

Putting the Puzzle Together: Choices to Make When Creating a Closed-Universe Memorandum Assignment¹

Brutal Choices in Curricular Design ... is a regular feature of Perspectives, designed to explore the difficult curricular decisions that teachers of legal research and writing courses are often forced to make in light of the realities of limited budgets, time, personnel, and other resources. Readers are invited to comment on the opinions expressed in this column and to suggest other “brutal choices” that should be considered in future issues. Please submit material to Helene Shapo, Northwestern University School of Law, e-mail: h-shapo@law.northwestern.edu, or Kathryn Mercer, Case Western Reserve University School of Law, e-mail: klm7@case.edu.

By Judith Rosenbaum

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This article is dedicated to Professor Helene Shapo, in honor of her retirement after 30 years of directing and teaching in the field of legal reasoning, writing, and research. Helene began her career when LRW was in its infancy, and she is one of the pioneers who has made LRW the professional discipline it is today. I owe more than I can ever express to her mentoring. She has been a constant source of inspiration, guidance, and support, and many of the ideas in this article are based on innumerable conversations that we have had on this subject over the course of our 24 years of working together. Many newcomers to the field may not know her, but she is one of the giants upon whose shoulders we all stand today.

I. Introduction

When constructing a first-semester closed-universe assignment, a legal writing professor faces a series of choices—general topic, jurisdiction, cases, issues, and more. The number and complexity of decisions to be made can overwhelm, but the choices become

easier if made with the pedagogical goals of the assignment (and the entire course) in mind, and if the choices are approached sequentially. These decisions are critical since our writing assignments are among our most important teaching devices.²

¹ This article is based on a presentation given on July 15, 2008, at the Thirteenth Biennial Conference of the Legal Writing Institute at the University of Indiana—Indianapolis. Many ideas in this article came from mistakes I have made in designing assignments in my years of teaching and I would like to thank those students over the years who may have suffered unknowingly through one of those mistakes. I would also like to thank two former colleagues, Cliff Zimmerman, now Associate Dean of Student Affairs at Northwestern University School of Law, and Christina Heyde, now a middle school teacher in Wilmette, Ill., for their thorough and thoughtful critiques of an earlier version of this article.

² Helene S. Shapo & Mary S. Lawrence, *Designing the First Writing Assignment*, 5 *Perspectives: Teaching Legal Res. & Writing* 94, 94 (1997) (concluding that since “lawyers and judges remember so vividly their first law school writing assignment, we should design the beginning assignment to capitalize on its indelible impact”). *Accord* Jan M. Levine, *Designing Assignments for Teaching Legal Analysis, Research and Writing*, 3 *Perspectives: Teaching Legal Res. & Writing* 58, 58 (1995) (“The design of assignments is perhaps the most important pedagogical activity in teaching legal research and writing.”). *See also* Lorraine Bannai, Anne Enquist, Judith Maier & Susan McClellan, *Sailing Through Designing Memo Assignments*, 5 *Leg. Writing* 193, 200 (1999) (suggesting assignments are a “secondary ‘text’” for a legal writing course).

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Creating an effective assignment is one of the most daunting tasks a legal writing teacher faces. It is like putting together a jigsaw puzzle. There are multiple ways to go about it, but it is accomplished far more efficiently by using a system, such as pulling out the border pieces and assembling the outside frame first. This article describes a system I have used successfully for years. Although the system can be applied to any type of assignment, research or non-research, long or short, straightforward or complex, memo or brief, this article focuses on creating a short, straightforward, closed-universe memorandum assignment. At Northwestern University School of Law, where I teach, this assignment is the first graded assignment that our students write. Thus, it is typically the first one that our beginning writing faculty develop for their individual sections and the one that causes them the most difficulty.³

II. Strategic Matters

A. Choosing Which Pedagogical Goals to Emphasize

The first step is identifying the pedagogical goals, not only for the assignment, but for the entire semester, so that you can make sure that students learn basic building blocks first and that more complex tasks can build on a solid foundation.⁴ As you think about those goals, you may also want

to think about how you will strike the balance between consolidating previously learned material through rewrites and fostering an awareness of different types of rule structures through new and different assignments. Rewrites offer the advantage of giving students an incentive to review their prior work, process our comments, and deepen their understanding of a topic that they may have only partially understood on the first draft. However, with the limited time available in the semester and the amount of time we need to read, comment on, and return assignments, the more we assign rewrites the less opportunity we have to expose our students to new issues and different types of organization. Without exposure to new rule structures, which require students to abstract what we have taught them in one setting and apply it to another, they may tend to think that there is a “one size fits all”⁵ approach to writing that can be applied like a formula from one topic to the next. Thus, you want some balance between these two options, though the way you strike that balance will depend on your school culture and the number of credits your school has allocated to your course.⁶

³ Our preliminary ungraded exercises consist first of a case brief and then of a written legal analysis based on a statute, two cases, and a hypothetical fact scenario. Many of us use a case from our closed-universe memo for the case brief and base the written analysis on Exercise 3-E in Helene S. Shapo, Marilyn R. Walter & Elizabeth Fajans, *Writing and Analysis in the Law* (5th ed. 2008). In Exercise 3-E, we give the students a criminal statute and a set of facts and ask the students to answer a series of questions designed to teach them how to identify the elements of a statute and the facts relevant to each element. After a class discussion designed to make sure that the students understand what the issues are and how to introduce a discussion and organize by elements, we give the students two one-page case excerpts and ask them to analyze in writing whether the statute was violated.

⁴ See Terrill Pollman, *Building a Tower of Babel or Building a Discipline? Talking About Legal Writing*, 85 Marq. L. Rev. 887, 908 (2002) (suggesting one typical progression).

⁵ Kevin H. Smith, *Practical Jurisprudence: Deconstructing and Synthesizing the Art and Science of Thinking Like a Lawyer*, 29 U. Mem. L. Rev. 1, 2 n.4 (1998).

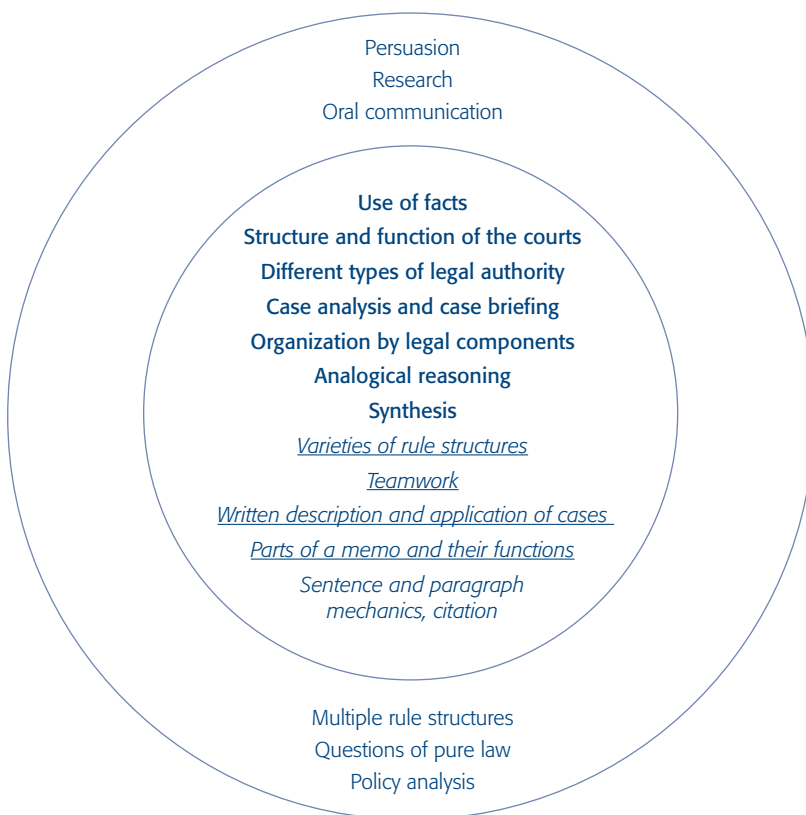
⁶ At Northwestern, the way we have approached this issue has changed over the years. When I first started teaching in 1984, we assigned the students four separate memos during the first semester. Two were closed-universe memos and two were research memos. One of the research memos was a guided research exercise and the other was open research. That approach has evolved over the years. First, we stopped requiring separate memos on different but related issues for the first two assignments. Instead we began to require a somewhat longer first memo for the first assignment and then a complete rewrite of that memo for the second assignment. At that point, the students wrote four memos, on three separate topics. Next, we dropped the open research memo and substituted in its place a rewrite of the guided research memo. To make sure that the students did some open research, we added an extra issue to the rewrite; students thus rewrote one of the issues and wrote the other issue for the first time. In the most recent change we switched a guided research memo into an open research memo, which the students rewrote completely without a new issue added on. In sum, today the students still write four memos over the course of first semester, but they write on only two topics, because we now require a rewrite for each memo.

At Northwestern, our pedagogical goals for the entire year include teaching students about the following topics, listed in no particular order of importance: the structure and function of the courts; different types of legal authority; varieties of rule structures; the organization of a legal analysis by the components⁷ of controlling law; case analysis and case briefing; analogical reasoning; written description and application of cases; use of facts; the parts of a memo and their functions; sentence and paragraph mechanics; synthesis; citation; research; persuasion; questions

of pure law; policy analysis; oral communication; and teamwork. In the first semester, we cover many but not necessarily all of these topics. Of the topics we do cover in the first semester, when we critique the first memo we emphasize the most important substantive skills in our critique of the first draft and only as students begin to master these skills do we add critique on writing style, grammar, and citation mechanics.

I have attempted to list our priorities in the diagram below. In this diagram, the concentric circles together represent the pedagogical goals for the entire first year. The outer circle represents skills

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⁷ I have chosen the word “components” to include the variety of rule structures, including elements, factors, rule and exceptions, and balancing tests. For an excellent description of the variety of rule structures, see Linda H. Edwards, *Legal Writing: Process, Analysis, and Organization* 17–26, 29–36 (4th ed. 2006).

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that are introduced after the closed-universe assignment, for example, in the late first-semester research memo, or even in the second-semester advocacy assignment. The inner circle represents skills that we aim to teach through the closed-universe assignment. Because, as many writers on the subject have stressed, legal writing is a recursive rather than a linear process,⁸ we have already introduced some of these skills in our earlier ungraded exercises, and we use the closed-universe memorandum assignment to give the students another opportunity to practice and hone these skills. I have used a bold font to identify the skills we want students to learn in both the ungraded exercises and the closed-universe memo. The next skill set identified in the diagram includes the skills that we introduce for the first time primarily in the closed-universe memorandum assignment. The diagram uses underlined italics to designate those skills. Finally, the diagram uses a plain font without any attributes to indicate the more mechanical skills that we generally do not comment upon until at least the rewrite of the first memorandum, when our students have begun to understand how to organize their analysis by the requirements of the law and to use deductive, inductive, and analogical reasoning to reach tentative conclusions.

One reason we prioritize some skills over others when critiquing the early memos is that to me, the most important goal in the early part of the first semester is to enable the students to understand that they must organize their analysis by the components of the controlling law. Almost everything else that I teach follows from this goal. My second priority after organization is for the students to learn the other legal analytical aspects of

writing, such as the relationship between cases and statutes, the commonly accepted ways to describe the facts and holdings of cases, and the level of detail required for effective analogical reasoning. Only as the students begin to master these analytical challenges do I begin to concentrate on the finer points of their writing, such as grammar and citation. The reason for this sequential approach is that until the students can organize their writing by the requirements of controlling law and until they know enough about how to describe a case and where to locate the description in their analysis, it is not very important to tell them that they should have included a pinpoint cite or that their sentences are not written in parallel form. After all, it is entirely possible that they will alter a case description or move it to a different place in their second draft and that the grammar and citation may change for reasons that relate to analysis and not to mechanics.

B. Choosing a Jurisdiction for the Problem

The next step is to decide where to set the problem. I recommend using a real jurisdiction and not a fictional one.⁹ Using a real jurisdiction impresses on the students the important distinction between binding and persuasive authority and between higher and lower levels of authority within a particular jurisdiction. In contrast, using a fictional jurisdiction makes everything just persuasive. Thus, students do not learn how to develop their organization based on statements of the law from the courts in the jurisdiction.¹⁰ Moreover, students

⁸ Teresa Godwin Phelps, *The New Legal Rhetoric*, 40 Sw. L.J. 1089, 1094 (1986); See also Angela J. Campbell, *Teaching Advanced Legal Writing in a Law School Clinic*, 24 Seton Hall L. Rev. 653, 664 (1993) (referring to Professor Phelps' "new rhetoric" paradigm); Carol McCrehan Parker, *Writing Throughout the Curriculum: Why Law Schools Need It and How to Achieve It*, 76 Neb. L. Rev. 561, 585 (1997) ("[O]ne of the most important tasks a law school writing program should undertake is to teach students the recursive process of conceptualizing, drafting, and revising to produce professional-quality documents.").

⁹ Although at one point, a number of assignments used to be set in fictional jurisdictions, those who have discussed this issue in recent years are unanimous in recommending that all assignments, not just closed-universe ones, be set in a real jurisdiction. See Gail Anne Kintzer, Maureen Straub Kordesh & C. Ann Sheehan, *Rule Based Legal Writing Problems: A Pedagogical Approach*, 3 Legal Writing 143, 151 (1997).

¹⁰ In fact, using a fictional jurisdiction where all cases have equal weight does not differ significantly from the messages students get in their other courses where all cases in the casebook are equal, regardless of where they are from or when they were decided. Thus, students are deprived of the opportunity to simulate the work of a practicing lawyer and analyze and synthesize a corpus of law decided under the doctrine of stare decisis. See Mary Kate Kearney & Mary Beth Beazley, *Teaching Students How to "Think Like Lawyers": Integrating Socratic Method with the Writing Process*, 64 Temp. L. Rev. 885, 891 n.23 (1991).

do not have to wrestle with synthesizing cases addressing the same issue in the same jurisdiction but with seemingly inconsistent outcomes. Finally, using a fictional jurisdiction limits students' opportunities to learn how to incorporate relevant persuasive authority into their analysis by evaluating the persuasive authority in light of the law of the controlling jurisdiction. Thus, they do not have to wrestle with determining which of several persuasive cases would be most likely to persuade the courts of the jurisdiction in which the problem is set.

C. Choosing an Appropriate Topic

Beyond setting the problem in a real jurisdiction, the topic must be appropriate for beginning law students. In the fall semester, first-year students are laypersons, even if they have had some "pre-law" courses or experience working in a law office. They have not encountered most legal terminology, and even if they have heard of certain terms, they do not understand them in their legal context.¹¹ Thus, you not only need a topic that they will be able to understand substantively, you also need a topic that has a readily identifiable rule structure.¹²

The best starting point is either a subject from the first-year curriculum or certain easily understood upper-class subject areas such as family law or agency. Fascinating but knotty problems from your former law practice, interesting as they may have been to you as a practitioner, probably are not going to work for a closed-universe assignment and indeed may not even be appropriate for an

¹¹ To them, "negligence" may mean "careless," "motion" may mean "movement," and "release" may mean "let go." Terms like "estoppel" or "proximate cause" or concepts like "damages" and "jurisdiction" are as unfamiliar as would be new words in a foreign language. See Julie M. Spanbauer, *Teaching First-Semester Students That Objective Analysis Persuades*, 5 *Legal Writing* 167, 170 (1999).

¹² Kintzer et al., *supra* note 9, at 151 ("Early assignments that use an elements rule structure or a simple category rule structure are often easiest for students").

assignment later in the year.¹³ The complex statutory courses of the upper-class curriculum such as securities law, environmental law, antitrust, labor relations, or tax are beyond the ken of a typical first-year student. In addition, although constitutional law issues often involve compelling fact scenarios, they require more policy analysis than first-year students can handle comfortably early in the first semester, and the cases are often dense and hard to decipher or to reconcile with each other.

Even within the first-year curriculum, certain issues are better than others. Torts topics work well if you use elements-based torts and stay away from issues that involve complex economic analysis like products liability and primary and secondary assumption of risk. Most criminal law topics work well, too. These subject areas typically work well because the facts are easily understood and the rules

¹³ For example, before coming to Northwestern, I had done a lot of work in the area of litigation over judicial discipline and disability retirement. The facts in judicial discipline cases can be very interesting, because when judges are disciplined, the discipline is often for outrageous behavior. For example, in one case the court found that a judge on different occasions called a female judge various names such as "bitch" and "cunt," said "fuck you" to the female judge, and told her to "get her 'fact, fucking ass' to the clerk's office" to sign papers. That same judge also set off firecrackers in a male judge's office and left death threats in his mailbox. He also signed official court documents such as plea forms, court registers, and bench warrants with names other than his own, including "Adolf Hitler," "Mickey Mouse," and "Snow White." Finally, he had improper ex parte contacts with criminal defendants whom he had placed on probation and executed bond documents for odd amounts such as 13 cents or \$9.99, knowing that the clerk's office did not have the capacity to make change for these amounts. In *re Jones*, 581 N.W.2d 876, 883–891 (1998). Although the facts in many judicial discipline cases involve similar bizarre fact patterns, I have never used these cases for a writing assignment, because the governing rules are amorphous and because a judicial disciplinary case is a procedurally complex administrative matter. Often an adjudication by the administrative body is not published or is merely a recommendation to a state Supreme Court, which the supreme court can accept, modify, or reject. For an explanation of the complexity of these proceedings, see Judith Rosenbaum, *Practices and Procedures of State Judicial Conduct Organizations* (1990). The administrative complexity and the difficulty extracting a clear rule make these cases hard for a first-year student to work with in a writing assignment, no matter how interesting the facts of the cases may be.

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are clear.¹⁴ In other first-year subject areas, likewise, some issues work well, while others are too complex for a beginning first-year student. For example, in civil procedure, certain issues on the commencement of a lawsuit, such as service of process or one of the methods of establishing general jurisdiction, generally work well. These issues also offer the additional benefit of helping to teach students some of the basics of how litigation begins, which is not necessarily something they pick up in their doctrinal courses, even civil procedure. In contrast, other issues such as long-arm jurisdiction, collateral estoppel, *res judicata*, and joinder of parties or claims, are best saved until later in the year when students begin to get a better understanding of the operation of the legal system. In contracts, simple issues of contract formation work well, but the calculation and types of damages are too complicated for early in the first year. In property, adverse possession, fixtures, gifts, and landlord/tenant issues are good beginning topics, but nuisance, servitudes, and land use planning are too hard.¹⁵

¹⁴ When I use a tort or criminal law topic, however, I prefer not to make intent an issue. This doesn't mean that I never create a problem where intent is one of the elements, such as a problem involving an intentional tort. If my problem does involve intent as an element, I simply make sure that whether intent is present or not is clear on the facts. The reason I avoid using intent as an element at issue is that in our short ungraded exercise, intent is at issue under the statute that the students analyze. When students work on that exercise, I find that they have a hard time understanding what inferences they can and cannot draw with respect to intent. I prefer to deal with inferences in the early weeks of the first semester by working with my class on the difference between what they know as a fact and what they can infer from facts in the cases they are reading for the assignment and, to the extent intent is relevant to my assignment, to be completely clear in the facts I set up whether intent is present. Avoiding putting intent at issue is my personal preference, however, and not a viewpoint shared by everyone.

For a discussion of the difficulty of proving intent, see Richard K. Neumann Jr., *Legal Reasoning and Legal Writing: Structure, Strategy, and Style* 187–90 (4th ed. 2001) (“[O]ne rarely has direct evidence of a person's state of mind: people do not carry electronic signboards on their foreheads on which their thoughts can be read at moments the law considers important.”).

¹⁵ Nuisance cases, although they have great facts, are complex because of the remedy issues they present. Sometimes the plaintiffs are seeking damages, sometimes an injunction, and sometimes both. Given the differences in the remedies and thus the difference between actions at law and equitable actions, these cases are too hard for beginning first years to understand. For a somewhat contrary view on using nuisance as a topic, see Kintzer et al., *supra* note 9, at 152–53.

D. Choosing an Organizational Structure

The other important consideration that bears on the selection of the particular issue within the area of law you will use is the type of organizational pattern that the issue will present. Our first assignments may teach many things, but they must teach organization, because structuring the memo properly is the foundation on which most of the rest of the first-year legal writing course must build. Thus, the closed-universe assignment, and indeed, most first-semester assignments should involve an organizational structure that first-year students can readily discern from the cases or from cases and a controlling statute. Typically the best topics are those that have a clear rule with elements or factors¹⁶ that must be analyzed in light of the facts to see whether the requirements of a cause of action or defense are satisfied.¹⁷

¹⁶ In this article the term “elements” refers to fixed requirements. These requirements are the black letter rules that students are learning for their doctrinal courses, such as what is needed to prove promissory estoppel in contracts, or domicile in civil procedure, or a *prima facie* case in torts. “Factors,” in contrast, refer not to fixed elements, but to the particular facts or categories of facts that courts look to in determining whether a fixed element is satisfied. For example, in Illinois one of the “elements” required for substituted service is that service must be at the defendant's “usual place of abode.” 735 Ill. Comp. Stat. Ann. 5/2-203 (West 2003). That “element,” along with four others *must* be satisfied if an attempt at substituted service is to be upheld. But in determining whether a place is the “usual place of abode” courts look at a variety of factors, not all of which may be present in any given case. These factors include the place where the defendant resides, the defendant's spouse and children reside, the defendant receives mail, the defendant is registered to vote, and the defendant registers his or her driver's license. *United Bank of Loves Park v. Dohm*, 450 N.E.2d 974, 976 (Ill. App. Ct. 1983).

The terms “elements” and “factors” are sometimes used rather loosely among legal writing faculty. See Terrill Pollman & Judith M. Stinson, *IRLAFARC! Surveying the Language of Legal Writing*, 56 Me. L. Rev. 239 (2004) (describing a survey of legal writing faculty conducted by the authors to determine whether legal writing faculty were developing a new vocabulary and if so, the extent to which that vocabulary had a consistent meaning among members of the discipline). We would do well to define these terms and use them consistently in all our programs. By doing so, we can help our students to clarify their analysis and ultimately develop a generation of lawyers with a common vocabulary. An excellent step in this direction can be found in Shapo et al., *supra* note 3, at 80–85.

¹⁷ For the first assignment, I do not necessarily favor using a statutory claim over a common law claim or vice versa, because my larger priority is that the governing rule have clear elements that can set up the organization of the memo. However, whichever type

Such a topic fulfills many of the pedagogical goals for a first assignment. First, using a topic with a clear rule requires students to learn the relationship among an issue, a holding, and a rule of law and how all of these relate to facts.¹⁸ Second, it requires students to synthesize cases to determine which factors courts use in deciding if an element is present. Third, it requires them to use analogy and distinction to compare the facts in cases with the facts in their problem.

In contrast, other types of legal issues such as those on the cutting edge of the law or those involving balancing tests or pure questions of law are far too complex for beginning assignments. All of these issues involve complex organizing strategies. First-semester law students are tempted to organize their analysis by cases or sources consulted. They typically struggle with organizing by elements of a rule and factors relevant to the elements and would be overwhelmed by an assignment with a complex organization.¹⁹ Moreover, questions of pure law

or on the cutting edge of the law usually require using precedents where the facts of cases reaching opposite conclusions are the same and the difference in outcome depends on underlying subtle reasons such as public policy or broad analogies to precedent from related areas. First-semester law students typically look for cases with identical facts and have trouble recognizing similarities in categories of facts.²⁰ They do not have enough background to find related areas to use for analogy and even if they could find such areas, they do not have the sophistication to evaluate which of these precedents would be persuasive to a particular jurisdiction and why. The final strategic consideration that I require for my closed-universe memo is to be sure that there are at least two elements in the claim that can be placed at issue, even if in order for students to complete the analysis within the page requirement, one element is relatively easy to analyze

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of claim I choose for my first assignment, statutory or common law, I try to choose the opposite for the second assignment, so that students gain experience with both. See Kintzer et al., *supra* note 9, at 151 ([A] Methods course that consistently assigns only common-law problems short-changes students in this world where statutory law is increasingly important.”)

¹⁸ In teaching my students, I tell them that the holding is the court’s decision based on the facts. A holding answers a particular question in a particular case, based on the particular facts before the court in that case. A holding in one case may thus be that all the elements of a cause of action have been satisfied, while in another case a holding may be that one of the elements is not satisfied. If a court holds that one element is not satisfied, it may or may not reach a decision on the other elements, and even if it does, there has been debate about whether its discussion of those other elements is holding or dictum. In each case, however, the part of the case that is holding is fact-dependent, even if the holding is the adoption of a new rule. See, e.g., *Sommer v. Kridel*, 378 A.2d 767 (N.J. 1977) (showing an interesting interplay between a holding announcing a rule of law and holdings then applying that rule to facts). A rule of law, in contrast, is broader than a holding in that it is a normative statement based on a synthesis of the holdings of many cases within a particular jurisdiction on that issue. Thus, by my definitions, a holding answers the question at issue by applying the rule to the facts to reach the result. A rule is abstract and a holding is outcome specific.

¹⁹ In fact, on a first assignment, I also stay away from an organizational structure involving a rule and exceptions. Even in later assignments, students often have a hard time understanding how to subdivide the analysis when the issue involves whether an exception to a general rule applies. For example, before New Jersey

eliminated the fireman’s rule by statute, N.J. Stat. Ann. § 2A:62A-21 (West 1994), I used to do a fireman’s rule problem. Under New Jersey law, a police officer injured in a high speed chase sued the other driver for her injuries. New Jersey had already held that the fireman’s rule applied to police officers. *Berko v. Freda*, 459 A.2d 663 (N.J. 1983). Since the facts involved a lawsuit by a police officer against a tortfeasor, the facts fell squarely within the fireman’s rule and the real issue in the case was whether any of the exceptions to the rule recognized by New Jersey applied so that the lawsuit was not barred. To analyze the problem the students needed to indicate briefly in their thesis paragraph that the case fell under the fireman’s rule, that the rule applied to police officers as well as fire fighters. They also could have mentioned the policy behind the rule. They did not, however, need to devote any analysis to whether the facts fell under the rule, since the facts fell squarely within the rule. Nonetheless, many students spent at least one-third of the memo analyzing whether the facts fell within the rule instead of conceding the applicability of the rule as a given and focusing on whether the application of any exception would take the case out of the rule.

I also save embedded rule structures for later memos. What I mean by an embedded rule structure is when one or more of the organizational divisions of the memo, such as elements themselves, have a rule structure that must be broken down in order to analyze the issue. For example, the issue may break into two main elements, where element one consists of two elements, each of which must be discussed, and element two is a rule with exceptions. In order to satisfy the overall claim, both subdivisions of element one must be satisfied and none of the exceptions in element two may be present.

²⁰ Maureen J. Arrigo, *Analogization: Lost Art or Teachable Skill*, 1 Perspectives: Teaching Legal Res. & Writing 36 (1993).

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and only one is fairly complex.²¹ To ensure that students actually organize their analysis by the issues and not by the cases, I also try to make sure that at least one or two cases address both elements, so that when the students write their analysis they have to use some aspects of a case for one of the elements at issue and different aspects of it for another element.²²

III. Tactical Matters

A. Choosing an Issue

Once you have established your pedagogical goals for the first assignment, understood the advantages of using a real jurisdiction, picked a legal subject area for the assignment, and know, at least generally, the type of rule structure you want to employ, the next steps are the less theoretical and more mechanical tasks of choosing the precise issue, determining the specific jurisdiction, selecting the cases, and preparing the facts of the problem. When choosing an issue, you have two options. One option is to pick a real situation from current events, from a real case, or even from your own or a friend's life. The other option is to identify a subject area and a rule that interests you and, after

finding a jurisdiction and cases for the issue, to develop your own problem facts around the cases you select.

An advantage of using a problem based on real facts is that you do not have to develop problem facts, even though you have to find a jurisdiction and appropriate cases.²³ Another advantage is that students tend to enjoy problems based on current events. They see the assignment as relevant, since it is based on something actually happening in the world, and they feel, more than with a hypothetical problem, that they are working as lawyers. I have also successfully given my students an assignment based on a real case from my husband's practice. I changed the names of the parties and gave them the complaint, which had been met with a motion to dismiss. I then asked them to evaluate the sufficiency of the complaint. My class enjoyed comparing its conclusions to the decision in the actual case.²⁴

The advantage of using current events does not necessarily hold true for problems based on your own life or someone else's. While some students will enjoy working with “real” facts, rather than purely hypothetical ones, other students will find that a problem from someone else's life experience that has nothing to do with the world they inhabit—particularly when it is not based on an actual case file—is no different from a hypothetical.²⁵

²¹ Although I tend to avoid embedded rule structures in the first memo, because I think that students can get lost in the various subdivisions of the rule, I have effectively used a false imprisonment assignment where the only element at issue was “restraint,” but more than one aspect of “restraint” was at issue. In false imprisonment, restraint can be established by any of five different methods. The facts in my assignment could have satisfied the requirements of restraint by duress or restraint by threat of force, and the students did not seem to get lost in the organization. They were able to dispose of the nonissues up front and then set up a separate analysis of restraint by duress and restraint by threat of force.

²² I do this because one year I had a student write a memo discussing all five cases from the memo assignment, one case at a time. When I tried to explain to him that he had used a case-by-case analysis and not a structured analysis, he responded that the first three cases were about the first element at issue and the second two were about the second element. Although this approach does not provide a guarantee that students will not organize by cases, it does seem to help in showing them how certain aspects of a case may be relevant to one element and other aspects may be relevant to another element. A side benefit to this approach is that when students have to use the same case a second time in their memo for a different issue, you have an opportunity to teach them how to introduce the case for the new point by giving some context but not completely restating facts already covered.

²³ Developing assignment facts that fit well with the cases is essential to having a good problem. While most legal writing teachers truly enjoy the creative writing aspect of developing facts, some do find that creating a good set of facts is quite difficult and time-consuming and are relieved to use a real-life scenario.

²⁴ The trial judge had dismissed that particular count of the complaint, and the dismissal had not been appealed because other counts had survived.

²⁵ One of my favorite closed-universe assignments, which some readers may have seen in the Idea Bank at an LWI conference, is a problem involving substituted service of process on an elderly mother who is served while staying with her son, the defendant in a civil suit, and daughter-in-law on her annual three-month visit. One of the issues in that assignment is whether service was performed at the defendant's “usual place of abode.” I was able to create an issue about the usual place of abode based on the living arrangements of a colleague whose family had a condominium apartment in Chicago but spent weekends, holidays, and summers

There are a couple of drawbacks to using current events, some of which are also relevant to using a real case file or a problem from real life. First, some current issues can trigger painful emotional reactions in students. Even if you favor raising such issues in your class, as many legal writing professors do,²⁶ the closed-universe memo creates enough anxieties on its own simply because it is typically the first major integrative piece of writing for the students and often the first graded assignment as well.²⁷ Thus, it may not be the assignment where you want to open up classroom discourse on a controversial topic. There are substantive as well as emotional disadvantages to using a topic from real life. Often when you use a problem from current events, the cases in the jurisdiction where the problem arose do not work well pedagogically with the facts. They may not provide enough analysis or they may all hold the same way, thus making synthesis difficult.²⁸ Alternatively, there may be no relevant cases, or there may not be enough of them to give the students a corpus of binding law with which to work. Of course, if you switch the problem to a jurisdiction that works better or if you change the facts to work better with the facts of the jurisdiction, it is no longer “real life” and you lose many of the benefits a current events problem may provide.

at a lake house in the northern Chicago suburbs. These “true” facts allowed the problem to work perfectly, but I doubt that it mattered to my students that some of the underlying facts were truth and not fiction.

²⁶ Brook K. Baker, *Incorporating Diversity and Social Justice Issues in Legal Writing Programs*, 9 *Perspectives: Teaching Legal Res. & Writing* 51 (2001); Emily Zimmerman, *Keeping It Real: Using Contemporary Events to Engage Students in Written and Oral Advocacy*, 10 *Perspectives: Teaching Legal Res. & Writing* 109 (2002).

²⁷ See Suzanne E. Rowe, *Legal Research, Legal Writing, and Legal Analysis: Putting Law School into Practice*, 29 *Stetson L. Rev.* 1193, 1210 (2000).

²⁸ One such problem was a problem one of my colleagues based on a highly publicized recantation by the complaining witness in a rape case. The problem was hard to work with in the controlling jurisdiction because the cases all held the same way. While my colleague could have changed the facts somewhat so that there was at least more balance to the problem or something to give the students a basis for distinguishing the facts of the assignment from the facts of the precedent cases, changing the facts would have taken away the “real-life” basis of the assignment.

If you don’t use an issue from real life for your assignment, then the other option is to pick a topic you think will work well pedagogically and to build the cases around the topic and then the problem facts around the cases. Many sources can help you generate ideas for issues. Some of the ones I use include first-year casebooks, student study aids or outlines, *U.S. Law Week*, national legal newspapers, or local daily or monthly legal news. The main advantage of this approach is that you can carefully thread the facts of the assignment into the law of the jurisdiction and often you can create a problem that is pedagogically more satisfying than one based on current events or other facts from real life. A disadvantage to building your own topic this way, however, is that it can be quite time-consuming, particularly once you have an issue you like but have to find a jurisdiction with cases that fit together in the right way to allow you to accomplish your pedagogical goals. Additionally, sometimes you need considerable creativity to come up with facts that are realistic and that work well with all the cases.

B. Selecting the Cases

Once you have identified an issue or fact scenario you would like to use, the next step is to pick the cases you will include in the assignment. Picking the cases necessarily involves determining the jurisdiction in which your problem will be set and thus which cases will be binding and which will be persuasive, although the proportion of binding to persuasive cases will vary with the issue, the jurisdiction where you set the assignment, and the specific cases you decide to use, including the number you decide to use.²⁹ I prefer to use a

²⁹ There is no “magic” number of cases that should be included in the package for the closed-universe memo, but the range of choice is not all that large. I generally use about five or six cases for a paper with a page limit of six to seven pages. I have found that using fewer than five cases often does not give the students enough to work with when they have to synthesize cases, particularly if some of the cases address only one of the elements at issue. But, because students often feel obliged to use every case you provide in the package for a closed-universe assignment, if you use many more than six cases they may have a hard time staying within your page limit. If your page limit is shorter than six pages, you may want to use fewer cases, and if your page limit is longer than seven, you can probably use an extra case or two.

“Once you have identified an issue or fact scenario you would like to use, the next step is to pick the cases you will include in the assignment.”

“If the synthesis that I incorporate into the assignment is particularly difficult, I may not use any persuasive cases at all.”

jurisdiction where there are enough cases that all, or at least a majority of the cases, come from the controlling jurisdiction and thus are binding and not persuasive. My reason for using a large number of cases from a controlling jurisdiction is to ensure that the students will have to look closely at the facts and holdings of the cases and to synthesize the law.³⁰ In fact, to ensure that synthesis is built into the assignment, I try to make sure that several cases directly address at least one of the elements at issue, and that in at least one of the cases addressing that element, the court reaches an opposite holding from the other cases based on slightly different facts. By setting the assignment up in this way, I try to get my students to think deeply about the factual differences among the cases and to give them the opportunity to identify a higher level of abstraction that can explain the outcomes in the cases and can serve as a rule that, in turn, can be applied to the assignment's facts.³¹

If the synthesis that I incorporate into the assignment is particularly difficult, I may not use any persuasive cases at all. If I do use persuasive cases, I generally try to pick one or possibly two cases that are closer to the assignment's facts than any cases from the controlling jurisdiction so that the

students can use the persuasive cases to help them resolve the factual ambiguities in their assignment. For example, in my assignment on substituted service of process, one of the issues is whether the defendant's elderly mother who is visiting him on her annual three-month visit is a “person of the family” for purposes of substituted service under Illinois law. The synthesized rule requires that the person served spend considerable time in the defendant's abode and “considerable time” is determined by looking at whether the defendant and the person served slept under the same roof and ate their meals together. This rule is based on two cases with counterintuitive facts leading to opposite holdings.³² In the first case a 13-year-old brother from Florida received a summons while he was in Illinois on a two-day visit at his older brother's home. After the trial court entered a default judgment against the older brother, the older brother appeared specially to quash service of summons claiming that his younger brother, as a Florida resident, was not a “person” of the older brother's family. The court agreed with the older brother and held that even though the younger brother was a blood relative, his presence in the home for two days was not enough to make him a “person” of his older brother's family for purposes of the abode service statute. In the other case, the sheriff gave the summons to the defendant's landlady. The defendant had been boarding in the landlady's home for three years. The court held that the landlady was a “person” of the boarder's family.³³ The persuasive case that I throw into that mix is a Florida case with an aunt from England who is served with a summons for the defendant while she is visiting in the United States for four months.³⁴ Thus, it is

³⁰ My colleague, mentor, and friend Helene Shapo does not necessarily agree that most of the cases have to come from the controlling jurisdiction. She has successfully used closed-universe assignments with a single case from the controlling jurisdiction. The other cases then present factual similarities to the facts of the assignment and the students have to decide why, based on the single binding case, the courts in the controlling jurisdiction would follow certain of the persuasive cases but not others. See Helene S. Shapo, Marilyn R. Walter & Elizabeth Fajans, *Writing and Analysis in the Law Teacher's Manual* 132–333 (4th ed. 1990).

³¹ For example, in a DUI assignment that I adapted from a colleague, Ben Brown, the controlling statute made it a crime for an intoxicated person to be “in physical control” of an automobile. Tenn. Code Ann. § 55-10-401 (2007). The fact that could explain the differences in the outcomes of the cases on the issue of “physical control” was whether the defendant was steering the motor vehicle at the time of the accident. *Compare* State v. Lane, 673 S.W.2d 874 (Tenn. Crim. App. 1983) (affirming defendant's conviction when he was sitting behind the wheel of his incapacitated car while it was being pushed along the shoulder of the road) with State v. Carter, 889 S.W.2d 231 (Tenn. Crim. App. 1994) (reversing defendant's conviction when she was behind the wheel of an incapacitated car that was in a parking lot and not moving at the time of her arrest).

³² *Compare* Cumbo v. Cumbo, 293 N.E.2d 694 (Ill. App. Ct. 1973) (brother on a two-day visit) with Edward Hines Lumber Co. v. Smith, 172 N.E.2d 429 (Ill. App. Ct. 1961) (boarder).

³³ *Compare* Cumbo v. Cumbo, 293 N.E.2d 694 (Ill. App. Ct. 1973) (brother on a two-day visit) with Edward Hines Lumber Co. v. Smith, 172 N.E.2d 429 (Ill. App. Ct. 1961) (boarder).

³⁴ Sangmeister v. McElnea, 278 So. 2d 675 (Fla. Dist. Ct. App. 1973).

factually closer on this issue than any of the Illinois cases.³⁵

Although choosing the jurisdiction goes hand in hand with case selection, for me, the importance of finding the right cases controls the choice of the jurisdiction and not the other way around. In other words I never decide that I want to set a problem in a particular state and then look for cases within that state. I always look for cases that will set up a good problem and then when I find enough cases that work well together from a single jurisdiction, I set my problem in that jurisdiction. I have three requirements for what constitutes a “good case” for a closed-universe assignment. Two of the requirements must apply to all the cases I use, and one must apply to some but not necessarily all of the cases. The requirements that all cases must satisfy are first, that they have clear and consistent rule statements and second, that they have fact-based outcomes. The one requirement that is a little more flexible is that a few of the cases must have some reasoning about how the court reached its decision.

The reason that I look for cases with clear and consistent rule statements is that early in the first semester, first-year law students want to give meaning to every single word that seems like a rule in a case. If the language that the courts use in defining the rule controlling an issue is different from one case to the next, then on the first memo, students have a very hard time determining the rule. Their rule statements often consist of long quotes of the slightly different language from each of several cases. Thus, I either look for cases where the courts have stated the rule in the same language from one case to the next, or, because this is a closed-universe assignment, I “doctor” the cases

³⁵ When I first created this assignment, the Florida statute was worded identically to the Illinois statute, which gave the students a good basis to justify their use of the persuasive authority. However, the wording of the Illinois statute has changed slightly, so now to avoid the extra complexity that would come from having to justify the use of a case based on a differently worded statute, since this is a closed-universe assignment, I give my students a copy of the statute as it was phrased before the amendment.

so that the rule statements are consistent.³⁶ For example, on the service of process assignment described earlier, some of the cases say that a “person of the family” is determined by whether there is enough of a “relation of confidence ... between the person with whom the copy is left and [the] defendant that notice will reach [the] defendant.”³⁷ Other cases describe family as a “collective body of persons who live in one house, and under one head or manager. ...”³⁸ After years of seeing the students try to write their rule for this element of the case by stringing together quotes about a confidential relationship and a “collective body” of individuals who live under one roof, I decided that I would alter the cases so that they all used the “confidential relationship” rule.³⁹ Once the students had fewer quotable phrases to string together in their rule, they could begin to think about what the facts in the cases told them was required for a confidential relationship.

In addition to clear and consistent rule statements, each of the precedent cases I use in my closed-universe assignment must have a fact-based outcome on one or both of the elements at issue. By fact-based outcome, I mean that the courts must

³⁶ To me the way that the cases work together with the facts of my assignment is more important than fidelity to the exact language of the cases or even to the level of court deciding the case. For many years I have taken some liberties with the cases I include in my assignments, including altering the rule statements for consistency, changing an intermediate appellate court decision to a decision of the state’s supreme court, and even making up a case based on a headnote and syllabus, which were the only part of this particular case included in the reporter. Of course, where I make changes in a case, when we are done with the assignment I do tell my students that the cases have been altered from their original and that they may want to mention this fact to prospective employers if they use the memo from this assignment as a writing sample. Shapo et al., *supra* note 30, at 133 (saying that it is permissible to “take liberties” with cases but recommending that students should be informed that the cases have been altered from the original).

³⁷ *Cumbo*, 293 N.E.2d at 695.

³⁸ *Edward Hines*, 172 N.E.2d at 432.

³⁹ This task used to involve a complicated cut-and-paste job, and usually the patchwork aspect was readily apparent to the students. Today with the ease of downloading from LexisNexis® or Westlaw®, this is an almost effortless process.

“ [T]he importance of finding the right cases controls the choice of the jurisdiction and not the other way around. ”

“I use cases with fact-based outcomes for the closed-universe assignment, because students have a very hard time understanding how to work with a question of pure law.”

look at the law governing the elements and decide whether, under that law, the facts in the case satisfy or fail to satisfy the element. For example, if I were creating a closed-universe assignment for a burglary problem and one of my issues was whether a carport that was open on the sides but covered by a roof was a “building” for purposes of Article 140 of the New York Penal Law,⁴⁰ I would try to include cases in which the courts had to consider whether various types of structures were buildings. Ideally, the cases might include cases where a gasoline pump⁴¹ and a railway box car⁴² were held not to be buildings, along with those where a chicken coop⁴³ and a fully enclosed porch with windows and wooden walls running along the length of a house⁴⁴ were held to be buildings. My first goal in setting the problem up in this way would be for the students to try to figure out what factors made the gasoline pump and the railway box car different from the chicken coop and the porch;⁴⁵ in other words to synthesize the holdings on this issue into a rule or factors that could explain the difference in the outcomes. My second goal would be for the students to decide whether their facts were closer to the gasoline pump and the railway box car or to the chicken coop and the porch, and to explain their reasoning; in other words, I would expect them to use analogical reasoning in applying law to fact and to justify their prediction.

I use cases with fact-based outcomes for the closed-universe assignment, because students have a very hard time understanding how to work with a question of pure law. They have trouble deciding which of two competing rules a jurisdiction should

adopt. In most of the cases that raise this type of issue, the legally relevant facts are the same and the issue is resolved not by comparing and contrasting facts but by using canons of statutory construction, legislative history, or public policy, or often some combination of all of these. Early in the first semester, students need to learn how to extract rules from cases and how to apply those rules to different facts. They will learn better if they have mastered these more fundamental skills before they have to move on to the more abstract thinking that comes with choosing from competing rules.

Finally, I try to ensure that at least a few of the cases included in the closed-universe assignment contain some reasoning. In my opinion, using opinions with some reasoning will help students to synthesize rules and will give them a better understanding of the issue of their assignment so that they can give a better explanation of why cases are either analogous to or distinguishable from their facts. While students can certainly synthesize common factors based on nothing but a few cursory facts, this type of synthesis is most useful in an early exercise that helps students identify controlling facts that tip a result one way or another.⁴⁶ These early controlled exercises allow students to see how facts can determine outcomes. However, most cases that students read, whether in our class or in their doctrinal classes, are filled with dicta. Early in the first semester, as soon as they have to deal with extra language in an opinion and not the bare facts, they will have a hard time straying from the exact language in an opinion. No matter what you have taught them about the differences between cases and statutes, they will tend to treat the language in the court’s opinion as if it were as controlling as the language in a statute. If the package for a closed-universe memo assignment includes a few cases where there is some additional reasoning, you will be able to use those cases to teach the students that when they synthesize rules from cases, they

⁴⁰ N.Y. Penal Law §§ 140.00, 140.20 (McKinney 2008).

⁴¹ *People v. Lamphere*, 219 N.Y.S. 390 (N.Y. App. Div. 4th Dept. 1927).

⁴² *People v. Chapman*, 611 N.Y.S.2d 991 (N.Y. Sup. Ct. Bronx County 1994).

⁴³ *People v. Snyder*, 148 N.E. 796 (N.Y. 1925).

⁴⁴ *People v. Lewoc*, 475 N.Y.S.2d 933 (N.Y. App. Div. 1984).

⁴⁵ One possibility might be that structures that were buildings were in a permanent location and had a roof and walls, even if the walls were open.

⁴⁶ Most legal writing texts have basic synthesis exercises like this. See, e.g., Shapo et al., *supra* note 3, at 50–52 (explanation and exercise on factors relevant to parental immunity from suit by a child).

can move a bit away from the words used by the court. In addition, the extra reasoning in some cases helps them to develop richer explanations in writing their memo of why some cases are like or not like their case.

C. Writing the Problem Facts

If you are not using a problem based on real facts from current events, then the final step in creating the assignment, apart from the mechanics of proofing it and testing it out, is to develop the facts that will set up the problem you will ask the students to address in their memo. Again, in selecting the cases, I always try to make sure that at least three or four cases address at least one of the elements at issue and that at least one of these cases reaches a holding on the issue that is the opposite of the holdings of the other cases. The way that I use these cases in developing the facts of the assignment is to construct the facts so that they slice between the facts of the cases with opposite results.⁴⁷ My goal is to make the outcome indeterminate enough that the students can easily conclude either way in their analysis.⁴⁸ In fact, I often set up the closed-universe assignment with the students acting as clerk to a judge who has to decide the case so that my students do not feel constrained to shoehorn

their analysis into a conclusion for the side that happens to be their client.

Sometimes it is easy to figure out a way to set up the facts so that they fall between the cracks of the precedent cases. However, when I have trouble creating the right set of facts, I set up the same type of synthesis chart that we teach our students to use.⁴⁹ I find that when I can see on paper which facts are cutting each way, I have a much easier time visualizing the facts that will slide in the middle of the precedents.

Another consideration that is relevant to both selecting the cases and drafting the facts for the assignment is the way that the procedural posture of the precedent cases relates to the procedural posture of the problem that you create. If all the cases that you use for precedent come up on a motion to dismiss, then be careful not to pitch the “call of the question” in your assignment to ask about the merits. While students might not notice the discrepancy, if they do, they may become confused or you may lose credibility with them. Sometimes you can modify the cases to ensure that their procedural posture is consistent with the way you want to set up the facts of your assignment. When you cannot modify the cases, you may have to take some time to develop a credible set of facts that has a procedural posture that is similar to the cases. For example, in one of my assignments, the cases all were decided on a motion for a directed verdict or a judgment notwithstanding the verdict. Since these motions take place either after the plaintiff’s evidence is presented, after the close of evidence, or after a jury verdict,⁵⁰ in order to make the facts of my assignment work with the cases, I had to put my facts in the form of a trial transcript to provide the appropriate context for a motion for a directed verdict to be raised.

“My goal is to make the outcome indeterminate enough that the students can easily conclude either way in their analysis.”

⁴⁷ Shapo et al., *supra* note 30, at 132 (“Provide facts for this issue that will make them ‘play’ with the facts a bit and require them to give both sides of an argument.”).

⁴⁸ In the service of process assignment described earlier, the precedent cases that hold that the person served was a “person of the family” include a case where service is on the defendant’s sister, who lives in an apartment adjacent to his and who spends a great deal of time in her brother’s apartment, often eating meals there, *Anchor Finance Corp. v. Miller*, 132 N.E.2d 81, 83 (Ill. App. Ct. 1956), and a case where the service is on the landlady of a boarder who has roomed in his landlady’s house for approximately three years, *Edward Hines Lumber Co. v. Smith*, 172 N.E.2d 429 (Ill. App. Ct. 1961). The cases that hold that the person served was not a “person of the family” include a case where a brother from a different state is visiting his brother, the defendant, for two days, *Cumbo v. Cumbo*, 293 N.E.2d 694 (Ill. App. Ct. 1973), and a case where a stepdaughter is served while in the defendant’s apartment to water plants and pick up the mail while he is out of town, *Conley v. McNamara*, 79 N.E.2d 645 (Ill. App. Ct. 1948) (abstract only). The Conley case is published in the reporter in abstract only, but I have created a full case out of it by obtaining a copy of the transcript of the case from the Illinois Appellate Court. I have also modified the Conley case to be an Illinois Supreme Court case, because it covers both issues in the assignment and I want students to pay careful attention to it.

⁴⁹ See Helene S. Shapo, Marilyn R. Walter & Elizabeth Fajans, *Writing and Analysis in the Law* (4th ed. 1990) at 143.

⁵⁰ These cases all were decided under state procedural law and in any event were all decided before the change in the Federal Rules of Civil Procedure that combined these motions into a motion for judgment as a matter of law. See Fed. R. Civ. P. 50.

“ [E]ven with the system I’ve outlined, creating the closed-universe assignment from start to finish will still take quite a bit of time. ”

A final consideration is how to present the facts of the assignment to the students. Although the easiest way to put the facts together is to write a narrative telling the students what the problem is about and who the parties are, and this may be the way that you have to present the facts if you are facing a deadline, it is not the best approach from a pedagogical point of view. Lawyers do not learn facts about their clients in neatly packaged narrative stories. Even though we may not be able to mirror all of the complex fact investigation that goes into researching all the facts on behalf of a client, the more that we can present the facts the way students will learn about facts in practice, the better we prepare our students for their work as lawyers. Ideally, you should present the facts to the students through various types of documents that they may encounter in practice, such as transcripts of client interviews, all or parts of relevant pleadings, deposition excerpts, transcripts of hearings, or excerpts of relevant documents such as leases or contracts.

One advantage of presenting facts in this way is that the students will receive the facts from various people involved in an action or a transaction based on their perception of what happened. This approach mirrors the way that lawyers learn about facts in practice better than a neat narrative in chronological order from an omniscient observer. Students will have to reorganize the facts into a coherent order in their memo, rather than simply following the order of the narrative. Putting the facts into the words of legal documents or the mouths of witnesses allows us to add jargon, either legal or colloquial, or irrelevant material into our assignments, forcing students to sift through the facts to determine what is relevant rather than parroting what we have written back to us in their statement of facts.

Conclusion

This article has attempted to provide a system to help new or even experienced legal writing faculty put together the pieces of the closed-universe memorandum assignment puzzle. Even when you sort the pieces and decide to work on one area at a time, completing a complex puzzle still takes a considerable amount of time. So, too, even with the system I’ve outlined, creating the closed-universe assignment from start to finish will still take quite a bit of time. Sometimes topic ideas do not work out because you cannot find the cases that have the requisite amount of reasoning and fact-based outcomes. Sometimes, you have to search through most of the 50 states before you find a jurisdiction with the right lineup of cases. Sometimes, even when you have a jurisdiction with good cases, you struggle to get your creative juices flowing enough to create a credible fact pattern. However, just as with a puzzle, a little patience and willingness to re-engage after you are stuck will get you through to the end of the project.

Sometimes when you get to the end of a puzzle, you find you have somehow lost a piece or two along the way. Sometimes the closed-universe assignment you thought would work perfectly has a glitch or two that you learn about only after your students are working on it. For the most part, the system described here will help you to avoid those glitches. Beyond that, take heart; unlike losing a puzzle piece that you may never recover, a small glitch in a writing assignment can be fixed by changing a case or changing some facts the next time you use the assignment.

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