

READING AND INTERPRETING SUPREME COURT OPINIONS

Briefing a Case

You should now be able to identify the facts of *Griswold v. Connecticut*, its procedural history, the legal claims, the issues, rulings, reasoning of the majority opinion, and the holding. As a matter of fact, you should now be able to write a "brief" of this opinion (i.e., a summary of the opinion organized in terms of facts, procedural history, etc.). The brief could follow an outline something like this (different people set up their briefs differently):

1. Name of case
2. Statement of facts
3. Procedural history and decision(s) in lower court(s)
4. Decision in Supreme Court
5. Statement of issue(s)
6. Rulings (holdings) on each issue
7. Justification offered for each ruling
8. The holding of the case
9. Dissenting opinion(s)

I won't write out an entire brief of the majority opinion, but I do want to comment on certain parts of the brief, beginning with the statement of issue(s). The issues of a case are those factual and/or legal questions regarding which parties to the case would answer differently. That is to say, these are the points of dispute. In this sense the basic legal issue of *Griswold* could be phrased as follows: whether or not the Connecticut law banning the use of contraceptives is constitutional. The problem with this formulation is that it does not convey enough information -- it leaves out any reference to the specific section of the Constitution that may be involved in the case. And we know that this was an important problem in the case -- was it the First Amendment free speech clause (right of association) or the Fourteenth Amendment that was to be used in deciding the case?

Hence, a better version of the issue might look like this: whether or not the Connecticut statute making it a crime to use contraception violates the right of privacy protected by the Fourteenth Amendment. This was the general, overriding issue in the case, but Justice Douglas wrote his opinion to address a somewhat narrower set of issues.

I will list those issues here in the order in which Justice Douglas took them up. As it turned out, Justice Douglas's opinion took up the issues in a logical order, but not every opinion will do so. Thus, sometimes when one summarizes an opinion one will take up parts of the opinion in a different and, arguably, more logical order than they were taken up in the opinion itself

Remember, we are now looking at these opinions from the perspective of readers trying to make our own sense of them.

1. Should the usual rule that litigants may not base their case on the rights of third parties be relaxed in this case and *Griswold* and Buxton permitted to attack the Connecticut law based on the right of married couples?
2. Should the Fourteenth Amendment be interpreted to protect a right of privacy that extends to the decision married couples make regarding the use of contraception?
3. Is a right of privacy protected by the Fourteenth Amendment a fundamental right requiring the use of the strict scrutiny test?
4. Does the Connecticut law banning the use of contraception serve a compelling state purpose, and is the banning of contraception a necessary means to achieve that purpose?

Summarizing an opinion. involves an act of judgment regarding what is the "best" version of the issues. You must decide whether to summarize the case in terms of one general issue, or in terms of multiple, smaller issues. You must decide which is the most logical sequence in which to list the issues.

As noted above, Justice Douglas reached a conclusion on each of the issues set out above. These conclusions are sometimes called "holdings," but to avoid confusing these "holdings" with "the holding" of the opinion I will call them "rulings."

Turning to the justifications; for these rulings, you should be aware of the opinion's use of all the materials out of which a constitutional justification is built (e.g., text, intent of framers). Be sensitive to whether precedent was read broadly or narrowly. What analogies were used? Was precedent distinguished? What strategy of justification was used? What tests and standards of review were involved? What rides, principles, doctrines, tests, or standards of review may have precedential value? You may not include all this material in the brief, since the brief is intended to be brief

Finally, let us turn to the holding or *ratio decidendi* of *Griswold*. The *ratio decidendi* might be stated as follows: It is a violation of the Fourteenth Amendment for a state to make it a crime for married couples to use contraception. This is a rather precise and narrow formulation of the *ratio decidendi*.

Further thought about the *Griswold* decision should lead you to other possible ways in which the case might be interpreted. In a broader reading of the case, we might conclude that the Court held that a state violates the Fourteenth Amendment if it bans the use of contraception by

anybody, married or unmarried. More broadly yet, *Griswold* can be interpreted as finding that the Constitution strongly protects from state interference all decisions regarding procreation. Read in this way the decision provides a precedent that can be used (and was used) to support the Court's decision in *Roe v. Wade* striking down a law that made it a crime to obtain an abortion. Further, *Griswold* might also be read to say that the right of privacy encompasses a broad range of sexual activities, for example, fornication and sodomy, that the state can regulate only if it has an extraordinarily good justification for doing so. In this connection *Griswold* can also be used to attack laws that sanction treating homosexuals and lesbians differently than heterosexuals. Yet other laws might also be open to attack under a broad reading of *Griswold*, for example, laws making it a crime to possess and use drugs. Perhaps a truly broad reading of *Griswold* would open the door to constitutional attacks on helmet and seat belt laws. In other words, *Griswold* might be interpreted as embracing a right to be left alone as long as what one is doing is not hurting anybody else.

Beyond the Brief

Briefs tend to be short summaries of an opinion, and because they are short much that could be said about the opinion is not included. For example, here are some additional questions about an opinion that you might ask but not answer in the writing of a brief. These are questions, however, that one might address in writing an essay about an opinion.

- Are the premises of the opinion plausible and backed up by evidence?
- Does the opinion argue logically from its premises? Are its logical deductions valid, and is the overall opinion coherent?
- Has the opinion properly used or abused legal materials, for example, text, evidence of original intent, evidence of tradition, considerations of prudence, precedent?
- Is the opinion rooted in a valid judicial philosophy?
- Does the opinion reflect acceptable fundamental principles?
- Has the Court announced rules, principles, and tests that are sufficiently clear and precise as to be enforceable and that do not leave the law in a state of uncertainty and confusion?

When you start to answer questions such as these about an opinion, you take a first step toward the critical appraisal of the opinion, a first step toward deciding whether the opinion was well reasoned and whether the decision was correct in your opinion. For example, Justice Douglas establishes important premises of his opinion based upon his reading of precedent. One may then begin to critically examine his opinion by questioning his use of precedent. Did he provide a plausible and justifiable interpretation of precedent to support his central premises?

Interpreting the Opinion in Conjunction with other Precedents

When you read an opinion, it will typically be but one opinion in a series of opinions, some of which came before and some of which came after the opinion you just read. As a student of constitutional law your task is to place the opinion you are studying in the proper legal perspective. Thus you will need to ask questions about the opinion (let us call it opinion "M") such as these:

- Did "M" provide a plausible interpretation of precedent, or did it abuse and misuse precedent?
- Did "M" overrule precedent?
- Did "M" reinterpret precedent and send constitutional law off in a new direction?
- Did "M" continue existing doctrine but carve out an "-exception" to that doctrine?
- Is "M" simply inconsistent with precedent, leaving constitutional doctrine in a state of confusion and uncertainty?
- Is "M" but an aberration that will quickly be overruled, ignored, or modified? Is "N" a wholly new case that established a new doctrine?

The opinion in *Griswold* touched on many of these questions. As we saw, Justice Douglas broadened the meaning of *Pierce*, thereby opening the door for his argument that the Constitution also embraces a general right of privacy. Justice Douglas's broad interpretation of *Pierce* carried with it the implication that the Court would entertain constitutional challenges to state laws regulating the curriculum of private schools.

More significantly, the decision recognized the new right to privacy that led directly to the Court's decision striking down laws, for example, prohibiting the unmarried from using contraception, prohibiting minors from having access to contraception, and, of course, prohibiting antiabortion laws (*Eisenstadt v. Baird* [1972]; *Carey v. Population Services International* [1977]; *Roe v. Wade* [1973]). This long line of cases that can be considered the progeny of *Griswold* was not persuasive enough, however, to convince a conservative majority to strike the conviction of an adult male homosexual for violating Georgia's sodomy law (*Bowers v. Hardwick* [1986]).

Going Deeper Still

Your analysis of a precedent can go deeper yet. Here are some additional questions one might typically ask about an opinion.

- What judicial philosophy does the opinion reflect? Some version of originalism or nonoriginalism?
- Does this opinion reflect a version of conservatism or liberalism?
- What underlying moral value and/or political principles does the opinion embody and implicitly rest on?
- Which justices made up the majority and the dissenting positions? What does this tell us about who is in control of the Court?
- Was the opinion a bargained result? That is, is the opinion internally coherent, or does it reflect uneasy compromise among justices with different views?

As for *Griswold*, one could argue that it reflects an activist judicial philosophy, an activism on behalf of liberal values in personal behavior and lifestyle. The fact that majority opinion in *Griswold* openly sided with the criticisms made of the *Lochner* decision, and signaled that it would continue to follow the "hands-off" approach adopted in *Lee Optical* when it came to governmental regulation of business, clearly suggests that this is not a Court that embraces a libertarian view of the Constitution. In other words, the *Griswold* Court plans to continue the practice of strong judicial activism on behalf of liberty regarding private personal choices, but to exercise judicial restraint regarding governmental regulation of the liberties of businesses and property owners. Whether this double standard is justified is an important question that you should consider in your study of constitutional law.