ANALYZING SUPREME COURT DECISIONS

Because judicial opinions provide justifications for constitutional positions, when reading cases one should bear in mind the modes of constitutional interpretation outlined in Chapter 1. Often it is helpful to “brief,” or outline, a case to analyze its major elements (see Box 2.1). In general, one should look for the following elements that are common to all court cases.

Components of Supreme Court Decisions

Title and Citation. Case titles derive from the names of the parties to the controversy. The party listed first is seeking reversal of an unfavorable lower-court decision, whereas the party listed second typically wants that decision affirmed. If the case comes to the Court on appeal, the parties are referred to as the appellant and the appellee. If the case comes on a writ of certiorari, they are referred to as the petitioner and the respondent.

Facts of the Case. Because Supreme Court cases arise as disputes between particular litigants, Court decisions represent attempts to apply constitutional principles to unique situations. Full understanding of a judicial decision therefore requires an appreciation of the facts underlying the case, which have been established by testimony at trial. Supreme Court justices might differ in interpreting the facts, however; disagreement about the facts, as well as about the proper interpretation of the Constitution, can produce divisions on the Court. The opinion of the Court typically summarizes the relevant facts before elaborating the Court’s justification for its decision. Summaries of the facts in those cases precede most of the cases presented in this volume.

The Law. Constitutional rulings by the Supreme Court involve the interpretation of three elements of law: constitutional provisions, statutes or administrative regulations (or both), and Supreme Court precedents. Large bodies of law have sprung from most constitutional provisions, so it is important to note precisely which provision the Court is interpreting. For example, if a constitutional challenge is raised under the Fourteenth Amendment, the first thing to determine is whether the challenge is based on the Due Process Clause or the Equal Protection Clause.

Legal Questions. A Court decision can be viewed as a response to a particular legal question or a series of questions. Identifying these questions is vital to proper analysis of the opinions in a case. One way to do so is to frame the questions in a yes-or-no format (see Box 2.1 for an example). Usually, the Court’s answers to the legal questions in a case can be determined from a close reading of the opinion of the Court. However, in cases in which five justices are unable to agree on a single opinion, one must search all opinions in the case for points of majority agreement.

Opinion of the Court. This opinion announces the Court’s decision and offers the justification for that ruling. Because the decision can serve as a precedent in future cases, close attention should be paid to the chain of reasoning supporting the decision and to its possible implications. Often the best approach is to trace how the Court arrived at its answers to each of the legal questions previously identified.

Concurring Opinions. Members of the Court majority might write concurring opinions because they agree with the Court’s decision but disagree with its justification, in which case the concurring opinion will offer an alternative justification. They might also write concurring opinions even if they agree with both the decision and its justification in order either to clarify
their own view of the case or to respond to arguments made in a dissenting opinion. Determining the basis for the concurrence should be the initial step in analyzing a concurring opinion.

**Dissenting Opinions.** Dissenting opinions attempt to demonstrate why the Court’s decision is wrong. They might point to alleged errors in reasoning, misinterpretation of precedents or constitutional provisions, or misunderstanding of the facts in a case. Analysis of dissenting opinions should focus on the bases for disagreement with the opinion of the Court.

**Evaluation.** No analysis of a case is complete without an evaluation of the decision. Is the opinion of the Court convincing? Is the decision consistent with previous Court decisions? If not, does the Court provide persuasive reasons for departing from precedent? What are the likely effects of the Court’s decision?
Texas v. Johnson
491 U.S. 397 (1989)

Facts of the Case
Gregory Johnson burned an American flag as a form of political protest. He was arrested and convicted of violating a Texas statute that forbade desecration of the American flag. He appealed his conviction, claiming that his action was protected by the First Amendment. The Texas Court of Criminal Appeals overturned his conviction, and the Supreme Court granted certiorari.

The Law
The Free Speech Clause of the First Amendment, made applicable to states by the Due Process Clause of the Fourteenth Amendment.

Legal Questions
1. Does Johnson's conduct constitute expressive conduct, thus implicating the First Amendment? Yes.
2. Did Johnson's burning of the flag disturb the peace? No.
3. Is the state's interest in preserving the flag as a national symbol related to the suppression of free expression? Yes.
5. Does the state have a valid interest in promoting respect for the flag as a symbol of the nation? Yes.
6. Can government prohibit flag desecration as a means of promoting that interest? No.
7. Is the Texas law constitutional? No.

Opinion of the Court (Brennan)
Johnson’s burning of the American flag was an attempt to convey a political message. When Texas banned flag desecration to promote respect for the flag, it prevented the use of the flag to communicate messages, such as Johnson’s, that are critical of the government and of the nation. However, the First Amendment forbids government from prohibiting the expression of ideas and communication of messages merely because they are offensive or disagreeable, and therefore the Texas statute is unconstitutional.

Concurring Opinion (Kennedy)
Commitment to the Constitution requires overturning Johnson’s conviction, however distasteful it may be to do so.

Dissenting Opinion (Rehnquist)
The American flag’s unique position as a symbol of the nation justifies special protections against its desecration. Texas’s flag desecration statute does not prevent Johnson from communicating his criticism of the government, because his speech and other actions expressing that criticism were not prohibited or interfered with. The statute only prohibits one means of conveying his message, and it does so in response to the profound regard that Americans have for their flag.

Dissenting Opinion (Stevens)
The rules developed for other forms of symbolic expression do not apply here, because of the flag’s status as a special symbol of the nation.

Evaluation
The Court’s ruling extended the range of expressive actions entitled to First Amendment protection. Forty-eight states and the national government had statutes banning flag desecration, so the effects of the Court’s ruling were felt nationwide. Attempts to amend the Constitution to overturn the Court’s ruling failed, and a congressional flag-desecration statute that was passed in the wake of this decision was subsequently invalidated by the Court.