How To Read
And Brief A Case

William S. Richardson School of Law
Orientation 2014
Richardson Lawyering 2.0
How Legal Readers Read

- Aware of context
- In a discussion with the text
- With a purpose
Better Reading for Law School

- Eliminate distractions
- Note parties, courts, and claims
- Collect vocabulary and terms of art
- Adopt a role while reading
- Question and talk back to the text
- When confused, do not just move along
What is a Case Brief?

- A case brief is a form for summarizing legal cases. Briefs typically contain, at a minimum: the legal questions facing the court, the relevant facts & law, the conclusions of the court, and the analysis used by the court in reaching its conclusions.
Why Brief Cases?

- To avoid embarrassment in class
- To prepare for exams
- To condense and summarize voluminous material
- To organize and interconnect material throughout the semester and throughout law school
- To hone your understanding and interpretation of legal analysis
- To take ownership of new material
Why Brief Cases?

- Briefing is a key skill used regularly by legal practitioners in almost every field. Becoming confident and polished at briefing cases will pay dividends during law school, when preparing for the bar, and throughout your professional career.
What Are The Components Of A Brief?

- Good briefing is whatever helps you learn and remember.
- Different professors emphasize different aspects of briefing. Be adaptive.
- Briefing is a crucial part of academic success in law school. You will regret any shortcuts you take.
What Are The Components Of A Brief?

- Case: *State of Hawaii v. Hanapi*
- Citation: 89 Haw. 177, 970 P.2d 485
- Date: 1998
- Court: Hawaii Supreme Court

What Are The Components Of A Brief?

- **Procedural History:** Defendant appealed his District Court conviction for 2nd degree criminal trespass

- **Parties:**
  
  Alapai Hanapi – The State of Hawaii
  (Gary Galiher???)
What Are The Components Of A Brief?

- **Issues Presented:**
  1. Did the exclusion of evidence related to Defendant’s claim of Native Hawaiian right constitute reversible error?
  2. Did the District Court err in rejecting Defendants claim that his conduct was protected under the Hawaii Constitution as a traditional and customary practice?
What Are The Components Of A Brief?

- **Holding:**
  
  (1) No, any error was harmless because the court ultimately allowed Defendant to introduce evidence supporting his claim, and the evidence that the Defendant was attempting to introduce was insufficient to establish his rights.

  (2) No, Defendant failed to introduce evidence showing that his conduct constituted an ancient traditional or customary Native Hawaiian practice.
What Are The Components Of A Brief?

- **Rule of Law:**
  
  1. The burden of proof is on the criminal defendant who asserts a Constitutional claim as a defense to a charge of criminal trespass.
  2. Must establish three factors for conduct to be protected as a Native Hawaiian right: (1) native-Hawaiian under PASH, (2) traditional and customary usage and (3) the land not fully developed.
  3. Expert testimony can be used to prove the existence of a traditional or customary practice.
What Are The Components Of A Brief?

Relevant Facts (The Story)

What facts are relevant?

Whose story is being told?

What is being left out?
What Are The Components Of A Brief?

- **Analysis:**
  The Defendant in a criminal case has the burden of establishing that his or her conduct was constitutionally protected.
What Are The Components Of A Brief?

Analysis:
One commonly applied tool of legal analysis is analogy and distinction. In Hanapi the Court finds that the exercise of First Amendment rights is analogous to the exercise of traditional and customary rights under the Hawaii Constitution.
What Are The Components Of A Brief?

- **Analysis:**
  A Defendant must establish three factors for conduct to be protected as a Native Hawaiian right: (1) the Defendant is Native Hawaiian practitioner as defined under PASH, (2) the conduct in question is constitutionally protected as a traditional and customary Native Hawaiian practice and (3) the land on which the conduct took place is undeveloped or not fully developed.
What Are The Components Of A Brief?

- **Analysis:**

  Although the District Court initially upheld the prosecutor's objections and handled Defendants' claims "begrudgingly" and "inartfully", any error was harmless, because (1) the testimony that the Defendant sought to introduce was ultimately admitted and (2) the evidence that the Defendant was attempting to introduce was not sufficient to establish his rights.
What Are The Components Of A Brief?

- Other Opinions
- Other Issues
What Questions?

What happened next?

Who else was affected?

What impact on the law?

What will be the next issue?