

# ANALYSIS DECONSTRUCTION:

*AN ANALYSIS AUTOPSY*

Shelley Bennett

Thurgood Marshall  
School of Law

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# ANALYSIS DECONSTRUCTION

2

*begins with*

## ANALYSIS CONSTRUCTION

- IRAC
- CRAC
- CREAC
- CRRPAC

# AND WOULD YOU BELIEVE . . .

- IGPAC
- FHRO
- CRuPAC
- IRLAFARC
- RREACC
- IHAC
- IRRAPC
- QfrFR + IRAC
- TRRAC
- CRPA
- IRAAAC
- BaRAC
- IRLAFARC
- TREAT

What???

# WHATEVER YOU CALL IT, IT DOES HELP.

- We provide an analytical formula, typically some version of CRAC.
- We emphasize the importance of organizing an analysis around legal issues, synthesizing rules for each issue, explaining cases to illustrate that rule, and then applying the law to the facts.
- In the confusion of 1L stress and chaos, we provide a lifeline of analytical order.

But . . . have you ever felt like  
this?





I know I taught them how to do<sup>6</sup>  
this.



Can anybody hear  
me???

# ANALYSIS DECONSTRUCTION or *Analysis Autopsy*

- **autopsy**
- noun
- au·top·sy 'ò- tāp-sē 'ò-təp-
  - 1
- : an examination of a body after death to determine the cause of death
  - 2
- : a critical examination, evaluation, or assessment of someone or something

# ANALYSIS AUTOPSY

The exercise of working backwards to take apart an analysis bit by bit.



# EXERCISE TOOLS

- Completed writing assignment
- Assignment fact documents
- Case charts (if any)
- Case pool

# BYSTANDER LAW FACT PATTERN

- Jackson was talking to his wife Delia on the phone as Delia and her son, who was Jackson's stepson, had been walking home from the library.
- Jackson then heard over the phone screeching tires and the sounds of Delia's screams before the phone dropped to the ground.
- Jackson feared that one or both of them had been hit by a car.
- Jackson was at their home a few blocks away so he sprinted to the accident scene to find his stepson unconscious in the street.
- This accident occurred in Houston.
- The students were instructed to write a predictive memo analyzing 2 elements of the bystander law: whether Jackson and his stepson were closely related and whether Jackson contemporaneously observed the accident.

# THE CASE POOL\*

- *United Servs. Auto. Ass'n v. Keith*, 970 S.W.2d 540 (Tex. 1998)
- *Texas Dept. of Corr. v. Miles*, 343 S.W.3d 238 (Tex. App.—Houston [1st Dist.] 2011)
- *Jones v. City of Houston*, 294 S.W.3d 917 (Tex. App.—Houston [1st Dist.] 2009)
- *Garcia v. San Antonio Hous. Auth.*, 859 S.W.2d 78 (Tex. App.—San. Antonio 1993)
- *General Motors Corp. v. Grizzle*, 642 S.W.2d 837 (Tex. App.—Waco 1982)
- *Bedgood v. Madalin*, 589 S.W.2d 797 (Tex. App.—Corpus Christi 1979)

\*Please note that many of these cases have been edited to suit the objectives of the closed assignment. If you look up one of these cases in an electronic database, for example, you might find that I changed the date or the jurisdiction, removed extraneous issues, or changed an unreported citation to a reported citation (for simplicity in the first and second memos). Also, the above citations do not include writ or petition history because students had not received Greenbook instruction at the time of this assignment.

# AFFIRMATIVE ARGUMENT

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Although Jackson did not visually witness the accident, he heard it over the phone. He perceived the accident auditorily.

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No one informed him of the accident. He perceived it by hearing it over the phone.

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Jackson's wife, Delia, did not tell him about the accident. She screamed and dropped the phone. He did not hear of the accident from someone else. He did not know who—if anyone—had been hurt until he arrived on the scene.

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Jackson witnessed the consequences of the accident almost immediately after hearing it.

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Jackson lost 15 lbs and had severe anxiety and nightmares about hearing accident over phone.

#### Application

(AA)

--Although Jackson did not visually witness the accident, he heard it over the phone. He perceived the accident auditorily.

--No one informed him of the accident. He perceived it by hearing it over the phone. He did not hear about the accident from Delia. She screamed and dropped the phone. He did not hear of the accident from someone else. He did not know who—if anyone—had been hurt until he arrived on the scene.

--Jackson was on the scene moments later. He witnessed the consequences of the accident almost immediately after hearing it.

--Jackson lost 15 lbs and had severe anxiety and nightmares about hearing accident over phone.



# THE LAW

- Overall rule: (1) located near the scene of the accident, (2) suffered shock as a result of sensory and contemporaneous observance, and (3) P and victim were closely related. [Roadmap paragraph]
- P must establish that he suffered shock bc of a direct emotional impact from a sensory and contemporaneous observance of the accident and did not learn of accident from others after occurred. (Multiple cases, including *Keith*, Tx S Ct 1998)
- P may be a bystander, even if not present at time of accident, as long as he had a firsthand contemporaneous perception of the accident. (*Jones*, Houston [1st] 2009)
- P must be sensorily aware of the accident to contemporaneously observe it. (Multiple cases, including *Keith*, Tx S Ct 1998)
- Actual observance of accident is not required if there is otherwise an experiential perception of it, as distinguished from a learning of it from others after it occurred. (*Miles*, Houston [1st] 2011; *Jones*, Houston [1st] 2009)
- Perception of an accident is contemporaneous for a parent who does not see but hears the accident that injures his child and then sees the results of the accident. (*Madalin*, Corpus Christi 1979)
- Perception is contemporaneous for a parent who does not see accident occur because immediately observes the consequences because she is “so close to the reality of the accident as to render her experience an integral part of it.” (Grizzle, Waco 1982)

# AFFIRMATIVE ARGUMENT *with Rules*

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Although Jackson did not visually witness the accident, he heard it over the phone. He perceived the accident auditorily.

--Actual observance of accident not required if there is otherwise an experiential perception of it

---Perception of an accident was contemporaneous for a parent who did not see but heard the accident that injured his child and then saw the results of the accident.

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No one informed him of the accident. He perceived it by hearing it over the phone.

---

Jackson did not hear about the accident from Delia. She screamed and dropped the phone. He did not hear of the accident from someone else. He did not know who—if anyone—had been hurt until he arrived on the scene.

--Actual observance of accident not required if P experientially perceived the accident and did not learn of it from others after it occurred.

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Jackson witnessed the consequences of the accident almost immediately after hearing it.

---He was “brought so close to the reality of the accident as to render [his] experience an integral part of it.”

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Jackson lost 15 lbs and had severe anxiety and nightmares about hearing accident over phone. –

-- P must establish that he suffered shock bc of a direct emotional impact from a sensory and contemporaneous observance of the accident.

#### Application (AA)

--Although Jackson did not visually witness the accident, he heard it over the phone. He perceived the accident auditorily.

---P must be sensorily aware of the accident to contemporaneously observe it.

---Perception of an accident is still contemporaneous for a parent who does not see but hears the accident that injures his child and then sees the results of the accident.

--No one informed him of the accident. He perceived it by hearing it over the phone. He did not hear about the accident from Delia. She screamed and dropped the phone. He did not hear of the accident from someone else. He did not know who—if anyone—had been hurt until he arrived on the scene.

---Actual observance of accident not required if there is otherwise an experiential perception of it, as distinguished from learning of it from others after it occurred.

--Jackson was on the scene moments later. He witnessed the consequences of the accident almost immediately after hearing it.

---He was "brought so close to the reality of the accident as to render [his] experience an integral part of it."

--Jackson lost 15 lbs and had severe anxiety and nightmares about hearing accident over phone.

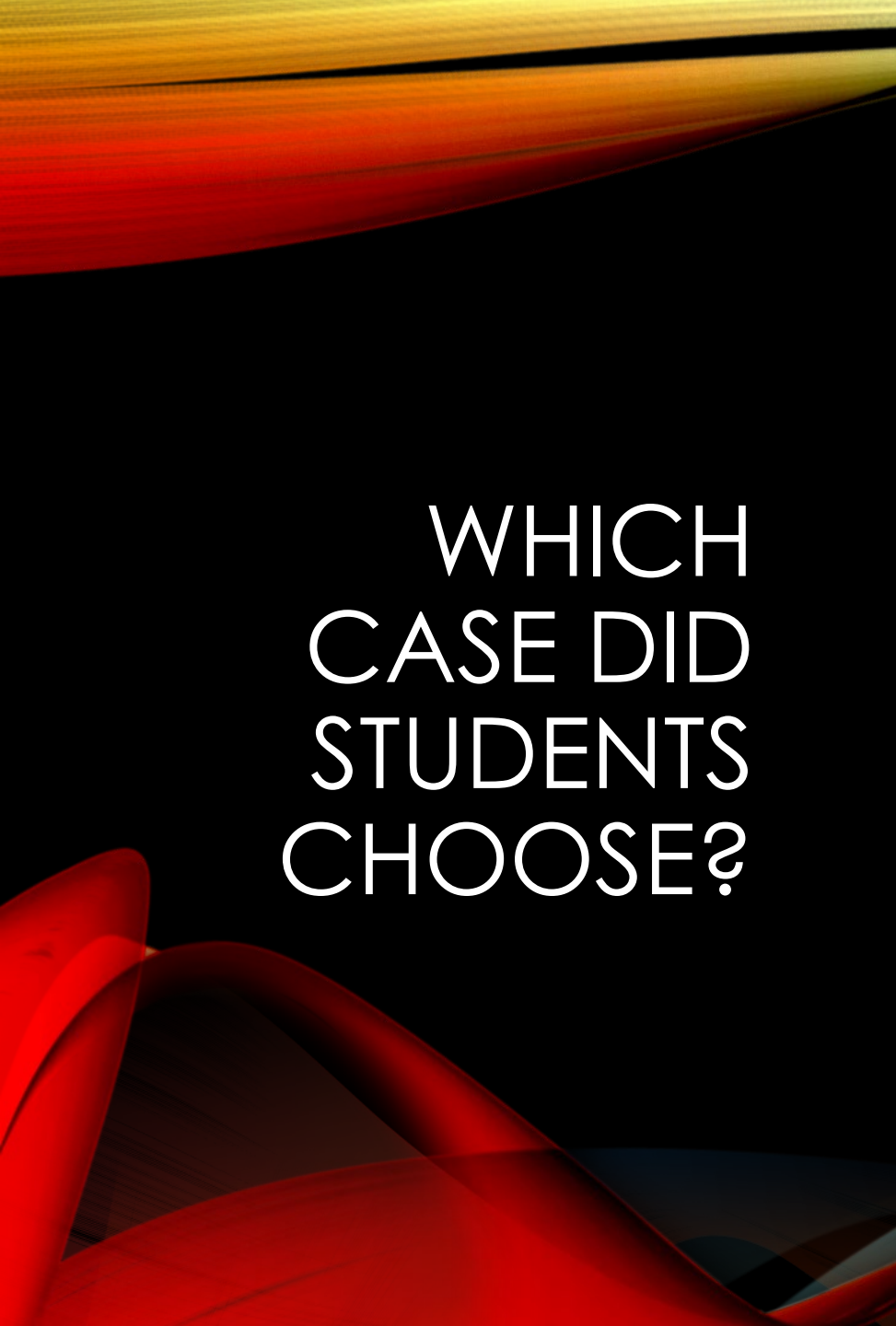
--- P must establish that he suffered shock ~~bc~~ of a direct emotional impact from a sensory and contemporaneous observance of the accident.

Rules	Application (AA)
--P must be sensorily aware of the accident to contemporaneously observe it. (Multiple cases, including <i>Keith</i> , Tx S Ct)	--Although Jackson did not visually witness the accident, he heard it over the phone. He perceived the accident auditorily.
--Perception of an accident is still contemporaneous for a parent who does not see but <u>hears</u> the accident that injures his child and then sees the results of the accident. ( <i>Madalin</i> , Corpus Christi 1979)	---P must be sensorily aware of the accident to contemporaneously observe it.  ---Perception of an accident is still contemporaneous for a parent who does not see but <u>hears</u> the accident that injures his child and then sees the results of the accident.
--Actual observance of accident not required if there is otherwise an experiential perception of it, as distinguished from learning of it from others after it occurred. ( <i>Miles</i> , Hou. [1 <sup>st</sup> Dist] 2011; <i>Jones</i> , Hou. [1 <sup>st</sup> Dist] 2009)	--No one informed him of the accident. He perceived it by hearing it over the phone. He did not hear about the accident from Delia. She screamed and dropped the phone. He did not hear of the accident from someone else. He did not know who—if anyone—had been hurt until he arrived on the scene.
--P may be a bystander, even if not present at time of accident, <u>as long as</u> he had a firsthand contemporaneous perception of the accident. ( <i>Jones</i> , Hou. [1 <sup>st</sup> Dist] 2009)	--Actual observance of accident not required if there is otherwise an experiential perception of it, as distinguished from learning of it from others after it occurred.
--Perception was contemporaneous for a parent who did not see accident occur because she was “brought so close to the reality of the accident as to render her experience an integral part of it.” ( <i>Grizzle</i> , Waco 1982)	--Jackson was on the scene moments later. He witnessed the consequences of the accident almost immediately after hearing it.
--P must establish that he suffered shock <u>bc</u> of a direct emotional impact from a sensory and contemporaneous observance of the accident. (Multiple cases, including <i>Keith</i> , Tx S Ct)	---He was “brought so close to the reality of the accident as to render [his] experience an integral part of it.”  --Jackson lost 15 <u>lbs</u> and had severe anxiety and nightmares about hearing accident over phone.  --- P must establish that he suffered shock <u>bc</u> of a direct emotional impact from a sensory and contemporaneous observance of the accident.

# CASE ILLUSTRATION OPTIONS

- *Texas Dept. of Corr. v. Miles*, 343 S.W.3d 238 (Tex. App.—Houston [1st Dist.] 2011).
  - Victim's mother was inside her house when her child was struck by a tractor trailer outside in front of the house.
  - Mother did not see or hear the accident but almost immediately stepped outside to see her child pinned under the tractor.
  - Court held that mother witnessed the consequences of the accident right after it happened and thus could recover as a bystander.
  - The court reasoned that the mother's actual observance of the accident was unnecessary if there is otherwise an experiential perception of it, as distinguished from a learning of it from others after it occurred.
- *General Motors Corp. v. Grizzle*, 642 S.W.2d 837 (Tex. App.—Waco 1982).
  - Victim's mother was riding in a vehicle a few minutes behind the truck carrying her daughter. She came upon a fatal accident involving the daughter a few minutes after it occurred. She did not see or hear the actual accident.
  - Court held that the mother's perception was contemporaneous because she was "brought so close to the reality of the accident as to render her experience an integral part of it."
  - Court reasoned that mother arrived at the accident scene a few moments after it occurred and witnessed the child trapped in the car, bleeding.
- *Bedgood v. Madalin*, 589 S.W.2d 797 (Tex. App.—Corpus Christi 1979).
  - Father in the backyard heard the screams of his son, who was in the front yard, followed by a loud thud, then arrived at the accident scene moments after to witness the results.
  - The court reasoned that even though father did not visually witness his son's accident, he heard his son's moans and then arrived at the scene to find his son lying face down covered in blood; this was a contemporaneous perception.
  - The court held that father heard the accident and witnesses the aftermath shortly after and that was sufficient to satisfy the sensory and contemporaneous observance element. It is not required that plaintiff visually witness the accident to recover because his audible perception satisfied the contemporaneous element.





## WHICH CASE DID STUDENTS CHOOSE?

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(1) Many chose *Bedgood*.

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(2) Several also chose *Miles*.

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(3) A few chose *Grizzle*.

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(4) A few opted for no case explanation. Assignment instructions are for losers!

## Rules

--P must be sensorily aware of the accident to contemporaneously observe it. (Multiple cases, including *Keith*, Tx S Ct)

--Perception of an accident is still contemporaneous for a parent who does not see but hears the accident that injures his child and then sees the results of the accident. (*Madalin*, Corpus Christi 1979)

-Actual observance of accident not required if there is otherwise an experiential perception of it, as distinguished from learning of it from others after it occurred. (*Miles*, Hou. [1<sup>st</sup> Dist] 2011; *Jones*, Hou. [1<sup>st</sup> Dist] 2009)

--P may be a bystander, even if not present at time of accident, as long as he had a firsthand contemporaneous perception of the accident. (*Jones*, Hou. [1<sup>st</sup> Dist] 2009)

-Perception was contemporaneous for a parent who did not see accident occur because she was "brought so close to the reality of the accident as to render her experience an integral part of it." (Grizzle, Waco 1982)

--P must establish that he suffered shock bc of a direct emotional impact from a sensory and contemporaneous observance of the accident. (Multiple cases, including *Keith*, Tx S Ct)

## Case Illustration

*Miles* (Houston, 1st Dist., 2011): Mother did not see or hear the accident but almost immediately stepped outside to see her child pinned under the tractor. Court held mother could recover-- mother's actual observance of the accident was unnecessary as long as there is otherwise an experiential perception of it, as distinguished from a learning of it from others after it occurred.

## Application (AA)

--Although Jackson did not visually witness accident, he heard it over the phone. He perceived the accident auditorily.

---P must be sensorily aware of the accident to contemporaneously observe it.

---Perception of an accident is still contemporaneous for a parent who does not see hears the accident that injures his child and then sees the results of the accident.

--No one informed him of the accident. He perceived it by hearing it over the phone. He did not hear about the accident from Delia. She screamed and dropped the phone. He did not hear of the accident from someone else. He did not know who—if anyone—had been hurt until he arrived on the scene.

--Actual observance of accident not required if there is otherwise an experiential perception of it, as distinguished from learning of it from others after it occurred.

--Jackson was on the scene moments later. He witnessed the consequences of the accident almost immediately after hearing it.

---He was "brought so close to the reality of the accident as to render [his] experience an integral part of it."

--Jackson lost 15 lbs and had severe anxiety and nightmares about hearing accident over phone.

--- P must establish that he suffered shock bc of direct emotional impact from a sensory and contemporaneous observance of the accident.

# COMPARISON CHART

<b>Jackson facts (our case)</b>	<b><i>Miles facts</i></b>
<b>Jackson was a few blocks away</b>	Mother was inside the house, across the street from accident
<b>Jackson did not see accident but heard the accident over the phone.</b>	Mother did not see or hear accident
<b>Sprinted 2 blocks to the accident and found his stepson unconscious in the street</b>	Almost immediately after accident, she looked out the front door and saw her child pinned beneath a trailer
<b>Jackson did not hear of the accident from anyone else</b>	She did not hear of the accident from someone else; she unwittingly came upon it
<b>Jackson both heard the accident as it occurred and almost immediately came up on the accident scene</b>	Court found that, despite not hearing or seeing accident, the mother had a sufficient perception of the incident to satisfy the bystander doctrine.

## Rules

--P must be sensorily aware of the accident to contemporaneously observe it. (Multiple cases, including *Keith*, Tx S Ct)

--Perception of an accident is still contemporaneous for a parent who does not see but hears the accident that injures his child and then sees the results of the accident. (*Madalin*, Corpus Christi 1979)

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--P may be a bystander, even if not present at time of accident, as long as he had a firsthand contemporaneous perception of the accident. (*Jones*, Hou. [1<sup>st</sup> Dist] 2009)

--Perception was contemporaneous for a parent who did not see accident occur because she was "brought so close to the reality of the accident as to render her experience an integral part of it." (*Grizzle*, Waco 1982)

--P must establish that he suffered shock ~~bc~~ of a direct emotional impact from a sensory and contemporaneous observance of the accident. (Multiple cases, including *Keith*, Tx S Ct)

## Case Illustration

*Miles* (Houston, 1st Dist., 2011): Mother did not see or hear the accident but almost immediately stepped outside to see her child pinned under the tractor. Court held mother could recover-- mother's actual observance of the accident was unnecessary as long as there is otherwise an experiential perception of it, as distinguished from a learning of it from others after it occurred.

Jackson facts (our case)	<i>Miles</i> facts
Jackson was a few blocks away	Mother was inside the house, across the street from accident
Jackson did not see accident but heard the accident over the phone.	Mother did not see or hear accident
Sprinted 2 blocks to the accident and found his stepson unconscious in the street	Almost immediately after accident, she looked out the front door and saw her child pinned beneath a trailer
Jackson did not hear of the accident from anyone else	She did not hear of the accident from someone else; she unwittingly came upon it
	Court found that, despite not hearing or seeing accident, the mother had a sufficient perception of the incident to satisfy the bystander doctrine.

## Application (AA)

## → Analogical argument

--Although Jackson did not visually witness the accident, he heard it over the phone. He perceived the accident auditorily.

--Actual observance of accident not required if there is otherwise an experiential perception of it

---Perception of an accident was contemporaneous for a parent who did not see but heard the accident that injured his child and then saw the results of the accident.

--No one informed him of the accident. He perceived it by hearing it over the phone. He did not hear about the accident from Delia. She screamed and dropped the phone. He did not hear of the accident from someone else. He did not know who—if anyone—had been hurt until he arrived on the scene.

--Actual observance of accident not required if D experientially perceived the accident and did not learn of it from others after it occurred.

--Jackson was on the scene moments later. He witnessed the consequences of the accident almost immediately after hearing it.

---He was "brought so close to the reality of the accident as to render [his] experience an integral part of it."

--Jackson lost 15 ~~lbs~~ and had severe anxiety and nightmares about hearing accident over phone.

--- P must establish that he suffered shock ~~bc~~ of a