Briefing a Case
What to look for in a Supreme Court decision

I. Facts: What are the facts of the case? Who did what? Was there a whom involved? What happened at the trial level?

A fact is something that is not disputed. Trial court judges and juries determine facts of the case. The Supreme Court justices (note the difference, they are not judges but justices) determine law.

Here are the facts in *McCulloch*:

In 1818, Maryland Assembly enacted a law imposing an annual tax on all banks not chartered by the state legislature. The local cashier McCulloch (not italicized) refused to pay the tax. Maryland successfully sued to recover the statutory penalty.

II. Government action: What did government do to precipitate this dispute?

The Constitution comes into play when state and federal statutes and/or practices are at odds with one another.

In *McCulloch*, the government actions include:

- Congress charters the second Bank of the United States in 1816.
- The state legislature of Maryland imposes a tax on non-state banks.

III. Constitutional language in dispute:

Words rule and interpretation resists. Every case we'll look at turns on a phrase or word in the Constitution. What's at issue is how to properly interpret that phrase or word (proper to your preferred outcome).

In *McCulloch*, there are a number of phrases under discussion:
"necessary and proper" takes most of the weight but other clauses from Article I, Section 8 are relevant. Do you recognize any other constitutional references?

V. Legal reasoning

Every Supreme Court decision explains its reason for achieving a certain outcome. If the justices did not reveal their process, they might be accused of decisions based on personal preferences or party affiliations. By revealing the reason behind their constitutional decision-making, the justices make it possible for the rest of us to apply their rationales to other pertinent cases.

In *McCulloch*, Marshall takes us slowly through the process of how he interprets the necessary and proper clause. This is the first big case of national consequence and he is
showing us what sound legal reasoning looks like. Notice his methods and his logic. He is a master at this.

V. Doctrines developed:

When deciding law, Justices develop doctrine. Doctrine is the punch line of a decision. It is the sentence or clause that defines the proper way to interpret certain constitutional language. Sometimes the Justices nail it with a metaphor and sometimes they come up with a multi-prong test. Doctrine is different than dicta, intelligent phrases that blow in the wind. A dissent is usually filled with dicta, with eloquent arguments that don't persuade the majority of justices. Sometimes the dicta of a dissent becomes the doctrine of an opinion. Levi will have more to say about that.

When you read *McCulloch*, think about Marshall's argument. Which passages speak to the controversy of the legitimacy of the Bank? Which speak to the powers of the States?

VI. The Decision

In a nutshell, the decision refers to the outcome of the case. Somewhere in the midst of legal reasoning and beyond the resounding of doctrine there is the very simple matter of which party came out ahead and which party lost.

In *McCulloch*, either the Bank had to pay the Maryland tax or it didn't. How did Marshall decide?