

**Launch Week: Reading Assignment #1**  
**for**  
**Prof. Goodno's Class on Case Briefing**  
**(Tuesday, August 16)**

**Instructions:** Please read the attached materials before our first class on Tuesday. Attempt to brief the case, *United States v. Robinson* (starting on page 19). We will be discussing this brief during our first session. Bring this packet to our session, along with a laptop or pen and paper.

READINGS	PAGE #
ARTICLE: Orin S. Kerr, <u>How to Read a Legal Opinion</u> , 11 Green Bag 2d 51 (2007).	2
ARTICLE: "IRAC," "How to Brief a Case," and other excerpts from www. LawNerds.com.	9
CHART: "Ten (10) Typical Components of a First Year Case Brief"	18
CASE: <u>United States v. Robinson</u> , 414 U.S. 218 (1973).	19
CASE: <u>Riley v. California</u> , 573 U.S. ___, 134 S. Ct. 2473. (2014).  [This case will be made available to read <u>after</u> our first class.]	TBA

## **HOW TO READ A LEGAL OPINION: A Guide for New Law Students**

By Orin S. Kerr  
Green Bag, Autumn, 2007

*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 \*52 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.<sup>1</sup>

#### ***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 with multiple judges. The name tells you which judge wrote that particular opinion. In older cases, the opinion often simply states a last name

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<sup>1</sup> 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.”

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 deciding. 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.

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, including “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.<sup>2</sup>

#### ***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

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<sup>2</sup> 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-spotters,” 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-spotter requires developing a careful and nuanced understanding of the importance of the facts. The best way to prepare for that is to read the fact sections of your cases very carefully.

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 thought 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 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.<sup>3</sup>

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 their decisions. Many courts will mix and match, relying on several or even all of these justifications.

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<sup>3</sup> 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.

### ***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 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 \*62 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 \*63 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!



**Excerpt from LawNerds.Com**

Available at <http://www.lawnerds.com/guide/briefing.html>

**The IRAC Formula**

IRAC (*Issue, Rule, Analysis, and Conclusion*) forms the fundamental building blocks of legal analysis. It is the process by which *all* lawyers think about *any* legal problem. The beauty of IRAC is that it allows you to reduce the complexities of the law to a simple equation.

**ISSUE**           -> What *facts and circumstances* brought these parties to court?

**RULE**            -> What is the *governing law* for the issue?

**ANALYSIS**      -> Does the rule *apply* to these unique facts?

**CONCLUSION**   -> How does the *court's holding* modify the rule of law?

**Issue Spotting - The First Step - "The facts of a case suggest an Issue."**

The key to issue spotting is being able to identify which facts raise which issues. Because of the complexity of the law, the elimination or addition of one fact (such as time of day or whether someone was drinking) can eliminate or add issues to a case thereby raising an entirely different rule of law.

In law school casebooks, the easiest way to isolate the issue is to merely look at the chapter headings of the cases, such as "Personal Jurisdiction" in Civil Procedure or "Offer and Acceptance" in Contracts. The cases you read will also contain language that signals the important issue. For instance, the judge will simply state:

*"The case turns upon the question whether..."*  
*OR "We come then to the basic issue in the case."*

However, you need to develop issue-spotting skills on your own in order to do well on the exam and become an effective lawyer. During the exam the professor is not going to state the issue. Ask yourself some of these questions as you read the case:

**Questions to ask when reading a case:**

- What *facts and circumstances* brought these parties to court?
- Are there *buzzwords* in the facts that suggest an issue?
- Is the court deciding a *question of fact* - i.e. the parties are in dispute over what happened - or is it a *question of law* - i.e. the court is unsure which rule to apply to these facts?
- What are the *non-issues*?

**Rule - What is the Law?** - "*The issue is covered by a Rule of law.*"

Simply put, the rule is the law. The rule could be common law that was developed by the courts or a law that was passed by the legislature.

**For every case you read, extract** the rule of law by breaking it down into its component parts. In other words, ask the question: what elements of the rule must be proven in order for the rule to hold true?

**Questions to ask when reading a case:**

- What are the *elements* that prove the rule?
- What are the *exceptions* to the rule?
- From what *authority* does it come? Common law, statute, new rule?
- What's the underlying *public policy* behind the rule?
- Are there *social considerations*?

The trap for the unwary is to stop at the rule. Although the rule is the law, the art of lawyering is in the *analysis*.

**Analysis - The Art of Lawyering** - "*Compare the facts to the rule to form the Analysis.*"

This important area is really relatively simple. For every relevant fact, you need to ask whether the fact helps to prove or disprove the rule. If a rule requires that a certain circumstance is present in order for the rule to apply, then the absence of that circumstance helps you reach the conclusion that the rule does not apply. For instance, all contracts for the sale of goods over \$500 have to be in writing. Consequently, in analyzing a contract for the sale of goods, you apply the presence or absence of two facts - worth of good and whether there's a written contract - in order to see whether the rule holds true.

The biggest mistake people make in exam writing is to spot the issue and just recite the rule without doing the analysis. Most professors know that you can look up the law, but they want to test whether you can apply the law to a given set of circumstances. The analysis is the most important element of IRAC since this is where the real thinking happens.

**Questions to ask when reading a case:**

- Which facts help prove which elements of the rule?
- Why are certain facts relevant?
- How do these facts satisfy this rule?
- What types of facts are applied to the rule?
- How do these facts further the public policy underlying this rule?
- What's the counter-argument for another solution?

**Conclusion** - "From the analysis you come to a Conclusion as to whether the rule applies to the facts."

The holding simply explains how the court concluded. It is the shortest part of the equation. It can be a simple "yes" or "no" as to whether the rule applies to a set of facts.

**Questions to ask when reading a case:**

- What's the holding of the case?
- Has the holding *modified the existing rule* of law?
- What is the *procedural effect* of the holding? Is the case overturned, upheld or remanded for retrial?
- Does the holding further the *underlying policy* of the rule?
- Do you agree with the *outcome* of the case?

**Cases and Casebooks, a Brief History** - Briefing a case is simply the act of creating a "brief" summary of the relevant facts, issues, rule and reasoning of a particular case you've read in class. However, to understand briefing, you must first understand the *case method*, which is how most law schools teach students. In 1870 at Harvard University Professor Christopher Columbus Langdell decided that the best way to teach law students was to have them read cases rather than textbooks. Textbooks explicitly state the rule of law and explain why it exists. Cases, however, are the stuff of real life. Cases contain the rule and also illustrate how the rule applies to different sets of facts.

After reading the cases, Langdell engaged his students in a Socratic dialogue where he grilled the students on what the cases meant. The idea behind the case method is that each case illustrates one tiny rule out of an entire body of law. By synthesizing each rule into a larger body of law, the student progressively learns not only the rules but also the process of legal reasoning. Law school hasn't changed much in 130 years.

**The Structure of a Casebook** - Casebooks are unlike any other text you've encountered. Instead of explaining a legal principle, the casebook starts with an actual case and you have to figure out the legal principle based on a real court proceeding. Your job is to extract the relevant principle and reasoning out of the case. That's where briefing comes in.

Chapters in a casebook are arranged according to broad topic areas that illustrate the general principles of the body of law. The first case in a chapter, also known as the "principal case," usually illustrates the broad rule for that section of the book. The principal case is then followed by a series of squib or note cases that show a refinement of the law, a different rule or a different interpretation of the rule.

*Squib cases* do one of the following:

- *Broaden* the application of the rule to cover more circumstances.
- *Narrow* the application of the rule to cover fewer circumstances.

- List *exceptions* to the rule.
- State a *policy* consideration.
- Set up *new factors* to prove elements.
- Set up *new tests* to prove elements.
- Show a *dissenting rule*.
- Illustrate a *different rule* in a different jurisdiction.
- Illustrate a *different interpretation* of the same rule.

Casebooks also pose questions at the end of a case that are meant to make you think about the principles. These questions typically are ambiguous and difficult to address given your present knowledge of the material. This can be extremely frustrating for the beginning law student. The most that an author does to answer the question is to cite a case that you then have to look up for the answer.

In between the cases, there might be commentary from law review articles or an illustration of a rule by citing a statute or the Restatement<sup>4</sup> that covers that body of law. Don't overlook the footnotes. More often than not, a lot of key information is found in the footnotes.<sup>5</sup>

By briefing the case using the principles discussed below, you should be able to at least analyze the question. The upside to questions is that you get a clue about what the professor might ask in class.

**Why Brief a Case?** - Cases are written by lawyers for lawyers. Consequently, there's a structure and method unlike any other type of writing that you've read. Once you know the structure and method, you'll be able to breeze through cases quickly. When the writing is brilliant - for example, cases written by Holmes, Cardozo and Learned Hand - the cases can be as enjoyable as a good piece of fiction. There's drama, conflict, resolution, humor and pathos. Other times, the writing is very non-linear and leaves out important elements, such as the facts of a case.

Briefing is the first step in learning how to outline (which means organizing your class notes and case briefs in preparation of an exam). The brief should distill a case down to its elements, which allows you to immediately understand the principal legal issues at a glance. When you are under the pressure of the harsh glare of an aggressive professor, you want to be able to take one look at the brief and know the answer.

Case briefs are an important tool, but it's also important to keep briefs in perspective. Many students labor intensively over case briefs by creating forms and making sure that the wording is perfect. A brief is just a tool that helps you accomplish three things - build comprehension, answer questions in class and complete an outline. You'll never be graded on a brief. If you're spending time on stylistic niceties that don't accomplish one of the three goals then you're not spending time wisely.

### Three Reasons to Brief a Case

1. Rewriting the material leads to better *comprehension*.

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<sup>4</sup> The Restatements are an effort by scholars, judges and leading lawyers to state the principles of a body of common law.

<sup>5</sup> Professors are fond of quoting that "the battle of law school is won in the footnotes."

2. Creates a cheat sheet for questions in class.
3. Serves as a starting point for outlining.

Briefing is a phase that you eventually grow out of. After the first semester, students tend to brief a lot less. Their briefs may just end up being the rule of law or they will write notes in the margin of the casebook, which highlight the different elements. While some complex cases in your second and third years demand briefing, you will probably pick up the skills you need in your first year to analyze cases on the fly.

**How to Brief a Case** - Briefs should be a one-page summary of the case. Structure the summary according to the elements listed below. The structure adheres to the types of questions the professor asks in class and to the information you'll need for outlining. Not every case can be summed up in one page, but it's a good discipline to attempt to condense the material.

#### ELEMENTS OF A CASE

- |                               |                               |
|-------------------------------|-------------------------------|
| ➔ <u>Facts</u>                | ➔ <u>Holding (Conclusion)</u> |
| ➔ <u>Procedural History</u>   | ➔ <u>Policy</u>               |
| ➔ <u>Issue</u>                | ➔ <u>Dicta</u>                |
| ➔ <u>Rule</u>                 | ➔ <u>Concurrence</u>          |
| ➔ <u>Analysis (Reasoning)</u> | ➔ <u>Dissents</u>             |

You might consider creating a standard form using a word processor, then fill in the blanks as you read the case; *however, not every element listed in the chart above is used in every brief you make*. You may want to modify the form as you go along through the semester. Professors will differ as to what they like. At the end of this chapter is a sample brief.

**Facts** - A well-written case gives the relevant facts that brought the parties to court. In a Torts case, for instance, the judge recites the facts of the accident or injury. In Contracts, the prior business relationship might be discussed. In Criminal law, the crime is described.

Case law is at its worst when the court leaves out the facts. Judges sometimes don't include facts because the question before the appellate court doesn't require all of the details to be resolved. The issue on appeal is so narrow, that the facts as determined by a jury are often no longer relevant to the issue at hand. However, it helps when the judges give you a context by outlining all of the facts.

You'll probably encounter such a case in Civil Procedure. Pennoyer v. Neff is one of those traditional law school cases that is extremely frustrating to understand because it lacks a

background history of the facts. In situations like this, you want to revert to secondary sources such as hornbooks,<sup>6</sup> to pick up on the material.

**Procedural History** - How did this case get to this particular court? Typically, you will be reading case law from the appeals court. That means the case has already been decided at a lower court and the losing party has appealed to a higher court. Typically, the lower courts don't write opinions on their decisions, consequently, you'll almost always be reading appellate decisions.

The judge often starts the case with information on how the court below decided the case and which party is making the appeal. Often the cases will present a detailed history of the arguments presented by both parties in the court below as well. At minimum, you should be able to answer the following two questions that your professor is likely to ask in class: (1) *Who is appealing on what issues?* (2) *What happened in the lower court?*

**Issue** - A well-written opinion starts out by telling you the legal issue up-front. Language that the court uses might include such phrases as: "*The question before us is whether....*;" "*This case was brought before us to decide whether...*".

Appellate courts hear a case on appeal when there has been a problem with the case in the court below. The problem could be an error that the court made or the appellate court may want to take the case because the lower courts in its jurisdiction are not consistent in their decisions. By taking this case, it gives the higher court a chance to give guidance and establish precedent for the lower courts to follow. If you're having trouble spotting the issue, then try to key into the word "whether." It often signals what the turning point for a case.

**Rule** - The court should give a clear statement of the rule that controls the issue. The court often traces the development of the law within its own jurisdiction, starting with the common law rule. Since many of these bodies of law differ slightly between states, the court prefers to look within its own jurisdiction before it cites to a case from another state or country. The judge then either reaffirms a principle of law or fashions a new rule that evolves the law. The rule is the Rule arm of IRAC.

**Analysis (Reasoning)** - The reasoning is the Analysis arm of IRAC. This is how and why the court fits the particular facts and circumstances of this case into the rule. The courts often fashion tests or rely on precedent, which forms part of the reasoning. You should take special note of the reasoning and try to emulate it in your own writing.

**Holding (Conclusion)** - The holding is the court's decision on the issue. Who wins? The holding may be narrowly construed to a particular issue or be very broad. Identifying the holding may merely consist of finding the words "We hold that..." The holding should include the disposition of the case. Is the ruling of the lower court affirmed? Overturned? Remanded for retrial?

**Policy** - Rules don't stand by themselves without any sort of reason behind them. If there isn't a sound policy behind a rule, then the court tries to fashion a rule that serves the principles of equity or justice. Sometimes a statute that does not further the policies of equity or justice binds the judge. In those circumstances, the judge sometimes upholds the statute but writes the opinion

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<sup>6</sup> Hornbooks are summaries of the law that can be found in your library.

in such a way to bring the injustice to the attention of the legislature in order to encourage them to change the law.

**Dicta** - Dicta refers to anything that isn't relevant to the case's holding. Often judges will use a case to expound upon their theories of the law. The theories may not be relevant to the case at hand, but it gives the judge a chance to give direction to the lower courts by putting the theory in writing. Dicta does not carry weight as a precedent. But it's useful to note how the court might have ruled given a different set of circumstances.

**Concurrence** - A Concurrence is a separate opinion in which one of the judges agrees with the result but has different reasoning. Like dissents, you will find that concurrences proliferate in Supreme Court cases. Look at the concurrence to see how the reasoning differs. Make a note of it in the brief.

**Dissents** - Typically, a panel of judges tries appellate cases. Not surprisingly, there is not always unanimous agreement. Consequently, a judge who is not in the majority will write a dissent. Dissents are ubiquitous in Supreme Court cases. Make sure that you pick up the major sticking points in the dissent. What principles does the dissenting judge disagree with the majority on? Dissents are sometimes indicators of a direction the court may eventually move towards.

**Sample Case and Brief** - What follows are a sample case and a brief of that case. You'll notice that the elements of the brief scan very closely to the IRAC method with the additional elements of procedural history and the facts.

#### SAMPLE CASE

The following is a sample case that is commonly used in Contracts Cases to illustrate the idea of a "legal duty." Each element is identified.

##### **STEPHEN GRAY, RESPONDENT, v. THERESA D. MARTINO, APPELLANT**

Supreme Court of New Jersey  
91 N.J.L. 462; 103 A. 24  
February 2, 1918, Decided

MINTURN, J. The plaintiff occupied the position of a special police officer, in Atlantic City, and incidentally was identified with the work of the prosecutor of the pleas of the county. He possessed knowledge concerning the theft of certain diamonds and jewelry from the possession of the defendant, who had advertised a reward for the recovery of the property. In this situation he claims to have entered into a verbal contract with defendant, whereby she agreed to pay him \$500 if he could procure for her the names and addresses of the thieves. As a result of his meditation with the police authorities the diamonds and jewelry were recovered, and plaintiff brought this suit to recover the promised reward.

**Parties:** These are the primary parties. Generally the case will be referred to only by the last names of the parties. E.g. *Gray v. Martino*.

**Facts of the case:** What happened that brought these parties to court?

The District Court, sitting without a jury, awarded plaintiff a judgment for the amount of the reward, and hence this appeal.

**Procedural History:** Who won in the court below?

Various points are discussed in the briefs, but to us the dominant and conspicuous inquiry in the case is, was the plaintiff, during the period of this transaction, a public officer, charged with the enforcement of the law?

**Legal Issue:** What fact or circumstance is at issue that will be the deciding factor in how the court rules on this case?

The testimony makes it manifest that he was a special police officer to some extent identified with the work of the prosecutor's office, and that position, upon well-settled grounds of public policy, required him to assist, at least, in the prosecution of offenders against the law.

**Reasoning/Analysis:** The court applies the facts to see whether they satisfy the elements of the rule.

The services he rendered, in this instance, must be presumed to have been rendered in pursuance of that public duty, and for its performance he was not entitled to receive a special quid pro quo.

**Rule of Law:** Under what rule of law does this issue fall?

The cases on the subject are collected in a footnote to *Somerset Bank v. Edmund*, 10 Am. & Eng. Ann. Cas. 726; 76 Ohio St. Rep. 396, the head-note to which reads: "Public policy and sound morals alike forbid that a public officer should demand or receive for services performed by him in the discharge of official duty any other or further remuneration or reward than that prescribed or allowed by law."

This rule of public policy has been relaxed only in those instances where the legislature for sufficient public reason has seen fit by statute to extend the stimulus of a reward to the public without distinction, as in the case of *United States v. Matthews*, 173 U.S. 381, where the attorney-general, under an act for "the detection and prosecution of crimes against the United States," made a public offer of reward sufficiently liberal and generic to comprehend the services of a federal deputy marshal. Exceptions of that character upon familiar principles serve to emphasize the correctness of the rule, as one based upon sound public policy.

The judgment below for that reason must be reversed.

**Holding:** What is the conclusion of the court?

### SAMPLE BRIEF

**Gray** (cop, Plaintiff) v. **Martino** (crime victim, Defendant), Supreme Ct of NJ (1918)



### **Facts**

- Plaintiff makes a verbal contract with defendant. In return for \$500, plaintiff will find defendant's stolen jewels.
- Plaintiff had knowledge of whereabouts of jewels at contract formation.
- Plaintiff is a special police officer and has dealings with prosecutor's office.
- Defendant published advertisement for reward.
- Plaintiff finds stolen goods and arranges return.

### **Procedural History**

- District court by bench trial (no jury) awards money to the cop.
- Defendant appeals.

### **Issue**

At the time the contract was formed, was the plaintiff acting as a police officer charged with a legal duty to catch criminals without further reward?

### **Rule**

1. A public officer cannot demand or receive remuneration or a reward for carrying out the duty of his job as a matter of public policy and morality
2. However, it is not against public policy for a police officer to receive a reward in performance of his legal duty if the legislature passes a statute giving the reward to the public at large in furtherance of some public policy - such as preventing treason against the US.

### **Analysis (Reasoning)**

- Court finds sufficient evidence to characterize this fellow as a public official.
- His interaction with the prosecutor's office weighed in as a factor in suggesting he had a legal duty.
- Since he is characterized within the rule as a public official, he cannot, as a matter of law, receive a reward for the performance of his duties.

### **Holding (Conclusion)**

Court reverses decision of lower court in favor of the plaintiff since he was characterized as a public official.

**TEN (10) TYPICAL COMPONENTS OF A FIRST YEAR CASE BRIEF\***

<b>1</b>	<b>Caption</b>	Include the name of the parties, the court that issued the opinion, and the year that the opinion was written. Consider a shorthand note indicating the procedural identification of the parties ( <i>e.g.</i> , plaintiff/defendant, petitioner/respondent, appellant/appellee).
<b>2</b>	<b>Author(s)</b>	Generally, the judge(s) who drafted the unanimous or majority opinion of the court is not crucial to a brief, but if the case was written by the United States Supreme Court consider including the author(s).
<b>3</b>	<b>Facts</b>	Those facts that are <i>legally significant</i> to the court's decision ( <i>i.e.</i> , those that <i>made a difference</i> or <i>weighed in the balance</i> in determining the court's holding). Consider using bullet points.
<b>4</b>	<b>Procedural History</b>	Most of the cases that you'll read in law school will be appellate court decisions. In this section, you want to list what happened in the lower court(s) – usually called the “trial court” or the “district court.” Do not go into too much detail. One or two sentences are sufficient for this section.
<b>5</b>	<b><u>Issue</u></b>	The <i>specific</i> legal question decided by the court as it relates to the parties in question.
<b>6</b>	<b><u>Rule</u></b>	The precedential rule stated by the court; generally, should be broadly phrased and in general terms ( <i>i.e.</i> , the rule that will apply to litigants in similar fact situations in future cases) rather than with respect to the parties involved in the present case. It is very important to fully understand the rule because this will be what is tested.
<b>7</b>	<b><u>Analysis (Reasoning)</u></b>	The factual reasoning, logic, and/or public policy supporting the court's decision. This is the heart of the case and where professors may spend a lot of time in discussion. Make sure to fully understand why the court came to the conclusion it did.
<b>8</b>	<b><u>Holding (Conclusion)</u></b>	The holding is the <i>direct answer</i> to the issue statement ( <i>i.e.</i> , the court's decision as applied to the specific facts of the case). Also note the Procedural Disposition of the case – how the court disposed of the case after reaching its decision ( <i>e.g.</i> , affirmed or reversed the lower court, remanded for further proceedings, etc.).
<b>9</b>	<b>Concurring, Dissenting Opinions (if any)</b>	Explain concurring and dissenting judges' differing analysis or objections with respect to the majority opinion.
<b>10</b>	<b>Notes/Questions</b>	Observations or questions that come to mind as you read and brief the case; <i>if questions are not resolved by reading subsequent cases or during class, consult with your professor</i>

*\*After a few weeks of classes, consider modifying and focusing your briefs according to how your professor approaches the cases.*

**Instructions:** For our first class, please read the following case and make a case brief that you can use in class. Be prepared to be called on.

**UNITED STATES, Petitioner, v. Willie ROBINSON, Jr.**

**414 U.S. 218 (1973)**

Mr. Justice Powell filed a concurring opinion. Mr. Justice Marshall filed a dissenting opinion in which Mr. Justice Douglas and Mr. Justice Brennan joined.

Mr. Justice REHNQUIST delivered the opinion of the Court.

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On April 23, 1968, at approximately 11 p.m., Officer Richard Jenks, a 15-year veteran of the District of Columbia Metropolitan Police Department, observed the respondent driving a 1965 Cadillac near the intersection of 8th and C Streets, N.E., in the District of Columbia. Jenks, as a result of previous investigation following a check of respondent's operator's permit four days earlier, determined there was reason to believe that respondent was operating a motor vehicle after the revocation of his operator's permit. This is an offense defined by statute in the District of Columbia which carries a mandatory minimum jail term, a mandatory minimum fine, or both. D.C.Code Ann. s 40—302(d) (1967). Jenks signaled respondent to stop the automobile, which respondent did, and all three of the occupants emerged from the car. At that point Jenks informed respondent that he was under arrest for 'operating after revocation and obtaining a permit by misrepresentation.' It was assumed by the Court of Appeals, and is conceded by the respondent here, that Jenks had probable cause to arrest respondent, and that he effected a full custody arrest.

In accordance with procedures prescribed in police department instructions, Jenks then began to search respondent. He explained at a subsequent hearing that he was 'face-to-face' with the respondent, and 'placed (his) hands on (the respondent), my right-hand to his left breast like this (demonstrating) and proceeded to pat him down thus (with the right hand).' During this patdown, Jenks felt an object in the left breast pocket of the heavy coat respondent was wearing, but testified that he 'couldn't tell what it was' and also that he 'couldn't actually tell the size of it.' Jenks then reached into the pocket and pulled out the object, which turned out to be a 'crumpled up cigarette package.' Jenks testified that at this point he still did not know what was in the package: 'As I felt the package I could feel objects in the package but I couldn't tell what they were. . . . I knew they weren't cigarettes.'

The officer then opened the cigarette pack and found 14 gelatin capsules of white powder which he thought to be, and which later analysis proved to be, heroin. Jenks then continued his search of respondent to completion, feeling around his waist and trouser

legs, and examining the remaining pockets. The heroin seized from the respondent was admitted into evidence at the trial which resulted in his conviction in the District Court.

The opinion for the plurality judges of the Court of Appeals [reversed the conviction on the grounds that the search violated respondent's constitutional rights.] We conclude that the search conducted by Jenks in this case did not offend the limits imposed by the Fourth Amendment, and we therefore reverse the judgment of the Court of Appeals.

## I

It is well settled that a search incident to a lawful arrest is a traditional exception to the warrant requirement of the Fourth Amendment. This general exception has historically been formulated into two distinct propositions. The first is that a search may be made of the person of the arrestee by virtue of the lawful arrest. The second is that a search may be made of the area within the control of the arrestee.

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Throughout the series of cases in which the Court has addressed the second proposition relating to a search incident to a lawful arrest—the permissible area beyond the person of the arrestee which such a search may cover—no doubt has been expressed as to the unqualified authority of the arresting authority to search the person of the arrestee. E.g., . . . *Chimel v. California*, 395 U.S. 752, 89 S.Ct. 2034, 23 L.Ed.2d 685 (1969). In *Chimel*, . . . full recognition was again given to the authority to search the person of the arrestee:

‘When an arrest is made, it is reasonable for the arresting officer to search the person arrested in order to remove any weapons that the latter might seek to use in order to resist arrest or effect his escape. Otherwise, the officer’s safety might well be endangered, and the arrest itself frustrated. In addition, it is entirely reasonable for the arresting officer to search for and seize any evidence on the arrestee’s person in order to prevent its concealment or destruction.’ 395 U.S., at 762—763, 89 S.Ct. at 2040.

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## III

Virtually all of the statements of this Court affirming the existence of an unqualified authority to search incident to a lawful arrest are dicta. We would not, therefore, be foreclosed by principles of *stare decisis* from further examination into history and practice in order to see whether the sort of qualifications imposed by the Court of Appeals in this case were in fact intended by the Framers of the Fourth Amendment or recognized in cases . . . . Unfortunately such authorities as exist are sparse. Such common-law treatises as *Blackstone’s Commentaries* and *Holmes’ Common Law* are simply silent on the subject . . . .

‘(W)e think that an officer would also be justified in taking from a person whom he had arrested for crime, any deadly weapon he might find upon him, such as a revolver, a dirk, a knife, a sword cane, a slung shot, or a club, though it had not been used or intended to be used in the commission of the offence for which the prisoner had been arrested, and even though no threats of violence towards the officer had been made. A due regard for his own safety on the part of the officer, and also for the public safety, would justify a sufficient search to ascertain if such weapons were carried about the person of the prisoner, or were in his possession, and if found, to seize and hold them until the prisoner should be discharged, or until they could be otherwise properly disposed of. *Spalding v. Preston*, 21 Vt. 9, 16.

‘So we think it might be with money or other articles of value, found upon the prisoner, by means of which, if left in his possession, he might procure his escape, or obtain tools, or implements, or weapons with which to effect his escape. We think the officer arresting a man for crime, not only may, but frequently should, make such searches and seizures; that in many cases they might be reasonable and proper, and courts would hold him harmless for so doing, when he acts in good faith, and from a regard to his own or the public safety, or the security of his prisoner.’ *Id.*, at 484—485 . . . .

Then Associate Judge Cardozo of the New York Court of Appeals summarized his understanding of the historical basis for the authority to search incident to arrest in these words:

‘The basic principle is this: Search of the person is unlawful when the seizure of the body is a trespass, and the purpose of the search is to discover grounds as yet unknown for arrest or accusation (citation omitted). Search of the person becomes lawful when grounds for arrest and accusation have been discovered, and the law is in the act of subjecting the body of the accused to its physical dominion.

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The justification or reason for the authority to search incident to a lawful arrest rests quite as much on the need to disarm the suspect in order to take him into custody as it does on the need to preserve evidence on his person for later use at trial . . . .

A custodial arrest of a suspect based on probable cause is a reasonable intrusion under the Fourth Amendment; that intrusion being lawful, a search incident to the arrest requires no additional justification. It is the fact of the lawful arrest which establishes the authority to search, and we hold that in the case of a lawful custodial arrest a full search of the person is not only an exception to the warrant requirement of the Fourth Amendment, but is also a ‘reasonable’ search under that Amendment.

#### IV

The search of respondent’s person conducted by Officer Jenks in this case and the seizure from him of the heroin, were permissible under established Fourth Amendment law. . . . Having in the course of a lawful search come upon the crumpled package of cigarettes, he

was entitled to inspect it; and when his inspection revealed the heroin capsules, he was entitled to seize them as ‘fruits, instrumentalities, or contraband’ probative of criminal conduct. The judgment of the Court of Appeals holding otherwise is reversed.

Reversed.

Mr. Justice MARSHALL, with whom Mr. Justice DOUGLAS and Mr. Justice BRENNAN join, dissenting.

Certain fundamental principles have characterized this Court’s Fourth Amendment jurisprudence over the years. Perhaps the most basic of these was expressed by Mr. Justice Butler, speaking for a unanimous Court in *Go-Bart Co. v. United States*, 282 U.S. 344, 51 S.Ct. 153, 75 L.Ed. 374 (1931): ‘There is no formula for the determination of reasonableness. Each case is to be decided on its own facts and circumstances.’ . . . And the intensive, at times painstaking, case-by-case analysis characteristic of our Fourth Amendment decisions bespeaks our ‘jealous regard for maintaining the integrity of individual rights.’ . . . The majority’s approach represents a clear and marked departure from our long tradition of case-by-case adjudication of the reasonableness of searches and seizures under the Fourth Amendment. I continue to believe that ‘(t)he scheme of the Fourth Amendment becomes meaningful only when it is assured that at some point the conduct of those charged with enforcing the laws can be subjected to the more detached, neutral scrutiny of a judge who must evaluate the reasonableness of a particular search or seizure in light of the particular circumstances.’ *Terry v. Ohio*, 392 U.S. 1, 21, 88 S.Ct. 1868, 1880, 20 L.Ed.2d 889 (1968). Because I find the majority’s reasoning to be at odds with these fundamental principles, I must respectfully dissent.

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The majority’s attempt to avoid case-by-case adjudication of Fourth Amendment issues is not only misguided as a matter of principle, but is also doomed to fail as a matter of practical application. As the majority itself is well aware, see ante, at 470 n. 1, the powers granted the police in this case are strong ones, subject to potential abuse. Although, in this particular case, Officer Jenks was required by police department regulations to make an in-custody arrest rather than to issue a citation, in most jurisdictions and for most traffic offenses the determination of whether to issue a citation or effect a full arrest is discretionary with the officer. There is always the possibility that a police officer, lacking probable cause to obtain a search warrant, will use a traffic arrest as a pretext to conduct a search. See, e.g., *Amador-Gonzalez v. United States*, supra. I suggest this possibility not to impugn the integrity of our police, but merely to point out that case-by-case adjudication will always be necessary to determine whether a full arrest was effected for purely legitimate reasons or, rather, as a pretext for searching the arrestee. ‘An arrest may not be used as a pretext to search for evidence.’

As I view the matter, the search in this case divides into three distinct phases: the patdown of respondent’s coat pocket; the removal of the unknown object from the pocket; and the opening of the crumpled-up cigarette package . . . .