

Using Visual Techniques to Teach Legal Analysis and Synthesis

Angela Passalacqua¹

I. INTRODUCTION²

The Legal Research and Writing Program at Rutgers-Camden incorporates learning theory³ and other principles used in Academic Support Programs to help students develop legal analysis and synthesis skills. Legal Research and Writing professors can adopt the visual techniques described in this article to teach the legal analysis and synthesis skills that students must develop to succeed in law school.

A common goal of Academic Support Programs is to "[at-tempt] to improve the students' *learning skills*, so that they will

¹ Director, Legal Research and Writing and Academic Support Programs, Rutgers School of Law at Camden. B.A. with Honors, Rutgers College, 1982; J.D. with Honors, Rutgers School of Law at Camden, 1985. Thanks to Leonard S. Baker and Anne M. Mullan for their encouragement and helpful comments, and to my Academic Support friends for their support in every area.

² This article is based on a portion of the presentation entitled "Be Creative: Providing Academic Support Without An Academic Support Program," co-presented at the Legal Writing Institute on July 20, 1996 with Professor M. H. (Sam) Jacobson of Willamette School of Law. The title of the presentation does not describe Rutgers School of Law at Camden, where we have an "Academic Success Program" independent of the Legal Research and Writing Program. However, the two Programs have a single Director. One of the benefits of this system is that techniques that have proved successful with Academic Success students can be integrated into the Legal Research and Writing program, and have been, in my experience, helpful to all students. Due to time limitations at the conference, the learning theories that inform the Legal Research and Writing and the Academic Success Programs were not discussed in detail. My portion of the presentation focused on visual techniques that help students understand legal analysis and synthesis.

³ Learning theory has increasingly played a part in the reform of legal writing programs. See, e.g., Bari R. Burke, *Legal Writing (Groups) at the University of Montana: Professional Lessons in a Communal Context*, 52 MONT. L. REV. 373, 383 (1991) ("At this law school, changing methodology, including our Law Firm Program, is a response to our appreciation of *how* students learn rather than simply *what* students learn. Inquiry into *how* to enable students to perform lawyering tasks competently is best informed not by reference to what lawyers do but by reference to learning theory."). In *Legal Writing: A Revised View*, 69 WASH. L. REV. 36, 67-74 (1994), Christopher Rideout and Jill J. Ramsfield discuss how legal writing professors with a better understanding of how students learn can improve their teaching by adopting a greater spectrum of techniques; Rideout and Ramsfield then describe some of the different methodologies that can be used in legal writing.

be better able to digest future material and remain competitive with other students."⁴ Learning skills are best absorbed in conjunction with courses students are taking,⁵ rather than in Academic Support or other programs that do not attempt to make a reference to these courses. In law schools that do not have an Academic Support Program,⁶ Legal Research and Writing may be the only course where skills such as case analysis and synthesis are specifically discussed, with an equal emphasis on *learning to analyze* and *learning the substantive law* for the course. Therefore, the visual techniques described in this article are especially relevant to Legal Research and Writing courses.

One of the main principles behind Academic Support Programs (ASPs) that has been incorporated into the Rutgers-Camden Legal Research and Writing Program is the attempt to reach all types of student learners. "ASPs recognize that students have different learning styles and that students learn most effectively when the teacher's style matches the student's learning style."⁷ Our Legal Research and Writing Professors and Teaching Assistants are trained in part by participating in a Myers-Briggs Type Indicator (MBTI)⁸ workshop.⁹ The workshop

⁴ Kristine S. Knaplund and Richard H. Sander, *The Art and Science of Academic Support*, 45 J. LEGAL EDUC. 157, 161 (1995).

⁵ *Id.* at 202-03 (quoting conclusions about the effectiveness of undergraduate academic support programs discussed in Mary E. and Joel R. Levin, *A Critical Examination of Academic Retention Programs for At-Risk Minority College Students*, 32 J. C. STUDENT DEV. 323, 327 (1991)).

⁶ Incorporating these or other techniques in Legal Research and Writing can be helpful to students but cannot be considered a complete substitute for an Academic Support Program (ASP). ASPs deal with many issues that simply cannot be addressed by Legal Research and Writing Professors in the context of teaching a course. For a discussion of problems faced by "at-risk" students in traditionally-taught courses, and how they can be addressed in an Academic Support Program that is independent of a particular course, see Ruta K. Stropus, *Mend It, Bend It and Extend It: The Fate of Traditional Law School Methodology in the 21st Century*, 27 LOY. U. CHI. L.J. 449, 455-65 & 484-88 (1996). For a comprehensive evaluation of components of an Academic Success Program, see Knaplund and Sanders, *supra* note 4, at 202-06.

⁷ Stropus, *supra* note 6, at 485.

⁸ The Myers-Briggs Type Indicator was developed by Katherine C. Briggs and Isabel B. Myers based on the work of Carl G. Jung. Paul VanR. Miller, *Personality Differences and Student Survival in Law School*, 19 J. LEGAL EDUC. 460, 462 (1967).

⁹ At Rutgers-Camden, the MBTI inventory and workshops are conducted by Diana P. Avella and Mary Beth Daisey, certified testers who work at the Rutgers-Camden Office of Career Services. The Myers-Briggs Type Indicator must be administered by certified testers, and it would be impossible to conduct this kind of training without Ms. Avella's and Ms. Daisey's generous gift of their time and talent. For further information about the inventory, contact one of the two licensees: Consulting Psychologists Press, Inc. (3803 E. Bayshore Road, Palo Alto, California 94303) or Center for the Application of Psychological Type, Inc. (2720 N.W. Sixth St., Gainesville, Florida 32609). For a brief

helps illustrate how different "types" of people learn differently, and helps Professors and Teaching Assistants understand the theory behind the various methods of instructions recommended in the Rutgers-Camden Legal Research and Writing Professors' Manual.

In addition to assigned readings and traditional background lectures on new material, the Legal Research and Writing Professors use a variety of methods to discuss cases and teach analysis, writing and research skills, including the Langdellian¹⁰ method, collaborative exercises, role-playing, and other types of active learning.¹¹ One of the teaching methods included in the Legal Research and Writing Program is the use of visual techniques.

II. TEACHING THROUGH VISUAL TECHNIQUES

Visual techniques are an efficient method of conveying and organizing information to all types of people: "Visual representation acts as an organizer for ideas, improves comprehension, and functions as an aid to memory."¹² Law professors have endorsed visual techniques as a way of improving law teaching.¹³ The visual techniques described in this article can be easily in-

description of each type and how each type learns best, see David W. Champagne, *Improving Your Teaching: How Do Students Learn?*, 83 LAW LIBR. J. 85 (1991). For different views on how useful the MBTI is in helping improve student performance in law school, compare Vernellia R. Randall, *The Myers-Briggs Type Indicator, First Year Law Students and Performance*, 26 CUMB. L. REV. 63 (1995) with Cynthia V. Ward, *A Response to Professor Vernellia R. Randall's The Myers-Briggs Type Indicator, First Year Law Students and Performance*, 26 CUMB. L. REV. 11 (1995) and Vernellia R. Randall, *A Reply to Professor Ward*, 26 CUMB. L. REV. 121 (1995).

¹⁰ Stropus, *supra* note 6, at 451-55. The author discusses the origins and purpose of the Langdellian method (classroom discussions using questions and answers based on the original sources of law), arguing that it differs from the classic definition of "Socratic Method."

¹¹ A discussion of each of these techniques is beyond the scope of this article. Some of these techniques are discussed by Christopher Rideout and Jill J. Ramsfield, *supra* note 3, at 70-74.

¹² Kurt M. Saunders and Linda Levine, *Learning To Think Like a Lawyer*, 29 U.S.F. L. REV. 121, 185 (1994). "Most people, including juries and judges, learn more when they can both see and hear the material." Submission by Carol Rice, *Visual Aids Give Your Students the Big Picture*, *The Law Teacher*, Spring 1995, at 8.

¹³ Recent issues of Gonzaga University's Institute for Law School Teaching newsletter, *The Law Teacher*, have included articles on the use of graphics and visual aids in the classroom. See the submissions by Stephen L. Sepinuck and Carol Rice, *Visual Aids Give Your Students the Big Picture*, *The Law Teacher*, Spring 1995, at 8; Stephen L. Sepinuck, *For Some, Pictures Worth More Than Words*, *The Law Teacher*, Fall 1995, at 3; and Kevin C. McMunigal, *Graphics Help Students Decipher Evidence Rule*, *The Law Teacher*, Spring 1996, at 8.

corporated into Legal Research and Writing and other courses.¹⁴

Students can use the visual techniques described in this article to learn analysis and synthesis skills through the process of preparing to write memoranda or other documents in their Legal Research and Writing course. They will then be able to use these models to understand, organize, and integrate the numerous cases and other sources used in their other courses. Ultimately, students should be able to independently create¹⁵ the type of grids, charts, and outlines that help them succeed in their courses.

Appendix 1: Understanding a case

Early in the semester, students are introduced to case-briefing. The grid in Appendix 1 uses traditional case-briefing categories¹⁶ with a slight twist: by placing the trial and appellate rulings and rationales in sequential vertical categories in the grid, students can easily "see" the procedural history of the case. In addition, students can readily compare the differences in reasoning among the different levels of courts that ruled on the case. The grid also allows students to easily compare the majority rulings of the higher courts with any minority rulings or dissents by using the horizontal categories.

Appendix 2: Understanding a statute

In addition to cases, students in the Rutgers-Camden Legal Research and Writing Program work with statutes, which are usually the primary authority for the first memorandum that

¹⁴ For descriptions of other graphics or visual techniques that help students learn legal analysis and writing skills, see Linda Edwards and Paula Lustbader, *Teaching Legal Analysis*, 2 PERSPECTIVES 52 (1994) (discussing the use of concept maps, graphics and colors to organize information and mark the components of a complete analysis); and Barbara Blumenfeld, *A Photographer's Guide to Legal Writing*, 4 PERSPECTIVES 42 (1996) (discussing the use of photographs and the three concepts of determining theme, focusing attention on the theme and simplifying, to help teach novice writers "the necessary components of an effective legal document"). For a description of a grid that helps students understand how to effectively use the results of their research, see Peter Jan Honisberg, *Organizing the Fruits of Your Research: The Honisberg Grid*, 4 PERSPECTIVES 94 (1996).

¹⁵ "Nothing can substitute for independent learning." Stropus, *supra* note 6, at 487. See also Paul T. Wangerin, *Law School Academic Support Programs*, 40 HASTINGS L.J. 771, 86. (1989) ("Independent learning theorists believe that students, particularly adult students, do not learn well until they develop the ability to function outside the control of their teachers.").

¹⁶ See, e.g., CHARLES R. CALLEROS, *LEGAL METHOD AND WRITING*, 89-104 (2d ed. 1994) and NANCY L. SCHULTZ et al., *INTRODUCTION TO LEGAL WRITING AND ORAL ADVOCACY* 21-29 (2d ed. 1993).

students prepare during the semester. Students are often frustrated by complex statutes written in unfamiliar language. The detailed questionnaire in Appendix 2 helps students understand a statute by breaking it down into various categories: the statute's purpose, application, effect, elements, enforcement requirements, legislative history (and its relevance), and relationship to the case law and any regulations. This step-by-step process makes the difficult task of statutory analysis more manageable, and helps students focus on the facts of the problem that are relevant to each part of the statute. For example, Title VII has certain exceptions, including allowing qualifying religious schools to hire employees of a particular religion under certain circumstances.¹⁷ In answering question B-2 in Appendix 2, students must consider whether there are any facts that make the statute inapplicable to the particular employer. By focusing on this portion of the statute, the questionnaire allows students to pause to determine whether the statute actually applies to the particular employer, instead of rushing to analyze whether the employer's conduct constitutes discrimination. If this exception applies, the refusal to hire does not constitute discrimination.

Appendix 3: Legal analysis structure using "IRAC"

Once students begin the writing process, they must learn how to structure their legal analysis. The chart in Appendix 3 uses a simple problem to illustrate which legal issues are completely independent issues (guilt versus sentencing) and which legal issues are actually sub-issues of a larger issue (the causation and intent elements of murder). The chart also illustrates to students how each sub-issue must be supported by its own rule and analysis. This chart can be adapted to legal analysis paradigms other than IRAC, such as Richard Newman's "proof of a conclusion of law" discussed in *LEGAL REASONING AND LEGAL WRITING — STRUCTURE, STRATEGY AND STYLE*, at 84 (2d ed. 1994), or Linda Holdeman Edwards' "paradigm for a working draft"

¹⁷ 42 U.S.C. sec. 2000e-2 (e)(2). Some of the discussion of the E.E.O.C. regulations in the following charts is based on Lawrence Solotoff & Henry S. Kramer, *Sex Discrimination and Sexual Harassment in the Work Place*, (Law Journal Seminars - Press, Labor and Employment Law Series 1996)(Date originally published: 1994) and *Sex Discrimination Handbook* (Barbara S. Gamble, ed., B.N.A. Policy and Practice Series and Fair Employment Binder 1992).

discussed in LEGAL WRITING — PROCESS, ANALYSIS AND ORGANIZATION at 86 (1996).

Appendix 4: Determining the value of each authority

Novice law students are sometimes confused about the relative importance of the cases they receive in a closed memorandum packet or find through their research for an open memorandum. A typical “rookie mistake” is to over-rely on cases that are “on point” although these cases may not be mandatory or particularly persuasive authority. This grid allows students to consider various factors to determine how useful each of the authorities is: whether the authority is mandatory or persuasive, whether it is from a high-level or a low-level court, whether it is recent or old, and finally whether it is on point or analogous. Students can insert the name of each authority in the appropriate place in each of the vertical columns. An authority that seems very useful under one category (for example, it is “on point”) may not look as useful under a different category (for example, it is relatively old, or from a low-level court). This chart helps students place their authorities in a hierarchical order. Naturally, the analysis done through this chart must be supplemented by the more detailed analysis that results from the grid in Appendix 5. This Appendix helps students understand which authorities are “on point” and which authorities are useful in analyzing particular sub-issues.

Appendix 5: Grid for synthesizing cases

Besides being able to understand each legal authority studied, one of the most important skills required in law school is the ability to synthesize various authorities: “To excel at the Langdellian method, students must be able to take seemingly inconsistent decisions and precepts and assign a logical order to them.”¹⁸ Synthesis is at the heart of teaching legal writing.¹⁹ After understanding each case individually, students must synthesize them collectively and apply the synthesized rule to the fact pattern. The grid in Appendix 5 illustrates how a visual technique can be used to help students synthesize the authorities for

¹⁸ Stropus, *supra* note 6, at 466 (1996).

¹⁹ “The greatest difficulty faced by those who teach legal writing, however, is communicating to students that legal writing is a means towards synthesizing the law and preparing them for the complex legal and human problems of modern law practice.” Michelle S. Simon, *Teaching Writing Through Substance: The Integration of Writing With All Deliberate Speed*, 42 DEPAUL L. REV. 619 (1992).

a memorandum. The grid can be used to illustrate the historical development of a legal rule when the cases are placed in chronological order. The grid also allows students to see how the results differ when analyzed under the legal rule derived from each individual case (category 7) and when analyzed under the legal rule synthesized from all the cases (category 8). This particular grid compares authorities used for a closed memorandum problem, but students can adapt this form to synthesize any number of authorities (for example, to synthesize cases discussing the duty to warn in their Torts class, or synthesizing cases for a research memorandum).

The Closed Memorandum problem illustrated in Appendix 5 focuses on whether customers' preference for workers of a particular gender can be considered a *bona fide* occupational qualification²⁰ under Title VII.²¹ The Closed Memorandum cases show a semi-historical progression from the airline cases, in which the employers claimed that male business clients preferred to be served by female flight attendants,²² through more recent cases in which privacy is the reason for the customers' preference of a worker of a particular gender.²³ Privacy becomes part of the legal rule regarding *bona fide* occupational qualifications. This grid allows the students to compare the employers' and employees' actions and arguments in each case, synthesizing the authorities to determine how they apply to the facts of the Closed Memorandum.²⁴

CONCLUSION

The use of visual aids is just one of the teaching methods used in Academic Support that can be easily and successfully integrated into Legal Research and Writing and other courses to help students learn legal analysis and synthesis skills. The visual techniques illustrated in the appendices can help students understand the process of legal analysis and synthesis. The visuals work best initially when professors guide students in the use of these tools. However, the visuals cannot substitute for

²⁰ 42 U.S.C. sec. 2000e-2(e)(1) (1985).

²¹ 42 U.S.C. Sec. 2000e-1 to 2000e-17 (1985).

²² *Diaz v. Pan Am. Airways, Inc.*, 442 F.2d 385, 387 (5th Cir. 1971).

²³ *Jones v. Hinds Gen. Hosp.*, 666 F. Supp. 933, 935 (S.D. Miss. 1987); *EEOC v. Sedita*, 755 F. Supp. 808, 810 (N.D. Ill. 1991).

²⁴ *Hernandez v. Univ. of Saint. Thomas*, 793 F. Supp. 214 (D. Minn. 1992) was used as the inspiration for the facts of this Closed Memorandum, although a number of evidentiary issues were eliminated.

any student's individual process in understanding the legal authorities and synthesizing them. Rather, a variety of techniques and teaching methodologies should be used in Legal Research and Writing courses to help each student determine which techniques work best for her or him.

Appendix 1: An Alternative Way to Brief Cases

PARTIES:	Diaz v. Pan Am. Airways
JURISDICTION:	Federal
COURT:	5th Cir Ct of App
DATE:	1971
PAGE IN BOOK, CITE:	442 F.2d 385 (5th Cir. 1971)
TYPE OF CASE:	Employment discrimination

Relevant Facts: Airline refused to hire men as flight attendants. Applicant Diaz filed charges with the EEOC, which found probable cause of sex discrimination, but could not resolve matter with Pan Am. Applicant filed a class action suit in S.D. Fla.

Procedural History and Analysis

Court	(Majority) Rulings	Rationale	Dissent	Rationale
Trial Ruling or motion? Type of motion? Trial by Jury?	S.D. Fla: female gender = b.f.o.q. for flight attendant position	1. Airline's history using flight attendants 2. Passenger preference for women 3. Psychological reasons for preference: Women better at making flights more "pleasurable" 4. Hiring process: easier to hire only women than trying to find equally nurturing males		
Appellate	Reversed and remanded: female gender not b.f.o.q.	B.f.o.q. exception must be interpreted narrowly: must be necessary (not just convenient) for essence of business (not tangential point). Here, essence = travel; comfort = tangential. Business can look for individuals with desired characteristics, not gender-based stereotypes.	n/a	n/a
Supreme	n/a	n/a		

Appendix 2: Statutory Analysis Steps

Issues to consider	Answers and citations
A. Why is the statute being analyzed? 1. To learn statutory interpretation skills (<i>LR&W</i> problems) 2. To learn elements of widely used or model statutes (Federal Rules of Civil Procedure, Model Penal Code, U.C.C.) 3. To compare sample statutes from different jurisdictions (majority vs. minority rules) 4. To analyze the relevant law in a particular jurisdiction	Title VII (42 U.S.C. 2000e-1 to 2000e-17 (1985)) is binding on facts of the closed memo problem
B. Where and to whom does the statute apply? 1. Jurisdiction (See J, below) a. State b. Federal 2. Specific persons or entities within the jurisdiction a. All persons or entities, or b. just those with certain characteristics? (Ex-convicts, those who receive federal funds)	1. Federal 2. Applies to employers, employment agencies, and labor organizations
C. What is the effect of the statute? 1. To prohibit certain conduct (murder, unauthorized practice of law) 2. To set standards (who is allowed to drive, requirements for opening a nursing home) 3. To set rules for certain conduct (what one is not allowed to do when driving, rules of conduct for attorneys)	1. Prohibits discrimination in employment based on race, color, religion, sex or national origin
D. What are the elements of the statute? 1. proscribed or required conduct (underage drinking, passing the bar exam before practicing law) 2. requisite state of mind (negligence, recklessness, intent, none stated) 3. particular result required from conduct? (compare drunk driving [where conduct is sufficient for conviction] to death by auto [where a particular result of the conduct is required for conviction])	1. Prohibits discrimination in hiring, discharging, and employment practices, references for employment and membership/referrals in labor organizations 2. Disparate impact: not part of this closed memo problem
E. Who can enforce the statute? 1. Agency a. local law enforcement agencies for state statutes; Federal law enforcement agencies for Federal criminal statutes, etc. 2. Individuals or entities a. Does the statute provide a private right of action (civil damages or injunction for violation of statute)? 3. Evidence of violation of a statute may be relevant in tort cases	1. Agency: EEOC 2. Individuals discriminated against

F. How is the statute enforced? 1. Agency a. Injunctions b. Fines or civil penalties c. Criminal sanctions d. Granting or refusing to grant licenses or permits 2. Individuals or entities a. Payment of damages to individuals in civil actions b. Injunctions	Individual files "charge of discrimination" with EEOC, which investigates, and if finds probable cause of discrimination may either attempt conciliation, issue right to sue letter to individual (or individual may request a right to sue letter 180 days after charge is filed) allowing the individual to file a lawsuit in state or federal court, or EEOC may file a lawsuit without a particular plaintiff. \$ & injunctions are possible remedies.
G. Is the legislative history of the statute relevant? 1. Are the words of the statute clear? 2. If not, is there a need to establish the intent of the legislature? 3. What is the source of your knowledge about the legislative history?	Very little legislative history per <u>Diaz</u>
H. What is the relationship between the statute and case law? 1. Previous common law a. Does statute codify (adopt) previous common law? If so, prior cases are most likely still relevant to the analysis b. Does statute overrule (reject) previous common law? What portions of prior cases are rejected? 2. Cases decided under the statute a. cases may interpret words of the statute on a continuum from broadly to strictly	In this problem, cases interpret the "bona fide occupational qualification" exception.
I. Are there regulations pursuant to the statute? 1. Regulations are promulgated by agencies to put into effect the statute enacted by the legislature; regulations are usually more specific than statutes Examples: State Environmental Protection Agency for State Environmental Regulations; Federal Environmental Protection Agencies for Federal Environmental Regulations. Each regulation can in turn be analyzed according to the questions raised above.	EEOC regs: 29 C.F.R. Sec. 1600 (1995)
J. Are there other Federal or state statutes that may be relevant? Consider: 1. Whether these other statutes also apply, and their effect 2. Federal preemption of state law 3. Jurisdictional limitation and tactical choice of forum	There may be state or even local anti-discrimination laws -- not relevant to this closed memorandum problem

Appendix 3: Example of Legal Analysis Structure

ISSUE #1:	IS DEFENDANT GUILTY OF MURDER IF SHE CAUSES A CAR ACCIDENT WHICH RESULTS IN THE DEATH OF THE VICTIM?	
	Sub-Issue 1:	Did her acts cause the death of the victim?
		Rule: Legal rules from the jurisdiction regarding causation.
		Application: Application of the rule of law to the facts of the problem. Analysis usually includes the reasonable positions of each side. E.g., in this problem, what Prosecutor and Defense would argue regarding causation: the Prosecutor may be arguing the majority rule, while the Defense maybe arguing the minority rule or the exception to the rule; or, Prosecutor and Defense may disagree on the facts.
		Conclusion to Sub-Issue 1: Answers to question posed in the Issue: <i>Defendant did/did not cause the death of the victim.</i>
	Sub-Issue 2:	Did the Defendant intend to kill?
		Rule: Legal rules in the jurisdiction regarding intent.
		Application: Application of rule of law to facts of the problem.
		Conclusion to Sub-Issue 2: Answers the question posed in the issue: <i>Defendant did/did not intend to kill the victim.</i>
	CONCLUSION TO ISSUE #1: DEFENDANT IS/IS NOT GUILTY OF MURDER.	

ISSUE #2:	DID DEFENDANT RECEIVE AN EXCESSIVE SENTENCE?	
	Rule:	Legal rules on sentencing.
	Application:	Application of rules to facts in the problem.
	CONCLUSION TO ISSUE #2:	DEFENDANT DID/DID NOT RECEIVE AN EXCESSIVE SENTENCE.

Appendix 4: Factors to consider when synthesizing and organizing more than one legal authority

Ideally, each legal issue would be resolved by finding a clearly relevant statute or a precedent case exactly on point and recently decided by the jurisdiction's highest court. Obviously, this type of authority is rarely available. Attorneys must balance all of the factors below in determining the rule in a particular jurisdiction. The authorities for the closed memorandum can be examined in this grid to determine how useful they are.

Applicable statute or Constitutional provision	Mandatory authority: Statute or court in the jurisdiction	Highest court	Recent case	Case on point (See Appendix 5, Synthesis Exercise)	BEST OR MORE RELEVANT AUTHORITY
Title VII and regs	Title VII and regs All cases are federal, from outside the district where the facts are set.	<u>Diaz</u> (Fed Ct of App)	<u>Sedita</u> (1991)	<u>Held:</u> <u>(Distinguishable)</u> <u>Sedita</u>	<u>Jones</u> <u>Sedita</u>
		<u>Jones, Sedita</u> (Dist Ct)	<u>Jones</u> (1987)	<u>Analogous case</u>	
			<u>Diaz</u> (1971)	<u>Diaz</u> (Distinguishable)	<u>Diaz</u>
Analogous or related statute or Constitutional provision	Persuasive authority: Statute or court outside the jurisdiction	Lowest court	Older case	Very different case	LESS RELEVANT AUTHORITY

Appendix 5: Synthesis Exercise

Authorities:	<u>Diaz v. Pan Am Airways, Inc.</u> , 442 F.2d 385 (5th Cir. 1971)	<u>Jones v. Hinds Gen. Hosp.</u> , 666 F. Supp. 933 (S.D. Miss. 1987)	<u>EEOC v. Sedita</u> , 755 F. Supp. 808 (N. D. Ill. 1991)	Basis for Facts of closed memorandum: <u>Hernandez v. Univ. of Saint. Thomas</u> , 793 F. Supp. 214 (D. Minn. 1992)
1. Facts	Airline refused to hire men as flight cabin attendants claiming customers preferred women in those positions.	During layoffs, male orderlies with less seniority retained over females with greater seniority b/c males helped male patients with intimate functions.	All- female health club refused to hire men as instructors and managers claiming customers would be uncomfortable with them.	New University policy reassigned male custodian out of female-only dormitories.
2. Rule from the authority regarding sexual discrimination based on customer preference	not bfoq unless necessary to essence of business	gender = bfoq if necessary to preserve privacy rights of patients	gender not bfoq for manager and instructor position b/c alternatives existed to protect customers' privacy	privacy must go to core of employee's job performance and be central to business enterprise.
3. Employer Action (refusal to hire or dismissal)	refusal to hire male flight attendants	laid off senior females, retained male orderlies	refusal to hire male instructors and managers	reassigned custodians to work in buildings with students of same gender as custodians
4. Reason why employer claimed that its action was not discriminatory (bfoq)	women preferred by and more comforting to passengers	needed male orderlies to help male patients with intimate functions	customers preferred female-only health club	wanted to protect students' privacy
5. Was the employer's reason accepted by the court? Why or why not? Distinguish reasons based on legal rule from reasons based on evidence (proof)	Accepted by trial court but rejected by appellate court: for bfoq, gender must be necessary to essence of business, not tangential to business.	Persuasive evidence provided factual basis supporting claim re privacy concerns of patients; no scheduling alternatives possible: minimum # of males required for job	No factual basis (evidence problem) that males would undermine business interest; customers' privacy interests can be protected with reasonable alternatives.	sum jdgmt denied b/c genuine issue of material fact: do male janitors in female dorms undermine the central purpose of college by violating students' privacy interests
6. How does this authority apply to the fact pattern?	Matching gender of janitors to students necessary to essence of business? Business = education; cleaning dorms = tangential?	Is privacy interest established or just pretext? Any alternatives to laying off male janitors?	Factual basis for privacy interest? Reasonable alternatives to reassigning janitors?	(This case is the basis for the facts used in the closed memorandum problem)
7. Result when the authorities are applied together (considering value of each authority -- See Appendix 4)	Title VII anti-discrimination exception if gender = bfoq 1. Customer preference not enough; 2. need factual basis that protecting privacy is (a) necessary to (b) essence of business, not pretext and not tangential to business; 3. no reasonable alternatives exist to avoid gender preference.			