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This Time It's for Real: Using Law-Related Current Events in the Classroom¹

By Amy R. Stein

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Using law-related current events in the classroom is a great way to engage first-year students, as well as help them develop the habit of keeping up-to-date on the current state of the law. A legal writing teacher does not have to look far to find real news stories with a legal angle that provide a teachable moment. Using the same factual scenario throughout the semester to illustrate various legal writing concepts provides continuity and gives the students the sense that they are representing an actual client.

I use a series of stories from the New York Post about a dead schoolmate's brain discovered in a jar on a class trip to the medical examiner's office² and the ensuing lawsuit under the obscure right of sepulcher doctrine³. The common-law

right of sepulcher "seeks to assure the right of the decedent's next of kin to have immediate possession of the body for preservation and burial, and it affords damages when there has been interference with that right. In such cases, the recovery of damages for emotional distress is permissible where it is alleged to have been caused by the negligent mishandling of a corpse."⁴ Obviously a story like this makes for lively class discussion, but it can also become an excellent opportunity to teach students.

This article will discuss research, analysis, writing and oral advocacy exercises that I have created which integrate this real fact pattern into the curriculum. The exercises all function independently of each other, so

¹ Southside Johnny and the Asbury Jukes, *This Time It's for Real*, on *This Time It's for Real* (Epic Records 1977). This article is based on a presentation that I gave at the Capital Area Legal Writing Conference held at George Washington Law School in February 2011.

² Doug Auer & Dareh Gregorian, *Family Sues ME Office After Discovering Son's Brain was Removed*, N.Y. Post, October 1, 2010, http://www.nypost.com/p/news/local/staten_island/family_sues_me_office_after_discovering_w3kzyPQ2nvV51MOaKcEh6O; Doug Auer & Dareh Gregorian, *Dead Staten Island Teen's Brain on Display at Morgue*, N.Y. Post, October 2, 2010, http://www.nypost.com/p/news/local/staten_island/brainless_move_by_the_coroner_QUIOnajLCVtBIpOBirVL5O; Reuven Fenton & Dareh Gregorian, *Parents' Haunted by 'Brain in Jar'*, N.Y. Post, October 8, 2010, http://www.nypost.com/p/news/local/staten_island/frankenstein_tqPx1hyTwp6bZ0hLnXrbeL.

³ *Shipley v. City of New York*, No. 101114/06, 2009 WL 7401469 (N.Y. Sup. Ct. March 4, 2009) (Trial Order); *Shipley v. City of New York*, 908 N.Y.S.2d 425, 427 (N.Y. App. Div. 2d Dep't 2010).

⁴ *Shipley v. City of New York*, No. 101114/06, 2009 WL 7401469 (N.Y. Sup. Ct. March 4, 2009) (Trial Order).

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you can use one or more of them depending on the amount of time you have available.

The Client's Story

On January 9, 2005, 17-year-old high school student Jesse Shipley was tragically killed in an automobile accident on Staten Island.⁵ On January 10, 2005, an autopsy was performed on Jesse's body with the consent of his father.⁶ Following the completion of the autopsy, a wake and a funeral service were held, with Jesse's remains thereafter buried in a Roman Catholic cemetery on January 13, 2005.⁷ Unbeknownst to Jesse's family, his brain was not returned with the body, even though Dr. Stephen de Roux of the Medical Examiner's Office (hereinafter "ME") had already concluded that Jesse's death had resulted from multiple blunt impacts to the head during the accident which produced skull fractures and brain hemorrhages. Rather, it had been removed at the time of the autopsy and, according to the autopsy report signed by Dr. de Roux on May 16, 2005, it was "fixed in formalin for [subsequent] neuropathologic examination and reporting."⁸

In early March 2005, approximately two months after Jesse's funeral, a group of forensic science students from Jesse's high school was on a field trip at the Richmond County Mortuary. "During their tour of the facility, the students entered a room in which there was, among other things, a cabinet containing various human organs in specimen jars. Some members of the group observed that one of the jars held a human brain in a formaldehyde solution. In what can only be described as a surreal coincidence, the label on the jar indicated that the brain was that of Jesse Shipley, a circumstance which evoked strong emotional reactions from some of the students who were present."⁹ Jesse's younger sister, Shannon, was in the car during

the accident that killed Jesse. Shortly after the students returned from the trip, they told Shannon what they had seen. "She couldn't believe it," her dad said, she was "very hysterical."¹⁰ A day or two after the class trip, on March 9, 2005, two doctors from the Medical Examiner's Office dissected and examined Jesse's brain, and issued a report confirming Dr. de Roux's findings from two months earlier. When subsequently asked about the reason for the two-month interval between the autopsy and the examination of Jesse's brain, Dr. de Roux explained, "I wait months, until I have six brains, and then it's kind of worth [Dr. Mena's] while to make the trip to Staten Island to examine six brains. It doesn't make sense for him to come and do one."¹¹

The family received a copy of the autopsy report on May 31, 2005.¹² Among the allegations contained in the complaint was that the undisclosed withholding of the brain had necessitated a second funeral: "The Shipley's were informed by their priest, that their son's burial was not proper without the remaining body parts. Because of this, the Shipley[s] had to go through another anguishing funeral service for their son."¹³ The second funeral service was described as "macabre," with "jars holding the teen's brain and other tissue samples being buried in a small casket atop the one with his body."¹⁴ On March 31, 2006, Jesse's parents and sister Shannon sued the City of New York and the Medical Examiner's Office, seeking to recover damages for the emotional injuries they suffered as a result of the alleged mishandling of and interference with the proper disposition of Jesse's remains.¹⁵

Hard as it is to believe, at the same time that the *Shipley* case was making news, a similar case

"In early March 2005, approximately two months after Jesse's funeral, a group of forensic science students from Jesse's high school was on a field trip at the Richmond County Mortuary."

⁵ *Shipley*, 908 N.Y.S.2d at 427. The sad facts of the *Shipley* case were examined in depth by the Appellate Court; this factual summary is taken in large part from the opinion.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* at 427-28.

¹⁰ Reuven Fenton & Dareh Gregorian, *Parents' Haunted by 'Brain in Jar'*, N.Y. Post, October 8, 2010, http://www.nypost.com/p/news/local/staten_island/frankenstein_tqPx1hyTwp6bZ0hLnXrbeL.

¹¹ *Shipley*, 908 N.Y.S.2d at 428.

¹² *Id.*

¹³ *Id.*

¹⁴ Reuven Fenton & Dareh Gregorian, *Parents' Haunted by 'Brain in Jar'*, N.Y. Post, October 8, 2010, http://www.nypost.com/p/news/local/staten_island/frankenstein_tqPx1hyTwp6bZ0hLnXrbeL.

¹⁵ *Id.*

“It is never too early to get students to understand that it is the job of a lawyer to solve a problem for a client.”

was reported on by the *Post*.¹⁶ Vasean Alleyne, an 11-year-old Queens resident, was killed by a drunk driver. Months after Vasean's death in October 2004, his mother, Monique Dixon, learned that she had buried her son without his brain and spinal cord. She only learned that the ME had retained her son's organs when she read his autopsy report alone in her apartment. She also held a second funeral to bury her son's organs.¹⁷ Like the Shipleys, she sued the City of New York and the Medical Examiner's office for violation of the right of sepulcher.¹⁸

Bringing the Story into the Classroom

Because this factual scenario implicates so many different aspects of legal writing, I am able to weave it in throughout the semester. The advantage of using a familiar factual setup means that I have a go-to situation that I can rely on to demonstrate a particular concept. To date, I have been able to use the *Shipley* case as a vehicle to discuss client interviewing, research, analysis, drafting and oral argument. All this from a few short newspaper articles! Early in the semester to introduce the problem to the class initially, I post links to the relevant *New York Post* articles on the class Web page and have them read them before class.

Client Interviewing

It is never too early to get students to understand that it is the job of a lawyer to solve a problem for a client. In addition to asking students to read the articles, I also assign them the chapter on client interviewing in their book.¹⁹ We then have a class discussion about client interviewing generally, and how you would treat Andre and Korisha Shipley, Jesse's grieving parents, if they

came to your office seeking counsel. The copies of the articles I post contain pictures of Jesse, as well as of his parents, which helps them to understand that clients are real people with real problems, not just abstractions in a casebook.

We discuss the facts of the case in great detail. I start the process of conveying to students that an in-depth knowledge of the facts is required in order to give the client advice on how to proceed. For example, a student might state, "Jesse died in a car accident. There was an autopsy. After the autopsy, the Medical Examiner kept the brain when he returned the body. Jesse was buried without his brain." Yes, that is an accurate statement of the facts, but if that is all that the lawyer has extracted from their client, have they done an effective interview? Clearly the answer is no and we talk about what is missing from this simple exposition. We talk a bit about figuring out how to ask good questions and, equally important, good follow-up questions. As a class, we focus in on one aspect of the topic and draft sample questions on that topic. This makes students realize quite quickly that starting out with broad questions - "How did you find out that the Medical Examiner had retained Jesse's brain?" - and then moving to the narrow that will elicit the most thorough responses - "What are the names of the students who were on the class trip to the ME's office? What is the name of the student or students who informed your daughter about the presence of Jesse's brain in the ME's facility? How was this information communicated to her?" An effective way to illustrate the importance of good questioning is through a demonstration. Consider asking a teaching assistant or a former student to play the role of Mr. or Mrs. Shipley and run through a mock interview. This technique will graphically demonstrate the differences between effective and ineffective questioning. While we are focused on the attorney-client relationship, I touch lightly on retainer agreements and predicting outcomes, topics also covered briefly in the textbook.²⁰

I remind the students that there are two sides to every story, and that they need to give some thought

¹⁶ Tim Perone & William J. Gorta, *Numbskull ME in new Head Case*, N.Y. Post, October 3, 2010, http://www.nypost.com/p/news/local/queens/numbskull_me_in_new_head_case_fl2saEFGk5pFCqjga9aMxL.

¹⁷ *Id.*

¹⁸ *Dixon v. City of New York*, 908 N.Y.S.2d 433 (N.Y. App. Div. 2d Dep't 2010).

¹⁹ Richard K. Neumann, *Legal Reasoning and Legal Writing Structure, Strategy, and Style* 71-75 (6th ed. 2009).

²⁰ *Id.*

to what position the Medical Examiner's office will take, and what defenses they may raise. That is a bit difficult for them to determine at this point, since the articles say very little about the Medical Examiner, and focus primarily on the Shipleys. However, it is something they need to continue to think about as we move forward.

Research

I always liken research to a scavenger hunt where you use each clue you obtain to take you to the next step in finding the final treasure. Because there are newspaper articles and reported decisions on both the *Shipley* and *Dixon* cases, this scenario is an excellent vehicle for demonstrating this concept. I ask a student to come to the front of the class and serve as the researcher. First, the student types "Jesse Shipley" into the Google search bar. That turns up a host of news stories about the case, but not the court decisions. It also turns up a few articles about the *Dixon* case. Next, I have the researcher run the same search in Google Scholar and, miraculously, the *Shipley* trial and appellate opinions pop up. The *Dixon* case does not, though typing in the names of either the decedent or his mother (both given in the newspaper articles) does bring up that case. This is a wonderful opportunity to talk about Google Scholar, its strengths (free! free! free!) and weaknesses (no case updating), and to highlight the differences between free and fee-based sources available on the Internet. We then run searches on both Westlaw and LexisNexis, and students realize that these databases provide case updating, as well as links to many useful secondary sources. For example, when the students KeyCite and Shepardize the *Shipley* cases, they are led to the *Dixon* case. We also talk a bit about developing good search terms and a research plan, topics they are already familiar with from their research text.²¹ Once they look at either of the *Shipley* decisions, they will see for the first time the phrase "right of sepulcher," which is the theory under which plaintiffs' are seeking recovery and clearly an

excellent search term. Indeed, searching this term takes them to the relevant section in New York Jurisprudence,²² a New York treatise that they will likely use throughout their legal careers, as well as to other commonly used national treatises.²³

Legal Analysis

After locating the three relevant opinions as a class, students are instructed to read and analyze them prior to our next meeting. I ask them to prepare briefs for all of the cases, and to be prepared to discuss the relationship between the trial and appellate court opinions in *Shipley*. We start with the *Dixon* decision,²⁴ because we can dispose of it quickly. That decision deals not with the merits of the case, but with whether or not Plaintiff has filed a timely notice of claim, a prerequisite for bringing suit against a governmental defendant in New York.²⁵ While this decision does not advance their understanding of the right of sepulcher, it does provide me with an opportunity to remind students that ignorance of deadlines can lead to an impairment of their client's rights, as well as legal malpractice claims.

We then move on to the two *Shipley* decisions. The Trial Court denied defendants' summary judgment motion seeking dismissal for failure to state a cause of action.²⁶ I ask the students to identify the two reasons the Court gives for denying the motion, which are: 1) the City of New York "failed to establish as a matter of law that the decedent's brain was lawfully retained for scientific purposes, i.e., neuropathological examination, in light of the fact that the autopsy report concluded that the

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²² 18 N.Y. Juris. 2d *Cemeteries and Dead Bodies* § 88 (2d ed. Supp. 2011).

²³ See, e.g., 25A C.J.S. *Dead Bodies* § 25 (2011); 22A Am. Jur. 2d *Dead Bodies* § 20 (2011).

²⁴ *Dixon v. City of New York*, 908 N.Y.S.2d 433 (N.Y. App. Div. 2d Dep't 2010).

²⁵ N.Y. Gen. Mun. Law § 50-e(1) (McKinney 2010).

²⁶ *Shipley v. City of New York*, No. 101114/06, 2009 WL 7401469 (N.Y. Sup. Ct. March 4, 2009) (Trial Order) (citations omitted). The Trial Court did dismiss the cause of action brought by Shannon Shipley, finding that she lacked capacity to sue under the relevant statute. The Shipley's did not appeal this dismissal.

²¹ Amy Sloan, *Basic Legal Research Tools and Strategies*, 25-28, 305-32 (4th ed. 2009).

“If time permits, I ask the students to take a moment to reflect on where the case stands right now. After some discussion, students come to the realization that..the issues have been narrowed for trial.”

death was attributable to, inter alia, blunt impact injuries to the head, i.e., skull fractures;²⁷ and 2) the City did not prove that they apprised the Plaintiffs that decedent’s brain had been removed when they received his body for burial. “In fact, the City’s only proof on this issue, a copy of the report notifying plaintiffs of same, was not even typed until May 4, 2005, some four months after the plaintiff was buried. Thus, a question of fact exists as to whether or not the City unlawfully interfered with plaintiffs’ right of sepulcher.”²⁸

We then examine the Appellate Court’s treatment of the case. While the Appellate Court disagreed with the Trial Court’s finding that the City had failed to prove that the brain autopsy was authorized based on the cause of death, it affirmed that portion of the Order denying summary judgment to the defendants on the right of sepulcher claim. The Court engages in a lengthy analysis of the statutory powers and discretionary authority of the Medical Examiner’s Office and concludes that they are “extensive.”²⁹ The Court also concedes “the long recognized ... interest of a decedent’s kin in the remains of their decedent, and infringement upon that interest repeatedly has been acknowledged to be actionable.”³⁰ The Court recognizes the balance that must be struck between the medical examiner’s right to exercise their discretion in how they conduct an autopsy with the next of kin’s right to preserve and bury the decedent’s remains once the “legitimate purpose for the retention of those remains have been fulfilled.”³¹ The Court points out that the conflict in this case could have easily been satisfied “by the simple act of notifying the next of kin that, while the body is available for burial, one or more organs have been removed for further examination.”³² This would have allowed

the family to make an “informed decision” as to whether they bury the body without the missing organs, or choose to wait until the removed organs are released to them. “This requirement, hardly onerous in nature, strikes an appropriate balance” between these two conflicting demands.³³ The Appellate Division further finds that this lack of notification, coupled with the further anguish the parents suffered as a result of having to “endure” a second funeral service “states a cause of action to recover for the violation of the right of sepulcher.”³⁴

Drafting a Client Advice Letter

If time permits, I ask the students to take a moment to reflect on where the case stands right now. After some discussion, students come to the realization that discovery has been completed and the issues have been narrowed for trial. I suggest to them that now might be a good time to report to the client on what has happened, and see if they are interested in having you pursue a settlement ahead of trial. We talk about some of the things that they will want to report to the client: the fact that the vast majority of cases settle before trial; which claims survived summary judgment and which did not and why; the emotional cost of having to testify about these heart-wrenching events; and a broad assessment of the monetary value of the case based on a review of other, similar cases.³⁵ I then assign the reading material in their text on client letters,³⁶ and instruct them to work in pairs to draft a short client advice letter.³⁷ I collect their efforts, and we also discuss them in class, time permitting.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Shipley v. City of New York*, 908 N.Y.S.2d 425, 430 (N.Y. App. Div. 2d Dep’t 2010).

³⁰ *Id.* (citations omitted).

³¹ *Id.*

³² *Id.* at 431.

³³ *Id.* at 432.

³⁴ *Id.*

³⁵ According to the online docket for the *Shipley* case, there was a final disposition on June 27, 2011, and the case was removed from the calendar. Most likely, this means that there was a private settlement. New York State Unified Court System WebCivil Supreme Case Information, <http://iapps.courts.state.ny.us/webcivil/FCASearch> (last visited July 13, 2011).

³⁶ Richard K. Neumann, *Legal Reasoning and Legal Writing Structure, Strategy, and Style*, 267-71, 457-60 (6th ed. 2009).

³⁷ For a collection of resources on client advice letters, see M. Lisa Bradley, *Implementation of Collaborative Assignments*, 19 *Perspectives: Teaching Legal Research and Writing* 186, fn. 14 (2011).

Oral Argument

The final way in which I use the fact pattern is as an oral argument exercise. Since I don't grade it, this is an easy, non-threatening way to introduce the students to oral advocacy. I ask each student to imagine that they are a busy trial judge who has just read the parties' briefs on the summary judgment motion. I give the students two index cards and I instruct them to write on one card the two things they feel they must hear from the plaintiffs attorney, and two things they must hear from the defense lawyer on the other. I assume the role of trial judge and ask the students to come up in pairs and represent the interests of one or the other side. I question them from the cards. Then, I ask them to switch sides so they get to argue from both perspectives because being an effective advocate means being able to articulate all sides of an argument, even if it isn't a position that you agree with. Giving each pair of students

five minutes is more than enough, after all this exercise is just meant to be an *hors d'oeuvre*, the main course will come in the spring semester with their appellate argument. Students who are very confident in their oral skills will either gain more confidence or realize that perhaps they were overconfident; those students who are terrified of public speaking will hopefully realize that it's probably not quite as bad as they feared.

Conclusion

Integrating a real, client-based factual scenario into the legal writing classroom is a successful strategy for both the professor and the student. It helps the professor to model the concepts being taught in a concrete, relatable way. It provides students with a fun and interesting vehicle for developing their research, writing, and oral advocacy skills. It also helps them begin to develop an understanding of what it truly means to represent a client.

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Another Perspective

“From the moment I began teaching legal ethics, just about twenty years ago, I began with “stories ripped from the headlines” by writing role-plays, based on real cases, to place students in the actual role of having to make a legal ethics choice in a simulated situation (so that no real consequences would flow therefrom and possibly hurt a client, but in which a student would feel and experience what making a choice of behavior was like). My students have been prosecutors, divorce lawyers, class action lawyers, legal aid lawyers, public defenders, corporate lawyers, labor union lawyers, clients, disciplinary board members, paralegals, associates, partners, cabinet officers, public officials, candidates for public offices or judgeships, judges, political radicals and conservatives, truth tellers and truth exaggerators. They have negotiated, counseled, examined witnesses, tried and decided cases, presided over office meetings, testified to committees and administrative agencies, lobbied and made decisions about who gets hired, fired and who gets legal services.”

Carrie Menkel-Meadow, *Forward. Telling Stories in School: Using Case Studies and Stories to Teach Legal Ethics*, 69 *Fordham L. Rev.* 787, 814-815 (2000).