory materials at the top of an opinion and then moves on to the body of the opinion.

The Caption

The first part of the case is the title of the case, known as the “caption.” Examples include *Brown v. Board of Education* and *Miranda v. Arizona*. The caption usually tells you the last names of the person who brought the lawsuit and the person who is being sued. These two sides are often referred to as the “parties” or as the “litigants” in the case. For example, if Ms. Smith sues Mr. Jones, the case caption may be *Smith v. Jones* (or, depending on the court, *Jones v. Smith*).

In criminal law, cases are brought by government prosecutors on behalf of the government itself. This means that the government is the named party. For example, if the federal government charges John Doe with a crime, the case caption will be *United States v. Doe*. If a state brings the charges instead, the caption will be *State v. Doe*, *People v. Doe*, or *Commonwealth v. Doe*, depending on the practices of that state.¹

The Case Citation

Below the case name you will find some letters and numbers. These letters and numbers are the legal citation for the case. A citation tells you the name of the court that decided the case, the law book in which the opinion was published, and the year in which the court decided the case. For example, “U.S. Supreme Court, 485 U.S. 759 (1988)” refers to a U.S. Supreme Court case decided in 1988 that appears in Volume 485 of the *United States Reports* starting at page 759.

The Author of the Opinion

The next information is the name of the judge who wrote the opinion. Most opinions assigned in law school were issued by courts

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¹ English criminal cases normally will be *Rex v. Doe* or *Regina v. Doe*. Rex and Regina aren’t the victims: the words are Latin for “King” and “Queen.” During the reign of a King, English courts use “Rex”; during the reign of a Queen, they switch to “Regina.”
How to Read a Legal Opinion

with multiple judges. The name tells you which judge wrote that particular opinion. In older cases, the opinion often simply states a last name followed by the initial “J.” No, judges don’t all have the first initial “J.” The letter stands for “Judge” or “Justice,” depending on the court. On occasion, the opinion will use the Latin phrase “per curiam” instead of a judge’s name. Per curiam means “by the court.” It signals that the opinion reflects a common view among all the judges rather than the writings of a specific judge.

The Facts of the Case

Now let’s move on to the opinion itself. The first part of the body of the opinion presents the facts of the case. In other words, what happened? The facts might be that Andy pulled out a gun and shot Bob. Or maybe Fred agreed to give Sally $100 and then changed his mind. Surprisingly, there are no particular rules for what facts a judge must include in the fact section of an opinion. Sometimes the fact sections are long, and sometimes they are short. Sometimes they are clear and accurate, and other times they are vague or incomplete.

Most discussions of the facts also cover the “procedural history” of the case. The procedural history explains how the legal dispute worked its way through the legal system to the court that is issuing the opinion. It will include various motions, hearings, and trials that occurred after the case was initially filed. Your civil procedure class is all about that kind of stuff; you should pay very close attention to the procedural history of cases when you read assignments for your civil procedure class. The procedural history of cases usually will be less important when you read a case for your other classes.

The Law of the Case

After the opinion presents the facts, it will then discuss the law. Many opinions present the law in two stages. The first stage discusses the general principles of law that are relevant to cases such as the one the court is deciding. This section might explore the history of a particular field of law or may include a discussion of past cases (known as “precedents”) that are related to the case the court is de-
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ciding. This part of the opinion gives the reader background to help understand the context and significance of the court’s decision. The second stage of the legal section applies the general legal principles to the particular facts of the dispute. As you might guess, this part is in many ways the heart of the opinion: It gets to the bottom line of why the court is ruling for one side and against the other.

Concurring and/or Dissenting Opinions

Most of the opinions you read as a law student are “majority” opinions. When a group of judges get together to decide a case, they vote on which side should win and also try to agree on a legal rationale to explain why that side has won. A majority opinion is an opinion joined by the majority of judges on that court. Although most decisions are unanimous, some cases are not. Some judges may disagree and will write a separate opinion offering a different approach. Those opinions are called “concurring opinions” or “dissenting opinions,” and they appear after the majority opinion. A “concurring opinion” (sometimes just called a “concurrence”) explains a vote in favor of the winning side but based on a different legal rationale. A “dissenting opinion” (sometimes just called a “dissent”) explains a vote in favor of the losing side.

II. COMMON LEGAL TERMS FOUND IN OPINIONS

Now that you know what’s in a legal opinion, it’s time to learn some of the common words you’ll find inside them. But first a history lesson, for reasons that should be clear in a minute.

In 1066, William the Conqueror came across the English Channel from what is now France and conquered the land that is today called England. The conquering Normans spoke French and the defeated Saxons spoke Old English. The Normans took over the court system, and their language became the language of the law. For several centuries after the French-speaking Normans took over England, lawyers and judges in English courts spoke in French. When English courts eventually returned to using English, they continued to use many French words.
How to Read a Legal Opinion

Why should you care about this ancient history? The American colonists considered themselves Englishmen, so they used the English legal system and adopted its language. This means that American legal opinions today are littered with weird French terms. Examples include plaintiff, defendant, tort, contract, crime, judge, attorney, counsel, court, verdict, party, appeal, evidence, and jury. These words are the everyday language of the American legal system. And they’re all from the French, brought to you by William the Conqueror in 1066.

This means that when you read a legal opinion, you’ll come across a lot of foreign-sounding words to describe the court system. You need to learn all of these words eventually; you should read cases with a legal dictionary nearby and should look up every word you don’t know. But this section will give you a head start by introducing you to some of the most common words, many of which (but not all) are French in origin.

Types of Disputes and the Names of Participants

There are two basic kinds of legal disputes: civil and criminal. In a civil case, one person files a lawsuit against another asking the court to order the other side to pay him money or to do or stop doing something. An award of money is called “damages” and an order to do something or to refrain from doing something is called an “injunction.” The person bringing the lawsuit is known as the “plaintiff” and the person sued is called the “defendant.”

In criminal cases, there is no plaintiff and no lawsuit. The role of a plaintiff is occupied by a government prosecutor. Instead of filing a lawsuit (or equivalently, “suing” someone), the prosecutor files criminal “charges.” Instead of asking for damages or an injunction, the prosecutor asks the court to punish the individual through either jail time or a fine. The government prosecutor is often referred to as “the state,” “the prosecution,” or simply “the government.” The person charged is called the defendant, just like the person sued in a civil case.

In legal disputes, each party ordinarily is represented by a lawyer. Legal opinions use several different words for lawyers, includ-
Orin S. Kerr

ing “attorney” and “counsel.” There are some historical differences among these terms, but for the last century or so they have all meant the same thing. When a lawyer addresses a judge in court, she will always address the judge as “your honor,” just like lawyers do in the movies. In legal opinions, however, judges will usually refer to themselves as “the Court.”

Terms in Appellate Litigation

Most opinions that you read in law school are appellate opinions, which means that they decide the outcome of appeals. An “appeal” is a legal proceeding that considers whether another court’s legal decision was right or wrong. After a court has ruled for one side, the losing side may seek review of that decision by filing an appeal before a higher court. The original court is usually known as the trial court, because that’s where the trial occurs if there is one. The higher court is known as the appellate or appeals court, as it is the court that hears the appeal.

A single judge presides over trial court proceedings, but appellate cases are decided by panels of several judges. For example, in the federal court system, run by the United States government, a single trial judge known as a District Court judge oversees the trial stage. Cases can be appealed to the next higher court, the Court of Appeals, where cases are decided by panels of three judges known as Circuit Court judges. A side that loses before the Circuit Court can seek review of that decision at the United States Supreme Court. Supreme Court cases are decided by all nine judges. Supreme Court judges are called Justices instead of judges; there is one “Chief Justice” and the other eight are just plain “Justices” (technically they are “Associate Justices,” but everyone just calls them “Justices”).

During the proceedings before the higher court, the party that lost at the original court and is therefore filing the appeal is usually known as the “appellant.” The party that won in the lower court and must defend the lower court’s decision is known as the “appellee” (accent on the last syllable). Some older opinions may refer to the appellant as the “plaintiff in error” and the appellee as the “defendant.
in error.” Finally, some courts label an appeal as a “petition,” and require the losing party to petition the higher court for relief. In these cases, the party that lost before the lower court and is filing the petition for review is called the “petitioner.” The party that won before the lower court and is responding to the petition in the higher court is called the “respondent.”

Confused yet? You probably are, but don’t worry. You’ll read so many cases in the next few weeks that you’ll get used to all of this very soon.

III. WHAT YOU NEED TO LEARN FROM READING A CASE

Okay, so you’ve just read a case for class. You think you understand it, but you’re not sure if you learned what your professor wanted you to learn. Here is what professors want students to know after reading a case assigned for class:

Know the Facts

Law professors love the facts. When they call on students in class, they typically begin by asking students to state the facts of a particular case. Facts are important because law is often highly fact-sensitive, which is a fancy way of saying that the proper legal outcome depends on the exact details of what happened. If you don’t know the facts, you can’t really understand the case and can’t understand the law.

Most law students don’t appreciate the importance of the facts when they read a case. Students think, “I’m in law school, not fact school; I want to know what the law is, not just what happened in this one case.” But trust me: the facts are really important.²

² If you don’t believe me, you should take a look at a few law school exams. It turns out that the most common form of law school exam question presents a long description of a very particular set of facts. It then asks the student to “spot” and analyze the legal issues presented by those facts. These exam questions are known as “issue-sotters,” as they test the student’s ability to understand the facts and spot the legal issues they raise. As you might imagine, doing well on an issue-
Know the Specific Legal Arguments Made by the Parties

Lawsuits are disputes, and judges only issue opinions when two parties to a dispute disagree on a particular legal question. This means that legal opinions focus on resolving the parties’ very specific disagreement. The lawyers, not the judges, take the lead role in framing the issues raised by a case.

In an appeal, for example, the lawyer for the appellant will articulate specific ways in which the lower court was wrong. The appellate court will then look at those arguments and either agree or disagree. (Now you can understand why people pay big bucks for top lawyers; the best lawyers are highly skilled at identifying and articulating their arguments to the court.) Because the lawyers take the lead role in framing the issues, you need to understand exactly what arguments the two sides were making.

Know the Disposition

The “disposition” of a case is the action the court took. It is often announced at the very end of the opinion. For example, an appeals court might “affirm” a lower court decision, upholding it, or it might “reverse” the decision, ruling for the other side. Alternatively, an appeals court might “vacate” the lower court decision, wiping the lower-court decision off the books, and then “remand” the case, sending it back to the lower court for further proceedings. For now, you should keep in mind that when a higher court “affirms” it means that the lower court had it right (in result, if not in reasoning). Words like “reverse,” “remand,” and “vacate” means that the higher court though the lower court had it wrong.

Understand the Reasoning of the Majority Opinion

To understand the reasoning of an opinion, you should first identify the source of the law the judge applied. Some opinions interpret the Constitution, the founding charter of the government. Other cases
How to Read a Legal Opinion

interpret “statutes,” which is a fancy name for written laws passed by legislative bodies such as Congress. Still other cases interpret “the common law,” which is a term that usually refers to the body of prior case decisions that derive ultimately from pre-1776 English law that the Colonists brought over from England.3

In your first year, the opinions that you read in your Torts, Contracts, and Property classes will mostly interpret the common law. Opinions in Criminal Law mostly interpret either the common law or statutes. Finally, opinions in your Civil Procedure casebook will mostly interpret statutory law or the Constitution. The source of law is very important because American law follows a clear hierarchy. Constitutional rules trump statutory (statute-based) rules, and statutory rules trump common law rules.

After you have identified the source of law, you should next identify the method of reasoning that the court used to justify its decision. When a case is governed by a statute, for example, the court usually will simply follow what the statute says. The court’s role is narrow in such settings because the legislature has settled the law. Similarly, when past courts have already answered similar questions before, a court may conclude that it is required to reach a particular result because it is bound by the past precedents. This is an application of the judicial practice of “stare decisis,” an abbreviation of a Latin phrase meaning “That which has been already decided should remain settled.”

In other settings, courts may justify their decisions on public policy grounds. That is, they may pick the rule that they think is the best rule, and they may explain in the opinion why they think that rule is best. This is particularly likely in common law cases where judges are not bound by a statute or constitutional rule. Other courts will rely on morality, fairness, or notions of justice to justify

3 The phrase “common law” started being used about a thousand years ago to refer to laws that were common to all English citizens. Thus, the word “common” in the phrase “common law” means common in the sense of “shared by all,” not common in the sense of “not very special.” The “common law” was announced in judicial opinions. As a result, you will sometimes hear the phrase “common law” used to refer to areas of judge-made law as opposed to legislatively-made law.
their decisions. Many courts will mix and match, relying on several or even all of these justifications.

*Understand the Significance of the Majority Opinion*

Some opinions resolve the parties’ legal dispute by announcing and applying a clear rule of law that is new to that particular case. That rule is known as the “holding” of the case. Holdings are often contrasted with “dicta” found in an opinion. Dicta refers to legal statements in the opinion not needed to resolve the dispute of the parties; the word is a pluralized abbreviation of the Latin phrase “obiter dictum,” which means “a remark by the way.”

When a court announces a clear holding, you should take a minute to think about how the court’s rule would apply in other situations. During class, professors like to pose “hypotheticals,” new sets of facts that are different from those found in the cases you have read. They do this for two reasons. First, it’s hard to understand the significance of a legal rule unless you think about how it might apply to lots of different situations. A rule might look good in one setting, but another set of facts might reveal a major problem or ambiguity. Second, judges often reason by “analogy,” which means a new case may be governed by an older case when the facts of the new case are similar to those of the older one. This raises the question, which are the legally relevant facts for this particular rule? The best way to evaluate this is to consider new sets of facts. You’ll spend a lot of time doing this in class, and you can get a head start on your class discussions by asking the hypotheticals on your own before class begins.

Finally, you should accept that some opinions are vague. Sometimes a court won’t explain its reasoning very well, and that forces us to try to figure out what the opinion means. You’ll look for the holding of the case but become frustrated because you can’t find one. It’s not your fault; some opinions are written in a narrow way so that there is no clear holding, and others are just poorly reasoned or written. Rather than trying to fill in the ambiguity with false certainty, try embracing the ambiguity instead. One of the skills of top-flight lawyers is that they know what they don’t know: they know
How to Read a Legal Opinion

when the law is unclear. Indeed, this skill of identifying when a problem is easy and when it is hard (in the sense of being unsettled or unresolved by the courts) is one of the keys to doing very well in law school. The best law students are the ones who recognize and identify these unsettled issues without pretending that they are easy.

Understand Any Concurring and/or Dissenting Opinions

You probably won’t believe me at first, but concurrences and dissents are very important. You need to read them carefully. To understand why, you need to appreciate that law is man-made, and Anglo-American law has often been judge-made. Learning to “think like a lawyer” often means learning to think like a judge, which means learning how to evaluate which rules and explanations are strong and which are weak. Courts occasionally say things that are silly, wrongheaded, or confused, and you need to think independently about what judges say.

Concurring and dissenting opinions often do this work for you. Casebook authors edit out any unimportant concurrences and dissents to keep the opinions short. When concurrences and dissents appear in a casebook, it signals that they offer some valuable insights and raise important arguments. Disagreement between the majority opinion and concurring or dissenting opinions often frames the key issue raised by the case; to understand the case, you need to understand the arguments offered in concurring and dissenting opinions.

IV. Why Do Law Professors Use the Case Method?

I’ll conclude by stepping back and explaining why law professors bother with the case method. Every law student quickly realizes that law school classes are very different from college classes. Your college professors probably stood at the podium and droned on while you sat back in your chair, safe in your cocoon. You’re now starting law school, and it’s very different. You’re reading about actual cases, real-life disputes, and you’re trying to learn about the law by picking up bits and pieces of it from what the opinions tell
you. Even weirder, your professors are asking you questions about those opinions, getting everyone to join in a discussion about them. Why the difference?, you may be wondering. Why do law schools use the case method at all?

I think there are two major reasons, one historical and the other practical.

**The Historical Reason**

The legal system that we have inherited from England is largely judge-focused. The judges have made the law what it is through their written opinions. To understand that law, we need to study the actual decisions that the judges have written. Further, we need to learn to look at law the way that judges look at law. In our system of government, judges can only announce the law when deciding real disputes: they can’t just have a press conference and announce a set of legal rules. (This is sometimes referred to as the “case or controversy” requirement; a court has no power to decide an issue unless it is presented by an actual case or controversy before the court.) To look at the law the way that judges do, we need to study actual cases and controversies, just like the judges. In short, we study real cases and disputes because real cases and disputes historically have been the primary source of law.

**The Practical Reason**

A second reason professors use the case method is that it teaches an essential skill for practicing lawyers. Lawyers represent clients, and clients will want to know how laws apply to them. To advise a client, a lawyer needs to understand exactly how an abstract rule of law will apply to the very specific situations a client might encounter. This is more difficult than you might think, in part because a legal rule that sounds definite and clear in the abstract may prove murky in application. (For example, imagine you go to a public park and see a sign that says “No vehicles in the park.” That plainly forbids an automobile, but what about bicycles, wheelchairs, toy automobiles? What about airplanes? Ambulances? Are these “vehicles” for the purpose of the rule or not?) As a result, good lawyers
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need a vivid imagination; they need to imagine how rules might apply, where they might be unclear, and where they might lead to unexpected outcomes. The case method and the frequent use of hypotheticals will help train your brain to think this way. Learning the law in light of concrete situations will help you deal with particular facts you’ll encounter as a practicing lawyer.

Good luck!
Legal Writing
and Other Lawyering Skills

Fifth Edition

Nancy L. Schultz
Professor, Chapman University School of Law

Louis J. Sirico, Jr.
Professor of Law and Director, Legal Writing Program
Villanova Law School
How to Brief a Case

§ 4.01. WHAT IS A BRIEF?

1. Briefing Is Taking Notes

   In your first year of law school, your professors will expect you to brief the cases that they assign. The word “brief” has two meanings in law. A brief is a written argument that an attorney submits to a court deciding a case. A brief also is a summary of a court opinion. In your initial law school classes and in this chapter, your concern is with this second type of brief.

   Because briefing is new to you and because law school is also new, you may think that briefing is very different from anything you have done before. If you examine the task closely, however, you will discover that it is a very familiar one.

   Briefing a case is taking notes on the case. By this time, you are a veteran at taking notes on what you read. You probably started taking notes in high school or college. Briefing a case seems different because it is a highly structured method of taking notes. It requires you to identify various parts of a case and summarize them.

2. The Purposes of Briefing

   Briefing has two purposes. First, it helps you to focus on the important aspects of the case. A court opinion may ramble on page after page. Your brief, however, will be no longer than one or two pages. Briefing forces you to get to the heart of the case to grapple with the essentials.

   Second, briefing helps you prepare for class and serves as a source of reference during class. You cannot brief a case properly unless you understand it. Briefing ensures that you understand the case before you discuss it in class. During class, you will find yourself referring to your brief. The discussion in a law school class goes far beyond what the brief contains. Your professor uses a court opinion only as a springboard to a sophisticated treatment of legal doctrine and legal process. Without the sort of understanding of basic aspects of a case that briefing demands, you will not get off the springboard and will fail to gain what the class has to offer.

   Your case briefs are your personal notes. Your professors are not going to grade them. They probably never will read them unless you ask for assistance.
Few students refer to their briefs when preparing for exams. View your briefs as your private study tools for class preparation.

Because you will not be handing in your briefs to your professors and will not use them at semester’s end, you may be tempted not to brief cases. Briefing can be time consuming, and your time is limited. We strongly encourage you to stay with briefing at least for the first few months of law school.

At the initial stage of your legal education, you should brief all assigned cases. As your grasp of the law grows, you will switch to writing short summaries or even writing notes in the margins of your casebooks. For now, however, brief your cases diligently. Briefing will help you understand what is going on in class, not always an easy task.

§ 4.02. HOW TO BRIEF

1. The Format

The typical brief includes the name of the case, its citation, the important facts in the case, the case’s procedural status, the issue in the case, the court’s holding, and the court’s reasoning.

Different professors may ask you to brief cases in different ways. We offer you a typical format for a case brief. If a professor asks for a slightly different format, be sure to oblige him or her. You will find that despite deviations in format, all professors want you to abstract essentially the same information.

2. Parts of the Brief

a. An Exercise

Here is an exercise to help you learn about briefing cases. After reading the trial court’s opinion in Conti v. ASPCA (which you may read again in your property course), go back and take notes on it. You need not follow any particular format. Just take notes as if you were taking notes on a college reading assignment. Following the case is a brief of the case. Please do not read it until after you have completed taking notes.

As you read the opinion, note its format, the typical format for this sort of opinion. It begins with the name of the case, with the plaintiff’s name coming first. It then lists citations, which tell you what library books contain the opinion. Next is the name of the judge who wrote the opinion. Finally comes the text of the opinion. It contains the facts of the case, the court’s reasoning, and the court’s decision.

Conti v. ASPCA

77 Misc. 2d 61, 353 N.Y.S.2d 288 (Civ. Ct. 1974)

Martin Rodell, Judge.

Chester is a parrot. He is fourteen inches tall, with a green coat, yellow head and an orange streak on his wings. Red splashes cover his left shoulder. Chester is a show parrot, used by the defendant ASPCA in various educational exhibitions presented to groups of children.
§4.02. How to Brief

On June 28, 1973, during an exhibition in Kings Point, New York, Chester flew the coop and found refuge in the tallest tree he could find. For several hours the defendant sought to retrieve Chester. Ladders proved to be too short. Offers of food were steadfastly ignored. With the approach of darkness, search efforts were discontinued. A return to the area on the next morning revealed that Chester was gone.

On July 5th, 1973 the plaintiff, who resides in Belle Harbor, Queens County, had occasion to see a green-hued parrot with a yellow head and red splashes seated in his backyard. His offer of food was eagerly accepted by the bird. This was repeated on three occasions each day for a period of two weeks. This display of human kindness was rewarded by the parrot’s final entry into the plaintiff’s home, where he was placed in a cage.

The next day, the plaintiff phoned the defendant ASPCA and requested advice as to the care of the parrot he had found. Thereupon the defendant sent two representatives to the plaintiff’s home. Upon examination, they claimed that it was the missing parrot, Chester, and removed it from the plaintiff’s home.

Upon refusal of the defendant ASPCA to return the bird, the plaintiff now brings this action in replevin.

The issues presented to the Court are twofold: One is, is the parrot in question truly Chester, the missing bird? Two, if it is in fact Chester, who is entitled to its ownership?

The plaintiff presented witnesses who testified that a parrot similar to the one in question was seen in the neighborhood prior to July 5, 1973. He further contended that a parrot could not fly the distance between Kings Point and Belle Harbor in so short a period of time, and therefore the bird in question was not in fact Chester.

The representatives of the ASPCA were categorical in their testimony that the parrot was indeed Chester, that he was unique because of his size, color and habits. They claimed that Chester said “hello” and could dangle by his legs. During the entire trial the Court had the parrot under close scrutiny, but at no time did it exhibit any of these characteristics. The Court called upon the parrot to indicate by name or other mannerisms an affinity to either of the claimed owners. Alas, the parrot stood mute.

Upon all the credible evidence the Court does find as a fact that the parrot in question is indeed Chester and is the same parrot which escaped from the possession of the ASPCA on June 28, 1973.

The Court must now deal with the plaintiff’s position that the ownership of the defendant was a qualified one and upon the parrot’s escape, ownership passed to the first individual who captured it and placed it under his control.

The law is well settled that the true owner of lost property is entitled to the return thereof as against any person finding same. (In re Wright’s Estate, 15 Misc. 2d 225, 177 N.Y.S.2d 410) (36A C.J.S. Finding Lost Goods §3).

This general rule is not applicable when the property lost is an animal. In such cases the Court must inquire as to whether the animal was domesticated or ferae naturae (wild).

Where an animal is wild, the owner can only acquire a qualified right of property which is wholly lost when it escapes from its captor with no intention of returning.

Thus in Mullet v. Bradley, 24 Misc. 695, 53 N.Y.S. 781, an untrained and undomesticated sea lion escaped after being shipped from the West to the East Coast.
The sea lion escaped and was again captured in a fish pond off the New Jersey Coast. The original owner sued the finder for its return. The court held that the sea lion was a wild animal (ferae naturae), and when it returned to its wild state, the original owner’s property rights were extinguished.

In *Amory v. Flyn*, 10 Johns. (N.Y.) 102, plaintiff sought to recover geese of the wild variety which had strayed from the owner. In granting judgment to the plaintiff, the court pointed out that the geese had been tamed by the plaintiff and therefore were unable to regain their natural liberty.

This important distinction was also demonstrated in *Manning v. Mitcherson*, 69 Ga. 447, 450-451, 52 A.L.R. 1063, where the plaintiff sought the return of a pet canary. In holding for the plaintiff the court stated, “To say that if one has a canary bird, mocking bird, parrot, or any other bird so kept, and it should accidentally escape from its cage to the street, or to a neighboring house, that the first person who caught it would be its owner is wholly at variance with all our views of right and justice.”

The Court finds that Chester was a domesticated animal, subject to training and discipline. Thus the rule of ferae naturae does not prevail and the defendant as true owner is entitled to regain possession.

The Court wishes to commend the plaintiff for his acts of kindness and compassion to the parrot during the period that it was lost and was gratified to receive the defendant’s assurance that the first parrot available would be offered to the plaintiff for adoption.

Judgment for defendant dismissing the complaint without costs.

Now that you have completed reading the case and taking notes on it, compare your notes with a typical brief of the case.

**Conti (pl.) v. Aspca (def.)**  
77 Misc. 2d 61, 353 N.Y.S.2d 288 (Civ. Ct. 1974)

**FACTS:** ASPCA owned Chester, a show parrot. On June 28, he escaped to a tree and def. could not retrieve him. The next day, he disappeared. On July 5, pl. found Chester and enticed him to his home. ASPCA learned about this and took Chester back. Pl. brought replevin action. (There was a question whether the parrot really was Chester, but the court decided he was, based on the evidence.)

**PROCEDURE:** Action for replevin. Court dismissed the complaint, in def.’s favor.  
(Note: This is a trial court decision.)

**ISSUE:** Whether, when a domesticated animal escapes, ownership passes to the person who next captures it.

**HELD:** The parrot here is a domesticated animal (no discussion). When a domesticated animal escapes, ownership remains with original owner.

**ANALYSIS:** The owner of a wild animal (*ferae naturae*) loses ownership when it escapes with no intention of returning. This rule does not apply to domesticated animals (animals that have been trained and disciplined). They are treated as lost property, and ownership remains with the original owner. The court fails to state a
rationale explicitly, but cites the Manning case: a contrary holding would contradict “all our views of right and justice.” The court relies on three cases:

Mullet: A sea lion is treated as ferae naturae. Upon escape, the new captor gains ownership.

Amory: Court treats wild geese as tamed and therefore unable to gain their natural liberty.

Manning: Escaped pet canary is treated as a domesticated animal and as belonging to the original owner.

Your notes probably contain most of the information that the sample brief contains. The organization, however, may be quite different. You can see how the briefing format forces you to focus on essential information and state it concisely in a logical order. Now let us use the Conti case and the sample brief to examine the parts of a brief.

b. Name of the Case

Copy the name of the case. When you determine which party is the plaintiff and which is the defendant and, on appeal, which is the appellant or petitioner and which is the appellee or respondent, write down this information as well. Some opinions are written in a way that makes these vital facts difficult to discover. In Conti, the plaintiff’s name comes first, but in some cases it comes second. If you fail to write down which litigant is which, you may forget this information at a crucial moment in class.

c. Citation

The citation contains the information that you need to find the case in the library. If you do not know how to use a cite to find a case, you will learn very shortly. Most casebooks offer abridged versions of cases. Your curiosity sometimes will lead you to search for the complete case in the library. If you have the cite in your brief, you will not have to return to your casebook to find it when you head for the library.

d. Facts of the Case

Write down the facts that you think were important to the court in deciding the case as well as any additional facts that are important to you. Court opinions often contain pages of facts. You would be wasting time and paper if you were to copy them. You want only the essential facts. If you read the entire case before you begin to brief it, you will have a much better sense of which facts are the essential ones. If you fail to read the case first, you run the risk of getting mired in a complex set of facts and writing pages of useless information.

The Conti case has relatively few essential facts. These facts are that Chester, a domesticated parrot, flew away from its owner, the ASPCA, and ultimately landed in the home of Conti, who now claims ownership. Chester’s height and coloring are not significant. These characteristics would be significant if the opinion focused on whether Conti’s parrot really was Chester. Therefore you need not write down Chester’s description. The details of Chester’s escape and ultimate
welcome at the Conti household also are not essential. We know we can disregard this information because we have read the rest of the case.

e. Procedure
Answer three questions:
(1) Who is suing whom for what? In Conti, the answer is clear.
(2) What is the legal claim? Here, the plaintiff is suing in replevin. In some other case, a plaintiff might sue for breach of contract, false imprisonment, negligence, relief granted by a statute, or on one of many other grounds. If you come across a word like “replevin” and do not know its meaning, look it up in a dictionary. “Replevin” tells us that Conti was asking the court to order the ASPCA to return the bird to him. If you did not know the meaning of replevin, you might have thought that Conti might have been satisfied to receive the dollar value of the bird.
(3) How did the lower court rule in the case? It heard the arguments, considered the evidence, and rendered the decision. The trial court wrote the Conti opinion. Therefore we have no decision by an even lower court. Suppose Conti was dissatisfied with the court’s decision and appealed to a higher court, which decided the case and issued a written opinion. If we were briefing that opinion, we would note in our brief that the court below had dismissed Conti’s complaint.

f. Issue
The issue is the legal question that the court must decide in order to reach its conclusion. In Conti, the issue is whether the owner of a domesticated animal loses ownership when it escapes and someone else captures it. Sometimes a court opinion will state the issue explicitly. Sometimes it will state the issue only implicitly and leave you the task of articulating it explicitly.

The Conti court states the issue in a very shorthanded way: “[I]f it is in fact Chester, who is entitled to its ownership?” We are ignoring the court’s, first issue—whether the parrot is Chester—because the court finds the issue uncontroversial and quickly decides it without analysis. You must flesh out the issue in order to state it in more general terms. The issue deals not just with a parrot named Chester, but with any domesticated animal that escapes and undergoes capture under similar circumstances. Ultimately the court must decide the case on the basis of a general rule applicable to similarly situated individuals and animals.

How narrowly or broadly you phrase the issue is, in part, a matter of taste. In the sample brief, we phrase the issue broadly:

Whether, when a domesticated animal escapes, ownership passes to the person who next captures it.

Another lawyer might phrase it more narrowly—that is, more tailored to the facts of the specific case:

Whether, when a domesticated parrot escapes, ownership passes to the person who next captures it.
Still another lawyer might phrase it even more narrowly:

Whether the finder of Chester, an escaped parrot, owns it when the parrot was a domesticated animal that the ASPCA trained and disciplined and used in educational exhibitions.

In our experience, beginning law students frame issues too narrowly or too broadly. When they frame an issue too narrowly, they focus too much on the facts of the case and fail to understand that it applies to a broad range of cases. When they frame an issue too broadly, they fail to appreciate how important the specific facts of a case are to the court deciding it.

Learning to frame an issue is an art that takes time to learn. Your professors will give you guidance in mastering the art. They also will let you know how narrowly or broadly they want you to frame issues in their respective courses.

g. Holding

The holding is the court’s decision and thus its resolution of the issue in the case. It usually requires rephrasing the issue from a question to a declarative sentence. In Conti, the holding is:

When a domesticated animal escapes, ownership remains with the original owner.

As with framing issues, different professors will have individual preferences on how broadly or narrowly they want you to state the holding.

h. Analysis

Explain the court’s reasoning in reaching its decision. Again, reading the case before you brief it will save you an enormous amount of time. Understanding the court’s reasoning is not always easy. Sometimes the reasoning will be unclear or contain gaps in its logic or require the reader to discern what the court is saying only implicitly. These defects and similar ones often will be the subject of class discussion.

A court frequently explains that its decision furthers important social policy. In your brief, identify these policy considerations. In Conti, the court quotes an earlier decision to the effect that a contrary holding would contradict “all our views of right and justice.” If the Conti court had written a more expansive opinion, it might have stated that its holding protected the right of property ownership because it forbids an individual to casually seize and keep the property of another.

Court decisions often include dicta. Dicta are discussions of law that are not necessary to the court’s decision in the case before it. The singular of “dicta” is “dictum.” The discussion of the Conti court about the rule to follow when an undomesticated animal escapes is dictum. The court’s discussion of that situation is not essential to deciding the case of a domesticated parrot that escapes. It is a wise practice to note dicta in your brief.

Be sure to read any footnotes. Most cases appearing in law school casebooks are edited versions. The editor has omitted most footnotes. If the editor has retained a footnote, he or she believes that it is important to the student’s understanding of the case. A footnote sometimes contains the key to the case.
Do not ignore dissenting and concurring opinions. Again, if an editor retains a dissent or concurrence, he or she has done so for a reason. Do not be surprised if your professor asks you if you agree with the majority or the dissent. If you fail to brief the dissent, you probably will be unable to answer the question.

i. More Sample Briefs

Here are two additional briefs of the Conti case. Each differs slightly from the sample brief we have studied. Our purpose is to show you that there is not just one way to brief a case. Just as different people take notes in different ways, different people brief cases in different ways. In each, however, the essential information is the same.

First Sample Brief

Conti v. Aspca
77 Misc. 2d 61, 353 N.Y.S.2d 288 (Civ. Ct. 1974)

FACTS: On June 28, 1973, the ASPCA’s parrot, Chester, flew away. On July 5, Conti (Pl.) found a bird the court determined was Chester in his backyard. Conti caged the parrot and called the ASPCA for information on parrot care. The ASPCA (Def.) suspecting the parrot was Chester went and took the parrot from Conti. Def. refused to return the parrot to Pl.

PROCEDURE: Trial court decision on a replevin action. Replevin is an action where a person seeks to recover possession of particular goods.

ISSUE: Who has rightful possession of an escaped parrot originally owned by one party and recaptured by another?

HELD: Ownership of a domesticated parrot does not terminate upon escape, but continues as against the one who recaptures the escaped animal.

ANALYSIS: The true owner of lost property is entitled to its return. Ownership of a wild animal (ferae naturae) ends when it escapes and returns to its natural liberty. A domesticated animal (one that has been trained and disciplined) is treated as lost property and is subject to return upon recapture.

In determining whether the parrot was domesticated or wild, the court considered three cases and three guidelines. Mullet found an untrained sea lion to be ferae naturae. Amory held geese that had been trained were domesticated. Manning determined extinguishing ownership of a pet canary was "wholly at variance with all our views of right and justice." Chester had been trained, disciplined and was like a canary. Ownership continued to be held by the ASPCA because Chester was domesticated.

Second Sample Brief

Conti v. Aspca
77 Misc. 2d 61, 353 N.Y.S.2d 288 (Civ. Ct. 1974)

FACTS: Defendant ASPCA conducted a demonstration with a parrot named Chester during which the bird escaped. A week later, a parrot with markings and
§ 4.02. How to Brief

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colorings similar to Chester's appeared in plaintiff's yard and remained with the plaintiff for two weeks before being caged. The ASPCA removed the bird after plaintiff called for advice about its care. ASPCA claimed the bird was Chester and belonged to the organization.

PROCEDURE: Action for replevin—plaintiff wants the bird back.

ISSUE: Court identified two issues: 1. Whether the bird is actually Chester; and 2. Who gets him?

HELD: ASPCA gets the bird because: 1. The court found that the bird was Chester; and 2. As a domesticated animal, Chester does have a true owner, whose rights are not lost when the bird escapes.

ANALYSIS: The key issue in determining ownership was whether the rule of ferae naturae applied. This rule states that an owner acquires only qualified rights in a wild animal that are extinguished if the animal escapes. The court found that Chester was subject to training and discipline and therefore was not wild.

3. Problem

Here is another case that many of you will read during your first year in law school. Please brief it. Following the opinion are three sample briefs of the case. Compare your brief to them. Please do not read these briefs until you have written your own. If you ignore this instruction, you will learn far less.

As you read the opinion, note that it is an appellate opinion. The trial court decided in favor of the defendant, and the plaintiff has appealed to the appropriate appeals court, here, the Massachusetts Supreme Judicial Court.

Note also the format of the opinion. It begins with the name of the case. Here, the first name is McAvoy, the name of the plaintiff, who is now the appellant. Though some courts put the name of the appellant first, others do not necessarily do so. In each case, you need to check. Next is the citation you need to find the case in the library. Then come the facts of the case and, then, the name of the justice who wrote the opinion. Most of the time, the name of the judge appears before the statement of the facts. In virtually all appellate cases, several judges decide the case, and one judge writes the opinion. Here, Justice Dewey had that task. After the opinion discusses the case, it gives the court's ruling. In this case, the court overruled the plaintiff's exceptions and upheld the decision of the trial court. Exceptions are the grounds on which the plaintiff sought the appeal.

McAvoy v. Medina
93 Mass. (11 Allen) 548 (1866)

[Tort action to recover sum of money found by plaintiff in defendant's shop.]

At the trial in the superior court, before Morton, J., it appeared that the defendant was a barber, and the plaintiff, being a customer in the defendant's shop, saw and took up a pocketbook which was lying upon a table there, and said, "See what I have found." The defendant came to the table and asked where he found it. The plaintiff laid it back in the same place and said, "I found it right there." The defendant then took it and counted the money, and the plaintiff told
him to keep it, and if the owner should come to give it to him; and otherwise to advertise it; which the defendant promised to do. Subsequently the plaintiff made three demands for the money, and the defendant never claimed to hold the same till the last demand. It was agreed that the pocketbook was placed upon the table by a transient customer of the defendant and accidentally left there, and was first seen and taken up by the plaintiff, and that the owner had not been found.

The judge ruled that the plaintiff could not maintain his action, and a verdict was accordingly returned for the defendant; and the plaintiff alleged exceptions, (Citations omitted.)

DEWEY, J. It seems to be the settled law that the finder of lost property has a valid claim to the same against all the world except the true owner, and generally that the place in which it is found creates no exception to this rule. 2 Parsons on Con. 97. Bridges v. Hawkesworth, 7 Eng. Law 7 Eq. R. 424.

But this property is not, under the circumstances, to be treated as lost property in the sense in which a finder has a valid claim to hold the same until called for by the true owner. This property was voluntarily placed upon a table in the defendant's shop by a customer of his who accidentally left the same there and has never called for it. The plaintiff also came there as a customer, and first saw the same and took it up from the table. The plaintiff did not by this acquire the right to take the property from the shop, but it was rather the duty of the defendant, when the fact became thus known to him, to use reasonable care for the safe keeping of the same until the owner should call for it. In the case of Bridges v. Hawkesworth the property, although found in a shop, was found on the floor of the same, and had not been placed there voluntarily by the owner, and the court held that the finder was entitled to the possession of the same, except as to the owner. But the present case more resembles that of Lawrence v. the State, 1 Humph (Tenn.) 228, and is indeed very similar in its facts. The court there makes a distinction between the case of property thus placed by the owner and neglected to be removed, and property lost. It was there held that "to place a pocketbook upon a table and to forget to take it away is not to lose it, in the sense in which the authorities referred to speak of lost property."

We accept this as the better rule, and especially as one better adapted to secure the rights of the true owner.

In view of the facts of this case, the plaintiff acquired no original right to the property, and the defendant's subsequent acts in receiving and holding the property in the manner he did; does not create any. Exceptions overruled.

First Sample Brief

McAvoy v. Medina
93 Mass. (11 Allen) 548 (1866)

FACTS: Pl. customer found a pocketbook lying on a table in def.'s barbershop. Def. agreed to hold it in case the owner returned. The owner never showed up and apparently was a transient customer. Def. refused to give pocketbook to pl.

ISSUE: Does the finder have a valid claim to property that the owner voluntarily placed in a given location and forgot to retrieve (i.e. property that the owner mislaid)?

Held: No.

Analysis: The finder of lost property has a valid claim to it as against all but the true owner. But property that is voluntarily placed somewhere, like the table in the barbershop, and accidentally left behind is not lost property. The finder has no right to it. The owner of the location has the duty to take reasonable care of the property until the owner calls for it. This rule is better adapted to secure the rights of the true owner.

Second Sample Brief

McAvoy v. Medina
93 Mass. (11 Allen) 548 (1866)

Facts: McAvoy (P) was a customer in Medina's (D's) barbershop. P found a pocketbook containing money on a table in the shop. P & D agreed (at least at the time of trial) that it was placed on the table and accidentally left by a transient customer. P left the pocketbook with D who promised to advertise it. No one claimed it, and D refused to give P the money found in it.

Procedure: P appeals from the trial court, which found he could not maintain a tort action for the value of the money.

Issue: Whether the finder of property determined to be accidentally left has the same property right as the finder of lost property.

Holding: The finder of mislaid or forgotten property acquires no right to the property found against the shop owner where the article was left.

Analysis: Property voluntarily placed and accidentally left in a shop does not give the finder a valid claim against all but the true owner. A shop owner has the responsibility to use due care for the property until the true owner returns. Creating a property interest in the shop owner supports its return to its proper owner.

The court uses Bridges and Lawrence to show that finding the property in the shop is not the determinative factor. The distinction is between deciding if it is lost (Bridges—found on the floor), in which case the finder gets it, and finding if it is mislaid or forgotten (Lawrence—found on a table).

Third Sample Brief

McAvoy v. Medina
93 Mass. (11 Allen) 548 (1866)

Facts: Plaintiff McAvoy saw a purse on a table in def.'s barbershop and asked def. to give it to the owner or to advertise it. When the owner did not show up to claim the purse, pl. demanded it.


def.'s barbershop. Def. never showed up and pocketbook to pl.
pocketbook. T.C.: Pl.

Ct. here affirms (except-
PROCEDURE: Action in tort to recover money. Pl. appeals from lower court verdict for def.

ISSUE: If the purse is not treated as lost, but as accidentally left behind, would the finder be entitled to keep it if the true owner does not show up?

HELD: Pl.’s appeal was denied (exceptions overruled). The court held that the purse would not be treated as lost under the circumstances and thus pl. acquired no right to the property.

ANALYSIS: The court relied on Lawrence v. State in which the court distinguished between property “placed by the owner and neglected to be removed” and property lost. The court felt that treating the mislaid property differently and giving it to the owner of the location created a rule that was “better adapted to secure the rights of the true owner.”

§ 4.03. BEYOND BRIEFING

Briefing is just the beginning of preparing for class. Once you brief a case, you need to think about the opinion critically. You will spend most of your time in class evaluating the opinion rather than merely restating what the court said. By the time class is over, you may decide that you disagree with the court. After a class on the Conti case, you still may agree with the outcome, but you may question at least some of the court’s reasoning. In a class on the McAvoy case, you may learn that the trend among courts is to reject its holding. Here are three questions to help you think about the cases you have briefed.

1. Do you agree with the court’s holding and reasoning? Does the logic flow? Does the court rely on assumptions—explicit or implicit—with which you disagree? Do you agree with the social policies that the court purports to further?

2. Would you use the court’s holding to decide a case with similar, but not identical, facts? In Conti, suppose Chester was an untamed wolf instead of a tamed parrot? Suppose he was a tiger that escaped from the zoo? Would the court still find for the ASPCA, even though the animal was undomesticated? Would you?

3. Why did my professor and the casebook’s editor select this case? What larger lessons are they trying to teach? Why are Conti and McAvoy usually near the beginning of property casebooks, as opposed to the middle or end? If you think about each case as part of a series of cases that you are studying, do you see a big picture in addition to a series of narrow rules?

Exercise

Pick a case that you have briefed for one of your classes. Ask your professor to read it and suggest ways to improve it. You will discover that most professors will be very willing to spend the time with you.
Villanova is a Catholic and Augustinian university. The following are remarks by Richard W. Garnett, Professor of Law at the University of Notre Dame, that provide an insightful reflection on the mission of a law school at a Catholic university:

The late Blessed Pope John Paul II observed that a Catholic university is “born from the heart of the Church.” And we who are blessed to be a part of a law school at a Catholic university like to think that our work is located, in turn, at the heart of a great Catholic university. A Catholic university is called to creativity, to exploration, to the search for truth, and to the transformation of the world. The work and mission of a Catholic law school are essential to this project.

In our times, a great university must have a global focus – it must reach across boundaries and borders – and law is indispensable to any effort to unite citizens, leaders, scholars, and societies.

In today’s world, research and learning must be interdisciplinary – their aim must be to uncover illuminating connections – and law has always involved identifying the similar features of seemingly different cases and questions.

And, in our current context, it is crucial that the scholars and students be engaged with the world, and with what the Second Vatican Council called the “joys and the hopes”, as well as the “griefs and the anxieties,” of men and women everywhere. The study of law and the formation of lawyers are, necessarily, activities that engage us with the world, its challenges, and its opportunities. The work of a Catholic law school is both theoretical and practical; it involves critical reflection and careful application.

We believe that a great Catholic law school – that is, one that is meaningfully, distinctively, and interestingly Catholic – not only serves the needs of the profession and the community, it also plays an indispensable role in the high calling of a Catholic university.

As we see it, a Catholic law school is able to be a better law school, and to better form conscientious professionals and leaders, precisely because it is Catholic. It’s well known that law and lawyering get a criticism these days, and much of it is well deserved. Too often, law is seen as a “bag of tricks” to be manipulated by the powerful for their own ends; too often, lawyers are content to regard themselves as “hired guns” or as mere technicians; too often, the formulation of legal rules and policies seems driven simply by partisanship rather than wise and prudent consideration of real-world facts and the needs of the community.

At a Catholic law school, though, we can take comfort, and find inspiration, in the fact that our tradition has taught for centuries that law is an “ordinance of reason” and that its aim is the “common good.” Our faith provides a vision of what law, done right, is supposed to be, and really can be. It is not an exaggeration to say that the study and practice of law is elevated, for us, because we know that our human efforts to develop and implement just and efficient laws are reflections of – they participate in – the very mind of God.

Now, this might sound a bit grandiose or “high-falutin.” As every lawyer knows, the legal enterprise is not only about philosophical reflections on the nature of justice or the splendor of
truth; it’s also about the nuts and bolts of crafting arguments, reaching agreements, finding facts, and solving problems. We lawyers are inspired by the words of our patron saint, Thomas More, who notes — in Robert Bolt’s wonderful play, A Man for All Seasons — that God made men and women to “serve Him wittily, in the tangle of their minds.” The life of the mind is an arena for serving God, and we lawyers like to think that we have a special calling to supply the wits, and help unravel the tangle.

At a Catholic law school, three words, or themes, come up again and again in our conversations about how we should do what we do, how we can strengthen and enrich the wider university, and about what makes us different from the many other fine law schools. Those words are community, integration, and vocation.

We aspire to be not just a collection of individuals, but a true community of teachers, scholars, students, and professionals, united by a passion for justice. The Church has long taught, in its social doctrine, that the human person is social, and flourishes only in and through community. This is certainly true for law and lawyers. At a Catholic law school, our goal is to serve the common good — to put the law and our legal talents in the service of that good — and to do so in community. The word “community” for us expresses both how and why we “do law.” We invite our students not only to three years of technical training, but also to a shared enterprise, a learned profession, and a lifetime of relationships.

We also aim for integration. Too many lawyers are unhappy, and this is in part because they have been taught to radically compartmentalize, and dis-integrate, their lives. A Catholic university is committed to the idea that faith and reason work together — that they are, in the late Pope’s words — “like two wings on which the human spirit rises to the contemplation of truth.” Just as faith and reason can and must be integrated in the search for knowledge, it is also essential for professionals and students that their work, values, commitments, and loves be integrated and coherent. At a Catholic law school, we invite and try to inspire young lawyers to bring their values and religious faith to their studies, and then to carry them into their lives in the law. In our view, we cannot expect young lawyers to think deeply and well about law, justice, and the common good if we tell them to privatize their ideals, or to radically separate their fundamental moral commitments from their law practices. And so, we encourage our students to approach their vocations — as lawyers, spouses, parents, friends, and citizens — as whole persons. We challenge them to integrate their work, their beliefs, their values, and their activism. We urge them always to remember who they are, what they believe, where they came from, and to resist the temptation to “check their faith at the door” of their professional and public lives.

Finally, “vocation.” Many of us, when we hear the word, probably think either in terms of the clergy and religious life, or "vo-tech" classes. We mean something different, though, when we challenge our students to think of their lives in the law in terms of vocation, and calling. We are not naïve. We know that, for many, law is experienced more as a job, and less as an adventure. We know that plenty of people go to law school, and go into law practice, not because they heard a “call,” but because their parents expected it, or because lawyers in the movies seemed glamorous, or because they couldn’t think of anything else to do. Still, we propose to our students and graduates — and to our profession — that we should all wrestle with the question, “what would it mean for my time in law school, and for my life in the law, if I tried to think
about the law as a vocation?” We challenge our students and colleagues to ask, “who is calling me, and what am I being called to do?” These are difficult questions to ask, yet alone to answer. Odds are, we won’t get instructions from a Burning Bush, or be blinded by a light on the road to Damascus, or even get the answer from a still, small voice in the night. Still, we try to listen.