

HOW TO WRITE A CASENOTE



WORKSHOP

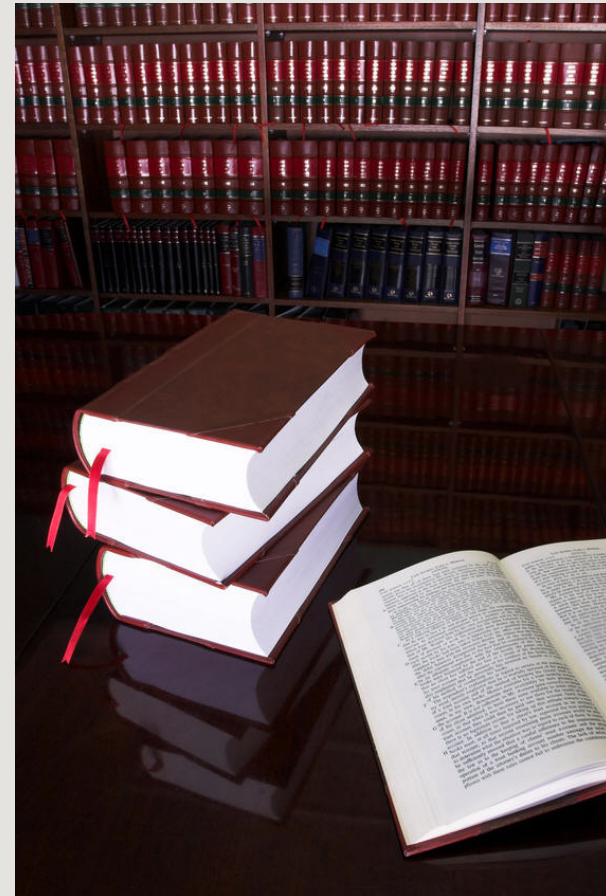
What is a Casenote?



- Scholarly report of a recent significant decision
- Concise analysis of an opinion
- Contains citations to related cases and important secondary authorities

Sections of a Casenote

- I. Introduction
 - A. Intro Paragraph
 - B. Brief Background
 - C. Roadmap/Scope
- II. Prior Law/
Perspective
- III. Main Case
- IV. Analysis
- V. Conclusion



I. Introduction



- Begin with an engaging sentence, quote or hypo that will “grab” the reader’s interest
- Include a broad thumbnail sketch
- Identify basic issues and themes
- Tell us why the case is important

A. Brief Background



- BRIEF description of relevant law leading up to your topic
- Put your case in perspective
- Be specific on the trend you're focusing on, while setting out relevant facts of your case

B. Roadmap



- Explain the structure of your casenote
- Preview the new development and the prior law, while identifying the thrust of your article
- Extending trend or breaking new ground?
Clarifying? New approach?

II. Prior Law



- Legal history leading to the recent development you will discuss
- Identify important cases, statutes and secondary sources
- Try not to organize according to cases
- When discussing case law discern what's necessary and what's not

III. Main Case



- Identify significant facts, procedural posture and parties **in detail**
- Discuss how the case came about and its impact on prior law
- Briefly describe the majority and, if any, dissenting opinions in your case

IV. Analysis



- This is where your argument should emerge!
- Draw from a synthesis of prior law
- Explain how your position reverses, extends, or deviates from prior law
- Incorporate lower courts' majority and dissenting opinions
- Implications & potential criticisms of your position

V. Conclusion



- What's the big picture?
- Don't introduce new material or arguments
- Review earlier statements in a new light

Writing the Analysis/Argument Section



- This is the most important part of the paper – Make it count!
- Why so important, well. . .

Types of Arguments



- The Court was wrong/right and for what reasons
- The Court did not really accomplish anything
- The Court properly applied/misapplied prior law or the statute
- What should the Court have done?
- What will the Court do? (where the Supreme Court has not yet decided the case)

More Resources...



- Some helpful examples of strong legal writing and analysis include:
 - Laurence H. Tribe, *Death by a Thousand Cuts: Constitutional Wrongs Without Remedies After Wilkie v. Robbins*, 2007 CATO SUP. CT. REV. 23 (2007).
 - Frank H. Easterbrook & Daniel R. Fischel, *The Proper Role of a Target's Management in Responding to a Tender Offer*, 94 HARV. L. REV. 1161 (1981).
 - John Hart Ely, *The Wages of Crying Wolf: A Comment on Roe v. Wade*, 82 YALE L.J. 920 (1973).

Bluebooking

- For purposes of the write-on competition, Bluebooking can count for as much as half of your total score.
- Even if you do not participate in the write-on, strong Bluebooking is crucial for the law review editing process
- Use the Index!



Bluebooking **Cases**: The Basics



- United Housing Foundation, Inc., et al. v. Forman et al., 421 U.S. 837 (1975)
- General: Rule 10.1 (page 87)
- 4 Basic Elements:
 - **Party Names: Rule 10.2 (p. 89)**
 - **Reporter: Rule 10.3 (p. 95) and T.1 (p. 215)**
 - **Year: Rule 10.5 (p. 99)**
 - **Short Cites: Rule 10.9 (page 107)**

Bluebooking **Cases**: The Basics



- Distinguishing Party Names in Text and in Citations:
 - **Used As Text** (Rule 10.2): In *United Housing Foundation, Inc. v. Forman*, the Court held Y.
 - **Full Citation in Footnotes** (Rule 10.2): *United Hous. Found., Inc. v. Forman*, 421 U.S. 837 (1975).
 - ✦ Remember to abbreviate according to T.6! (p. 430)
 - **As a Short Citation in Footnotes** (Rule 10.9): *United Hous. Found.*, 421 U.S. at 844.

Bluebooking **Cases**: The Basics



- Short Cites (Rule 10.9)
 - The Five Footnote Rule: If a case is cited within the five preceding footnotes, you can short cite.
 - This includes any citation in a parenthetical. However, you may not use “*Id.*” for a cite in a parenthetical
- Ex. Thompson v. Byers, 555 U.S. 987, 999 (2008) (quoting McGuane v. Fitzgibbons, 400 U.S. 22, 28 (1975)).
 - An “*Id.*” may not be used for McGuane v. Fitzgibbons.
 - McGuane v. Fitzgibbons may be short cited within the next 5 footnotes.
 - However, an “*Id.*” may be used for Thompson v. Byers.

Bluebooking **Law Review Articles**



- Author's Full Name in Ordinary Roman, *Name of the Article in Italics*, 23 LAW REVIEW IN SMALL CAPS 122 (2004).
 - Rule 16 (p. 147)
 - Author's Name As It Appears in Article.
 - Title, Capitalized According to Rule 8 (p. 84), but Do Not Abbreviate or Omit Words.
 - The 23 Here Is the Volume Number, the 122 Here is the Page at Which the Article Begins
 - The Name of the Law Review/Journal Should Be Abbreviated According to T.13. (p. 444)
 - The Year in Parentheses.

Bluebooking **Law Review Articles**



- Robert C. Ellickson, *Of Coase and Cattle: Dispute Resolution Among Neighbors in Shasta County*, 38 STAN L. REV. 623, 633 (1986).
 - Include the “C” in Robert C. Ellickson, if the author maintained it.
 - If the title was “Of Coase & Cattle,” you should keep the “&.”
 - The title should appear as it appears on the article. Include the subtitle.
 - Stanford Law Review abbreviated as shown on T.13 . (p. 444)
 - Page 633 is the pincite to the article.

Bluebooking Newspapers

- Michael Bluth, *Bob Loblaw Lobs Law Bomb!*, ORANGE COUNTY TRIB., Oct. 30, 2000, at A1.
 - Rule 16.6 (p. 151)
 - Author's Name, as It Appears on the Article.
 - Article Title as it appears in italics.
 - TRIBUNE shortened to TRIB. according to T.13. (p. 444)
 - Date abbreviated according to T.12. (p. 444)
 - The start page of the article, with an “at” in front.
 - Do not pincite.



Bluebooking Internet Sources



- **Rule 18 (p. 164)**
- **Article** only available on the internet (Rule 18.2.2):
 - Douglas Gantenbein, *Mad Cows Come Home*, SLATE, (Jan 5, 2004, 12:10 PM), <http://www.slate.com/id/2093396/index.html>.
- **Blogs:** include the name of the blog, URL, and date & time stamp
 - ✦ Single Poster: How Appealing, <http://legalaffairs.org/howappealing/> (Sept. 1, 2004, 21:20 EST).
 - ✦ Multiple Posters: Posting of Lyle Denniston to SCOTUSblog, <http://www.scotusblog.com/2010/04/court-renovation-nearing-end/> (Apr. 15, 2010, 12:13 EST).

Bluebooking: Support Signals



- Rule 1.2 (p. 54)
- [No signal] if cited authority :
 - Directly states proposition;
 - IDs source of quotation; or
 - IDs authority referred to in the text.
- *E.g.*, if cited authority states proposition and other authorities do as well, but citation to them is not helpful.
- *Accord* when two or more sources state or support a proposition, but the text only quotes/refers to one; the other sources are introduced by accord.

Bluebooking: **Signals**



- *See* when cited authority supports the proposition.
 - Used instead of [no signal] when the proposition is not directly stated by the cited authority, but obviously follows from it.
 - Use *see also* when cited authority constitutes additional source material supporting the proposition.
- *Cf.*, cited authority supports a proposition different from the main proposition, but sufficiently analogous to lend support. Literally, *cf.* means “compare”
 - Parenthetical explanations are recommended to clarify relevance to the reader.

Bluebooking: **Signals Indicating Contradiction**



- *Contra* when cited authority directly states the contrary of the proposition.
- *But see* when cited authority clearly supports a proposition contrary to the main proposition.
- *But cf.*, when cited authority supports a proposition analogous to the contrary of the main proposition.
 - Explanatory parenthetical strongly recommended.

Bluebooking: **Signals Indicating Background & Useful Comparisons**



- *See generally*, when cited authority presents helpful background material related to the proposition.
 - Explanatory parenthetical is encouraged.
- *Compare X and Y with Z.*
 - Comparison of the authorities will offer support or illustrate the proposition. Explanatory parenthetical following each authority is recommended.

Bluebooking: *Supra*



- Use “*supra*” to refer back to material that has already been fully cited (unless “*id.*” is appropriate or “*supra*” is inappropriate for the authority [Rule 4.2, p. 74]).
 - “*Supra*” maybe used to refer to authorities such as legislative hearings; books; pamphlets; reports; unpublished materials; nonprint resources; periodicals; treaties; and directives of international organizations.
 - “*Supra*” **may not be used** to refer to authorities such as **cases, statutes, constitutions, restatements, model codes, or regulations**, except in extraordinary circumstances, such as when the name of the authority is extremely long.
- “*Supra*” form generally consists of the last name of the author of the work, followed by a comma, the word “*supra*” and the footnote in which the full citation can be found.
 - Indicate any particular manner in which the subsequent citation differs from the former. Use pincites.
- Example: Williams, *supra* note 18, at 6.

Bluebooking: *Infra*



- Use “*infra*” to refer to material that appears **later in the piece**. (Rule 3.5, p. 71)
- Examples:
 - See discussion *infra* Parts II.B.2, III.C.1.
 - See *infra* pp. 106-07.
 - See *infra* p. 50 and note 100.

Bluebooking: “Hereinafter”



- Use “hereinafter” to refer to material that would be burdensome to cite with the usual “*supra*” form or for which the regular shortened form may confuse the reader. (Rule 4.2, p. 74)
- Examples:
 - *In re* Multidistrict Private Civil Treble Damage Antitrust Litig. Involving Motor Vehicle Air Pollution Control Equip., 52 F.R.D. 398 (C.D. Cal. 1970) [hereinafter *Air Pollution Control Antitrust Case*].
 - *Proposed Amendments to the Federal Rules of Criminal Procedure: Hearings Before the Subcomm. On Criminal Justice of the H. Comm. On the Judiciary*, 95th Cong. 92–93 (1977) [hereinafter *Hearings*] (statement of Prof. Wayne LaFave).

Surviving the Competition

•Time Management

- Enormous amount of material – read it all?
- Outline
- Leave some time to revise
- BUDGET TIME FOR BLUEBOOKING!

•Stress Management

- Exercise, Get sleep, Eat right!



QUESTIONS?



ASK AWAY...