1. DIRECTIONS

a. Read the Excerpt from LawNerds.com (p. 1).
b. Read the case of *Gray v. Martino* (p. 3).
c. Read the second version of *Gray v. Marino* (p. 4).
d. Sample brief of *Gray v. Marino* (p. 6).
e. For the first class meeting (Tues. Aug. 15) read, brief, and be prepared to discuss *Garratt v. Dailey* (p. 7).
f. For the second class meeting (Thurs. Aug. 17) read, brief, and be prepared to discuss *Griswold v. Connecticut* (p. 9).

2. ARTICLE

Excerpt from LawNerds.com

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

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.

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.

[1] Special thanks to Prof. Naomi Goodno who very kindly provided several of the documents which are included in these materials.

In situations like this, you want to revert to secondary sources such as hornbooks,[2] 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

[2] Hornbooks are summaries of the law that can be found in your library.

circumstances, the judge sometimes upholds the statute but writes the opinion 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.

3. THE CASE OF *GRAY V. MARTINO*

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.

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

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?

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.

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.

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.

4. THE CASE OF *GRAY V. MARTINO* WITH COMMENTS

The case	**The elements of this case**
STEPHEN GRAY, RESPONDENT, v. THERESA D. MARTINO, APPELLANT	**The parties:** The people or entities that are involved in the law suit. Also referred to as the caption. There may be multiple parties. And sometimes you must sort out the parties in order to understand the case. In other words the names that appear in your textbook caption may not be the parties who are relevant to the discussion. And this caption is tricky. Because Gray is the respondent, it means he won below. If you look at the procedural history it means that he is the plaintiff in this case.
Supreme Court of New Jersey 91 N.J.L. 462; 103 A. 24 February 2, 1918, Decided	**The citation:** Usually there is no need to include the citation in your brief other than to note the court involved and the date.
MINTURN, J.	**The judge or justice**: This is the person who authored the majority opinion. Usually you do not have to note the name of the judge or justice unless he or she is a member of the United States Supreme Court or a particularly famous judge or justice.

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.	**The facts**: These are the real world events that led to this law suit. Usually the facts will be much more extensive than these, and you will spend a great deal of time sorting out the relevant facts. Once you have determined the relevant facts, arrange them in chronological order. At first this process appears overwhelming; however, you will soon get very good and very fast at this task. [I promise you that this statement is true.]
The District Court, sitting without a jury, awarded plaintiff a judgment for the amount of the reward, and hence this appeal.	**Procedural History:** What was the result (who won) in the court or courts below? Often you will need to understand the procedural history to understand the holding. In this case, procedural history is the key to knowing who is the plaintif and who is the defendant. This element is very important in some classes and less so in others. It is usually very important in Civil Procedure.
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?	**The issue:** The issue is always a question; it is the question that the court must answer yes or no in order to decide the case. Learning how to determine the issue is the most important skill that you must learn in the early days of your law school career.
	The issue may be one of fact; did something happen that violated or invoked the law. Or the issue may be one of law; what law or rule should govern these facts. The problem is complicated by the fact that the issue as stated by the court may not be the one that your professor wants to talk about. This particular issue is a factual one.
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.	**The analysis**: The court resolves the factual issue and begins to apply the rule to the facts.
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."	**The rule:** Here we get a full statement of the rule along with a little bit of rationale (public policy and sound morals) for the rule. The court is following persuasive authority from Ohio and is in effect making this rule the law of New Jersey.

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 rule (cont.):** Actually the court gives an exception to the rule (where the legislature acts), but does not apply the rule. Rather it uses the exception to bolster the rule itself.
The judgment below for that reason must be reversed.	**The holding**: This is the result in the case. Note this holding does not make sense unless you know the procedural history.

5. SAMPLE BRIEF OF *GRAY V. MARINO*

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

Facts: Defendant's jewelry was stolen and she offered a reward. She made a verbal contract with the plaintiff, a police officer, to find the stolen jewelry. She promised to pay $500. Plaintiff had knowledge of whereabouts of jewels at contract formation. Plaintiff found the stolen goods and returned them. Evidently defendant refused to pay him, and plaintiff brought this action to recover the $500.

Procedural History: District court (no jury) awarded money to the plaintiff and defendant appealed.

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?

Rules:

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 or application): Court finds sufficient evidence that plaintiff was a public officer. Since he is a public officer, he cannot, as a matter of law, receive a contractual reward for the performance of his duties.

Holding: Court reverses decision of lower court in favor of the plaintiff and so plaintiff recovers nothing.

6. THE CASE OF *GARRATT V. DAILEY*

Ruth Garratt, Appellant, v. Brian Dailey, a Minor, by George S. Dailey, his Guardian ad Litem, Respondent

Supreme Court of Washington

46 Wash. 2d 197, 279 P.2d 1091 (1955)

OPINION. HILL, J.

The liability of an infant for an alleged battery is presented to this court for the first time. Brian Dailey (age five years, nine months) was visiting with Naomi Garratt, an adult and a sister of the plaintiff, Ruth Garratt, likewise an adult, in the backyard of the plaintiff's home, on July 16, 1951. It is plaintiff's contention that she came out into the backyard to talk with Naomi and that, as she started to sit down in a wood and canvas lawn chair, Brian deliberately pulled it out from under her. The only one of the three persons present so testifying was Naomi Garratt. (Ruth Garratt, the plaintiff, did not testify as to how or why she fell.) The trial court, unwilling to accept this testimony, adopted instead Brian Dailey's version of what happened, and made the following findings:

> III. That while Naomi Garratt and Brian Dailey were in the back yard the plaintiff, Ruth Garratt, came out of her house into the back yard. Sometime subsequent thereto defendant, Brian Dailey, picked up a lightly built wood and canvas lawn chair which was then and there located in the back yard of the above described premises, moved it sideways a few feet and seated himself therein, at which time he discovered the plaintiff, Ruth Garratt, about to sit down at the place where the lawn chair had formerly been, at which time he hurriedly got up from the chair and attempted to move it toward Ruth Garratt to aid her in sitting down in the chair; that due to the defendant's small size and lack of dexterity he was unable to get the lawn chair under the plaintiff in time to prevent her from falling to the ground. That plaintiff fell to the ground and sustained a fracture of her hip, and other injuries and damages as hereinafter set forth. "
>
> IV. That the preponderance of the evidence in this case establishes that when the defendant, Brian Dailey, moved the chair in question he did not have any wilful or unlawful purpose in doing so; that he did not have any intent to injure the plaintiff, or any intent to bring about any unauthorized or offensive contact with her person or any objects appurtenant thereto; that the circumstances which immediately preceded the fall of the plaintiff established that the defendant, Brian Dailey, did not have purpose, intent or design to perform a prank or to effect an assault and battery upon the person of the plaintiff.

It is conceded that Ruth Garratt's fall resulted in a fractured hip and other painful and serious injuries. To obviate the necessity of a retrial in the event this court determines that she was entitled to a judgment against Brian Dailey, the amount of her damage was found to be eleven thousand dollars. Plaintiff appeals from a judgment dismissing the action and asks for the entry of a judgment in that amount or a new trial.

The authorities generally, but with certain notable exceptions (citation omitted) state that, when a minor has committed a tort with force, he is liable to be proceeded against as any other person would be. (Citations omitted.)
In our analysis of the applicable law, we start with the basic premise that Brian, whether five or fifty-five, must have committed some wrongful act before he could be liable for appellant's injuries.

The trial court's finding that Brian was a visitor in the Garratt backyard is supported by the evidence and negatives appellant's assertion that Brian was a trespasser and had no right to touch, move, or sit in any chair in that yard, and that contention will not receive further consideration.

It is urged that Brian's action in moving the chair constituted a battery. A definition (not all-inclusive but sufficient for our purpose) of a battery is the intentional infliction of a harmful bodily contact upon another. The rule that determines liability for battery is given in 1 Restatement, Torts, 29, § 13, as: "An act which, directly or indirectly, is the legal cause of a harmful contact with another's person makes the actor liable to the other, if "(a) the act is done with the intention of bringing about a harmful or offensive contact or an apprehension thereof to the other or a third person, and " (b) the contact is not consented to by the other or the other's consent thereto is procured by fraud or duress, and "(c) the contact is not otherwise privileged."

We have in this case no question of consent or privilege. We therefore proceed to an immediate consideration of intent and its place in the law of battery. In the comment on clause (a), the Restatement says: "Character of actor's intention. In order that an act may be done with the intention of bringing about a harmful or offensive contact or an apprehension thereof to a particular person, either the other or a third person, the act must be done for the purpose of causing the contact or apprehension or with knowledge on the part of the actor that such contact or apprehension is substantially certain to be produced." See, also, Prosser on Torts 41, § 8.

We have here the conceded volitional act of Brian, i.e., the moving of a chair. Had the plaintiff proved to the satisfaction of the trial court that Brian moved the chair while she was in the act of sitting down, Brian's action would patently have been for the purpose or with the intent of causing the plaintiff's bodily contact with the ground, and she would be entitled to a judgment against him for the resulting damages. (Citation omitted.)

The plaintiff based her case on that theory, and the trial court held that she failed in her proof and accepted Brian's version of the facts rather than that given by the eyewitness who testified for the plaintiff. After the trial court determined that the plaintiff had not established her theory of a battery (i.e., that Brian had pulled the chair out from under the plaintiff while she was in the act of sitting down), it then became concerned with whether a battery was established under the facts as it found them to be.

In this connection, we quote another portion of the comment on the "Character of actor's intention," relating to clause (a) of the rule from the Restatement heretofore set forth:

"It is not enough that the act itself is intentionally done and this, even though the actor realizes or should realize that it contains a very grave risk of bringing about the contact or apprehension. Such realization may make the actor's conduct negligent or even reckless but unless he realizes that to a substantial certainty, the contact or apprehension will result, the actor has not that intention which is necessary to make him liable under the rule stated in this Section."

A battery would be established if, in addition to plaintiff's fall, it was proved that, when Brian moved the chair, he knew with substantial certainty that the plaintiff would attempt to sit down where the chair had been. If Brian had any of the intents which the trial court found, in the italicized portions of the findings of fact quoted above, that he did not have, he would of course have had the knowledge to which we have referred. The mere absence of any intent to injure the plaintiff or to play a prank on her or to embarrass her, or to commit an assault and battery on her would not absolve him from liability if in fact he had such knowledge. (Citation omitted.) Without such knowledge, there would be nothing wrongful about Brian's act in moving the chair, and, there being no wrongful act, there would be no liability.

While a finding that Brian had no such knowledge can be inferred from the findings made, we believe that before the plaintiff's action in such a case should be dismissed there should be no question but that the trial court had passed upon that issue; hence, the case should be remanded for clarification of the findings to specifically cover the question of Brian's knowledge, because intent could be inferred therefrom. If the court finds that he had such knowledge, the necessary intent will be established and the plaintiff will be entitled to recover, even though there was no purpose to injure or embarrass the plaintiff. Vosburg v. Putney, supra. If Brian did not have such knowledge, there was no wrongful act by him, and the basic premise of liability on the theory of a battery was not established.

The cause is remanded for clarification, with instructions to make definite findings on the issue of whether Brian Dailey knew with substantial certainty that the plaintiff would attempt to sit down where the chair which he moved had been, and to change the judgment if the findings warrant it.

Remanded for clarification.

7. THE CASE OF *GRISWOLD V. CONNECTICUT*

DIRECTIONS (day two)

Please read and brief the following case. While the subject of our class is still case briefing, the goal of our second session will be for you to see how your brief is used in class. So, also be prepared to recite this case in class.

GRISWOLD v. CONNECTICUT
United States Supreme Court
381 U.S. 479 (1965)

MR. JUSTICE Douglas delivered the opinion of the Court.

Appellant Griswold is Executive Director of the Planned Parenthood League of Connecticut. Appellant Burton is a licensed physician and a professor at the Yale Medical School who served as Medical Director for the League at its Center in New Haven—a center open and operating from November 1 to November 10, 1961, when appellants were arrested.

They gave information, instruction and medical advice to *married persons* as to the means of preventing conception. They examined the wife and prescribed the best contraceptive device or material for her use. Fees were usually charged, although some couples were serviced free.

The statutes whose constitutionality is involved in this appeal are §§ 53–32 and 54–196 of the General Statutes of Connecticut (1958 rev.). The former provides:

Any person who uses any drug, medicinal article or instrument for the purpose of preventing conception shall be fined not less than fifty dollars or imprisoned not less than sixty days nor more than one year or be both fined and imprisoned.

Section 54–196 provides:

> Any person who assists, abets, counsels, causes, hires or commands another to commit any offense may be prosecuted and punished as if he were the principal offender.

The appellants were found guilty as accessories and fined $100 each, against the claim that the accessory statute as so applied violated the Fourteenth Amendment. The Appellate Division of the Circuit Court affirmed. The Supreme Court of Errors affirmed that judgment. . . .

We do not sit as a super-legislature to determine the wisdom, need, and propriety of laws that touch economic problems, business affairs, or social conditions. This law, however, operates directly on an intimate relation of husband and wife and their physician's role in one aspect of that relation.

The association of people is not mentioned in the Constitution nor in the Bill of Rights. The right to educate a child in a school of the parents' choice—whether public or private or parochial—is also not mentioned. Nor is the right to study any particular subject or any foreign language. Yet the First Amendment has been construed to include certain of those rights.

By *Pierce v. Society of Sisters*, [268 U.S. 510], the right to educate one's children as one chooses is made applicable to the States by the force of the First and Fourteenth Amendments. By *Meyer v. State of Nebraska*, [262 U.S. 390], the same dignity is given to the right to study the German language in a private school. In other words, the State may not, consistent with the spirit of the First Amendment, contract the spectrum of available knowledge. The right of freedom of speech and press includes not only the right to utter or to print, but the right to distribute, the right to receive, the right to read, and freedom of inquiry, freedom of thought, and freedom to teach—indeed the freedom of the entire university community. Without those peripheral rights the specific rights would be less secure. And so we reaffirm the principle of the *Pierce* and the *Meyer* cases.

In *NAACP v. State of Alabama*, 357 U.S. 449, 462, we protected the "freedom to associate and privacy in one's associations," noting that freedom of association was a peripheral First Amendment right. . . . The right of ``association,'' like the right of belief, is more than the right to attend a meeting; it includes the right to express one's attitudes or philosophies by membership in a group or by affiliation with it or by other lawful means. Association in that context is a form of expression of opinion; and while it is not expressly included in the First Amendment its existence is necessary in making the express guarantees fully meaningful.

The foregoing cases suggest that specific guarantees in the Bill of Rights have penumbras, formed by emanations from those guarantees that help give them life and substance. Various guarantees create zones of privacy. The right of association contained in the penumbra of the First Amendment is one, as we have seen. The Third Amendment in its prohibition against the quartering of soldiers ``in any house'' in time of peace without the consent of the owner is another facet of that privacy. The Fourth Amendment explicitly affirms the ``right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.'' The Fifth Amendment in its Self-Incrimination Clause enables the citizen to create a zone of privacy which government may not force him to surrender to his detriment. The Ninth Amendment provides: ``The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.''

The Fourth and Fifth Amendments were described in *Boyd v. United States*, 116 U.S. 616, 630, as protection against all governmental invasions ``of the sanctity of a man's home and the privacies of life.'' We recently referred in *Mapp*

v. Ohio, 367 U.S. 643, 656 to the Fourth Amendment as creating a ``right to privacy, no less important than any other right carefully and particularly reserved to the people." . . .

The present case, then, concerns a relationship lying within the zone of privacy created by several fundamental constitutional guarantees. And it concerns a law which, in forbidding the use of contraceptives rather than regulating their manufacture or sale, seeks to achieve its goals by means of having a maximum destructive impact upon that relationship. Such a law cannot stand in light of the familiar principle, so often applied by this Court, that a "governmental purpose to control or prevent activities constitutionally subject to state regulation may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms." *NAACP v. Alabama*, 377 U.S. 288, 307. Would we allow the police to search the sacred precincts of marital bedrooms for telltale signs of the use of contraceptives? The very idea is repulsive to the notions of privacy surrounding the marriage relationship.

We deal with a right of privacy older than the Bill of Rights—older than our political parties, older than our school system. Marriage is a coming together for better or for worse, hopefully enduring, and intimate to the degree of being sacred. It is an association that promotes a way of life, not causes; a harmony in living, not political faiths; a bilateral loyalty, not commercial or social projects. Yet it is an association for as noble a purpose as any involved in our prior decisions.

Reversed.

MR. JUSTICE WHITE, concurring in the judgment.

In my view this Connecticut law as applied to married couples deprives them of ``liberty" without due process of law, as that concept is used in the Fourteenth Amendment. I therefore concur in the judgment of the Court reversing these convictions under Connecticut's aiding and abetting statute.
It would be unduly repetitious, and belaboring the obvious, to expound on the impact of this statute on the liberty guaranteed by the Fourteenth Amendment against arbitrary or capricious denials or on the nature of this liberty. Suffice it to say that this is not the first time the Court has had occasion to articulate that the liberty entitled to protection under the Fourteenth Amendment includes the right ``to marry, establish a home and bring up children," *Meyer v. State of Nebraska*, 262 U.S. 390, 399 and ``the liberty to direct the upbringing and education of children," Pierce v. Society of Sisters, 268 U.S. 510, 534–535, and that these are among ``the basic civil rights of man." *Skinner v. State of Oklahoma*, 316 U.S. 535, 541. These decisions affirm that there is a ``realm of family life which the state cannot enter" without substantial justification. *Prince v. Com. of Massachusetts*, 321 U.S. 158, 166. Surely the right invoked in this case, to be free of regulation of the intimacies of the marriage relationship, ``come[s] to this Court with a momentum for respect lacking when appeal is made to liberties which derive merely from shifting economic arrangements."

MR JUSTICE STEWART, whom MR. JUSTICE BLACK joins, dissenting.

Since 1879 Connecticut has had on its books a law which forbids the use of contraceptives by anyone. I think this is an uncommonly silly law. As a practical matter, the law is obviously unenforceable, except in the oblique context of the present case. As a philosophical matter, I believe the use of contraceptives in the relationship of marriage should be left to personal and private choice, based upon each individual's moral, ethical, and religious beliefs. As a matter of social policy, I think professional counsel about methods of birth control should be available to all, so that each individual's choice can be meaningfully made. But we are not asked in this case to say whether we think this law is unwise, or even asinine. We are asked to hold that it violates the United States Constitution. And that I cannot do.
In the course of its opinion the Court refers to no less than six Amendments to the Constitution: the First, the Third, the Fourth, the Fifth, the Ninth, and the Fourteenth. But the Court does not say which of these Amendments, if any, it thinks is infringed by this Connecticut law.…

As to the First, Third, Fourth, and Fifth Amendments, I can find nothing in any of them to invalidate this Connecticut law, even assuming that all those Amendments are fully applicable against the States. It has not even been argued that this is a law ``respecting an establishment of religion, or prohibiting free exercise thereof.'' And surely, unless the solemn process of constitutional adjudication is to descend to the level of a play on words, there is not involved here any abridgment of ``the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.'' No soldier has been quartered in any house. There has been no search, and no seizure. Nobody has been compelled to be a witness against himself. . . .

What provision of the Constitution, then, does make this state law invalid? The Court says it is the right of privacy ``created by several fundamental constitutional guarantees.'' With all deference, I can find no such general right of privacy in the Bill of Rights, in any other part of the Constitution, or in any case ever before decided by this Court.

At the oral argument in this case we were told that the Connecticut law does not ``conform to current community standards.'' But it is not the function of this Court to decide cases on the basis of community standards. We are here to decide cases ``agreeably to the Constitution and laws of the United States.'' It is the essence of judicial duty to subordinate our own personal views, our own ideas of what legislation is wise and what is not. If, as I should surely hope, the law before us does not reflect the standards of the people of Connecticut, the people of Connecticut can freely exercise their true Ninth and Tenth Amendment rights to persuade their elected representatives to repeal it. That is the constitutional way to take this law off the books.