Comm 453 LEGAL BRIEFS

A legal brief is an analysis of the main points of a trial. Legal briefs are often written in advance of a trial by attorneys and law school professors and students to provide judges and litigators with advice on what are the key aspects of a trial and to provide commentary on what should be the outcome of the trial. For non-practitioners of the law, a legal brief is usually written after a trial has been decided as a concise breakdown of the essentials of the court’s decision based on the contents of an official legal journal or casebook; thus, a brief is a guide for study, as well as preparation for trials.

On at least three occasions this semester students must write a legal brief of a court case. For the first two occasions students will base their legal briefs on casebook reports that the professor will send to students by email one week or more prior to the due date; on the class day the brief is due, students must submit the brief by hard copy at the start of class. The brief cannot be longer than one side of one sheet of paper. No briefs are accepted by fax or email attachment unless approved by prior arrangement by the professor.

If desired, students can speak with the professor on how to write the brief and/or have the professor look over their brief in advance and provide commentary. They can do so only by visiting the professor during his office hours no later than two days before the due date; if desired, during the visit during office hours they may bring a hard copy of the court decision or a hard copy draft of a brief they are working on. Students are not allowed to send court decisions and/or briefs by fax, email, email attachment or any other electronic means to let the professor review them in advance. The professor will not advise anyone on how to write a brief by phone or email. No such advance help will be provided on the day the brief is due or the day immediately preceding the day the brief is due.

Students should be aware that the brief must be an original piece of writing they authored. If a brief substantially resembles an item that can be found on the Internet or in a book or printed legal journal, the incident will be considered an act of plagiarism, and the student will be subject to disciplinary action. Students must avoid the use of non-familiar legal terminology and awkward phrasing, and they must explain important concepts in plain English; use of legal terminology may be considered an attempt to commit plagiarism or an attempt to cover up ignorance. Substantial penalties will be assessed if the brief contains too many legal terms that are not explained or applied appropriately.

The content of the brief must adhere to APA standards, (see Pocket Style Handbook). Briefs must be written in third person and will be penalized for poor grammar or mechanics, faulty reasoning, inappropriate documentation or general sloppiness.

In particular, a brief will receive a grade of F if it does not focus on what ramifications a court decision has that directly relate to a communication legal concern or if the brief is not one page long.

Specifically, a legal brief required for this class must be composed of the following five parts (see the next page of this handout for an example of a completed legal brief):

Legal Citation: Use the recommended bibliographic style for legal citation [i.e. Smith v. Jones, 121 S.Ct. 798 (2006)]. The final decision after all appeals must be used.

Background: A description of six sentences or more of how the case came to court, key issues, the main argument advanced by both sides and the court’s ruling.

Summary: A statement limited to one sentence written in interrogative form that sums up the main legal challenge the case presented.

Significance: A statement limited to one sentence written in declarative form focusing on why a resolution to the question raised in the summary is important.

Perspective: An explanation composed of six sentences or more that amounts to student’s own analysis of the court decision. This can consist of a comparison to similar situations the student has experience with or with other court cases the student has studied. It can consist of a judgment of how appropriate the decision was, or it can consist of an application to similar situations that may occur in the future. Opinions based mainly on personal preference and not grounded in law are unacceptable.

- On the line below the perspective should appear Term Paper Research Progress, followed by the current title of the term paper the student is working on in parentheses, and then followed by two or more sources to be utilized in the term paper, each written in APA style with an annotation of two or more sentences apiece. Skip a line between each reference. At least one of the sources must be a professional source. Each annotation must be at least two sentences or more. Sources that substantially duplicate sources provided in previous briefs or synopses are not allowed.

- For the first two legal briefs the Term Paper Research Progress section must appear. The third brief will appear in the student’s term paper and will NOT have a term paper research progress section; instead, a Keywords section will appear which will adhere to standards described in the term paper guide.
Legal Citation: Florida Star v. B.J.F., 105 U.S. Sup. Ct. 443 (1989)

Background: In Duval County, Florida, a police officer filed an official report of a sexual assault which contained the full name of the victim. The police department did not restrict access to the pressroom or the reports contained there. The room contained signs with rules that indicated that names of rape victims were not matters of public record. However, a rookie reporter for the Florida Star copied the police report and wrote an article that was published in the newspaper that contained the victim’s full name. The victim filed suit in the Circuit Court of Duval County against both the sheriff’s department and the newspaper for emotional distress. The police settled out of court; however, the newspaper went to trial and was found negligent. The victim was awarded compensatory and punitive damages. The District Court of Appeals affirmed the decision, and the Circuit Court denied an appeal by the newspaper. But on a further appeal, the U. S. Supreme Court reversed the lower court decision, declaring that a news media outlet may publish or air the name of a rape victim when the name is legally obtained from police records. The Supreme Court thus found that a Florida state law that prohibited the publishing of rape victims’ names was unconstitutional.

Summary: Are news organizations legally allowed to state the names of victims of rape or sexual assault in printed articles, on-the-air reports or on-line news items?

Significance: This case created a precedent that publishing or airing sexual assault victims’ names that are legally obtained through government records is a First Amendment right.

Perspective: The outcome of this case amounts to a setback for the cause of women’s rights. Absolutist free press theorists are likely to point out that in this case journalists were simply using their First Amendment right to provide key details on any story they desire. It also must be pointed out that the information obtained was public record and was accurate. However, the value of making sure that the public knows the names of who has been raped is questionable, and this decision may have come at the expense of the privacy rights of women. Few women who have been raped would want to come forward and be identified as “damaged goods,” and the rape problem in America may get worse because there would be fewer cases of women taking charges against rapists because this case shows that women have no legal guarantee that their identities could be kept secret.

Term Paper Research Progress (Maintaining Honesty with Anonymous Sources: Journalist’s Privilege among Newspaper Reporters)

The authors, both faculty members at Harvard Law School, assessed each of the 29 state laws that guarantee a qualified privilege for journalists. Laws are evaluated on the basis of protected figures and information, as well as the scope of protection.

The article provides a history of Garland v. Torre, which some legal historians consider to be the first case that validated the need for reporter’s privilege. The opinion in this case closely mirrors what has been rendered after Branzburg v. Hayes.