**Sample Brief 1**

The Antelope

*Facts*: Ship A, a Venezuelan ship with an American crew takes on Africans off coast of Africa. Also captured ships from Spain, Portugal and U.S. and took their Africans. When A was wrecked took over Spanish ship called the Antelope. The Antelope was seized as a foreign vessel by a United States Revenue Cutter in the high seas off the coast of Florida. It was prompted by the Antelope's suspected violation of the American Slave Trade Acts. The vice consuls of Spain and Portugal claimed that the Africans aboard the Antelope were properly Spanish and Portuguese citizens. Also claimed by Capt. Smith who was new Captain of Antelope as *jure belli* - right of law of war. U.S. claims the 280 Africans transported from foreign ports by American citizens in violation of the laws of the United States and law of nations.

*Procedural History*

Lower court dismissed Smith's claim and claim of U.S. except for those 30 Africans which had been taken from an American vessel and eventually on to the Antelope. Remainder of surviving Africans to Spanish and Portuguese claimants. U.S. Appealed

*Arguments*:

U.S. Spanish & Portuguese Claimants

1. Africans considered free men U.S. gave no warning to

under the laws of the U.S. No subjects of Spain and Portugal

reason to give effect to foreign who are pursuing slave traffic

law

2. Policy is to set Africans free U.S. is in no position to sit as

and sent back to Africa censor of the morals of the

world on the subject of slavery

and slave trade.

3. Slavery and slave trade have Slave trade is not contrary to

never enjoyed universal assent natural law or to the law of

of mankind nations.

4. Some of nations involved have Transportation of slaves is but

declared against slave trade and an incident to the original sin of

this is evidence of those countries slavery. Moral wrong to be

addressed is institution of

slavery not the slave trade.

5. Claims of Spain and Portugal

to surviving Africans should not

be recognized because actual

*Issues*:

1.Can the U.S. seize a foreign vessel engaged in the slave trade while it is on the high seas and apply United States laws against slave trading so as to cause a forfeiture of Africans owned by foreign nationals.

2. Does the U.S. have to return the Africans to Spain and Portugal?

*Holding*:

1. No. There is no basis for the U.S. to engage in a high seas seizure of a foreign vessel engaged in the slave trade.

2. No. Actual owners must come forward and offer proof and they have not done so.

*Judgment*: (Note: Listing a judgment as noted in the materials on how to brief is difficult in this case because it is an admiralty case . We will not cover another admiralty case in this class. Normally under judgment you put the terms reversed or affirmed or, perhaps, some slight variations. In this case the judgment looks more like a holding because of the unique nature of the case. I am using this unique case because I want to add some context to a couple of other cases we will have that involved some aspects of the issue of slavery. The judge’s judgment here was not a simple affirmed or reversed. It was: All slaves except for those few designated as belonging to Spanish claimants now belong to U.S. government.)

*Legal Reasoning*

Justice Marshall:

A. Begins by suggesting "Court must not yield to feelings which might seduce it from the path of duty; and must obey the mandate of the law." Suggesting his sympathy is against slavery and the slave trade but must follow the law.

B. Concludes that the "legality of the capture of a vessel engaged in the slave trade, depends on the law of the country to which the vessel belongs."

1. If law allows it, ship and Africans go back to Spain and

Portugal

2. If law does not allow it, ship and Africans will be "prize" and

belong to capturing country.

3. Concludes vessel does not belong to the U.S.

C. He then answers the argument that the law of nations condemns

the slave trade

1. Concludes it is still lawful under the law of nations and

and a captured vessel must be returned

D. Then works on loophole regarding proof of ownership of the cargo

of Africans.

1. Notes that while normally, no proof of claim to property is

required when a ship is returned, not the standard

with regard to claim to Africans who might become free

men.

2. Also if ship had not violated American neutrality, cargo would

be immediately returned.

3. Says some of slaves must be returned to Spain because of

a treaty covering this situation.(this was due to intracacy

which ship was captured first)

4. Finds Portuguese and Spaniards who claim most of the

ownership have not come forward so slaves become

property of U.S.

*Relationship to other cases*

Related to Marshall's behavior in later case, *Cherokee Nation v. Ga*. Also related to Story decision in *La Jeune Eugenie* case which held the U.S. courts had jurisdiction to resolve the slave trafficking cases involving foreign claimant and that the slave trade violated the law of nations. Ship was returned to owners.

*Source of Law*

Looks to law of Nations and American Admiralty law.