

15: Legal Memos - Discussion Section

In this chapter, we are going to explore what goes into writing the Discussion section of your legal research memo. This is perhaps the most important part of your memo, and it all starts with your IRAC paragraphs. From there, you will add some structural pieces to guide your reader, and counter-analysis (where appropriate) to complete the legal analysis.

DISCUSSION SECTION STRUCTURE

If your memo contains more than one Question Presented – and hence, more than one IRAC analysis, it will help the reader better understand and follow your analysis if you use subheadings/subtitles as guideposts before each one. Use the same numbering system that you used for your Questions Presented, and either a short statement or question reflecting the legal standard being analyzed, like this:

DISCUSSION

1. Did Wonka “intentionally damage” the factory with fire?

[IRAC Analysis follows]

2. Did the damage occur “without consent” of the other owner?

[IRAC Analysis follows]

The next step is easy: put your entire IRAC analysis beneath the appropriate subheading/subtitle. Resist the temptation to remove the IRAC Issue! Even though it’s repetitive of the subheading/subtitle, it’s a necessary part of the analysis.

Drafting Counter-Analysis

The purpose of your IRAC analysis is to show an in-depth explanation of your macro-synthesis and legal analysis, and your conclusions as to how the client’s questions should be answered. If you stop here, however, your analysis is incomplete.

At this point, your analysis is one-sided. But, the law is anything but one-sided. You will never find yourself in a position where you can simply present your case and then “drop the mic.” Instead, opposing counsel will try to poke holes in your case; so, you need to prepare for those responses by anticipating them. This is the purpose of counter-analysis.

There are two types of counter-analysis to consider including after each IRAC analysis:

- Factual counter-analysis (based on the client’s facts and reasonable inferences supported by those facts)
- Legal counter-analysis (based on differences between legal authorities – most often court decisions)

Factual counter-analysis

Very rarely are all of the legally significant facts undisputed. Facts are sometimes disputed, unclear, or subject to different interpretations/inferences. The purpose of factual counter-analysis is to anticipate an objective view of the facts that is different from what you wrote in the Application component of your IRAC analysis. Here are some suggested steps for writing factual counter-analysis:

Step 1: Review your Facts section in your legal memo. Remember, the Facts section of your legal memo contains all of the client facts, including the facts that don’t support the conclusion you reached in your IRAC analysis. Look for signal words such as apparently, allegedly.

Step 2: Identify legally significant facts that are disputed, unclear or are subject to more than one interpretation. Use a highlighter to mark those facts in your Facts statement that are

- Disputed by the parties or witnesses (for example, one person says the traffic light was green, and another person says the traffic light was red). These would be “black and white” disputes, meaning that if one version is true, the other must be false.
- Unclear due to a lack of testimony/evidence or several different versions of the facts. The more witnesses you have, the more different versions there likely will be as to what happened, when it happened, how it happened, or why it happened. These are

“gray” disputes, meaning that several different versions could be true, based on the vantage point and perception of the various witnesses.

- Able to support different assumptions, interpretations, or inferences that can be drawn from the fact. Sometimes a person’s objective words or behaviors can reflect many plausible subjective motives, thoughts, or intents. For example, suppose you saw a person throw away a half-eaten apple. There are many logical inferences as to why: the person was no longer hungry; the person was going somewhere that didn’t allow food; the person discovered a worm in the apple.

Once you’ve marked those facts, compile a list of legally significant facts that might be important enough to change the outcome of your client’s legal matter. Your macro-synthesis worksheets (in which you listed client facts that were similar to or different from the facts of court decisions you briefed) can help with this.

Step 3: Determine how the facts identified in Step 2 would change the client’s outcome. In the Application component of your IRAC analysis, you assessed the credibility, bias, and ability to perceive, with respect to witness statements, testimony and documents; you then decided which facts you believed were the strongest or most likely to be true. As part of this process, you also made some reasonable assumptions, interpretations and inferences based on your view of the facts. This step asks you to consider how someone else’s assessment could be different from yours, and how that difference would impact the client’s outcome.

Step 4: Write your factual counter-analysis. Once again, I recommend using a formula similar to what you see below for writing your factual counter-analysis. Using the same structure repeatedly also helps with writer’s block, and the consistency makes your writing more predictable and easier to follow.

- Start with a transitional word or phrase that signals the reader you are about to explain your factual counter-analysis. Some possibilities include however, nevertheless, nonetheless, conversely, on the other hand, or “A different view of the facts could lead to a different outcome.”
- State the general impact of the factual counter-analysis. For example, If the jury views the facts differently, our client might be held liable.
- Explain the counter-analysis factors in detail. Describe the black-and-white (or gray) dispute, and what the different resolutions of those disputes might be. Describe the different assumptions, interpretations, or inferences that can be drawn from the fact(s).
- Describe the specific impact that would occur if the jury viewed the facts differently from you, in the context of the legal standard analyzed in your IRAC analysis. For example, if the jury believes witness A’s testimony rather than witness B’s testimony, the jury might determine our client failed to stop for a red traffic light.
- End your factual counter-analysis with a conclusion regarding the impact on your IRAC conclusion. For example, Therefore, the plaintiff may be able to prove our client breached a duty of care.

Going back to our client, Willy Wonka, you might recall there were some pretty interesting facts relating to the question of whether the State would be able to prove beyond a reasonable doubt that Charlie Bucket, the “other” owner of the Chocolate Factory, did not consent to a plan to damage the factory with fire. Those facts are:

- Bucket claimed in his statement to police he was surprised and upset by the fire and did not consent to someone setting a fire.
- Bucket is currently being audited by Weegocha Auditing Company for alleged improper business practices. Weegocha states that \$1 million is unaccounted for in corporate record books.
- Corporate record books reflect that the factory has been operating at a financial loss for the last three years.
- Bucket has a Preferred Player’s Cards at LaCasino. LaCasino policy is to issue Preferred Player’s Cards only to regular customers gambling at least \$1 million.
- During our interview, Bucket admitted that he has lost a substantial, though unknown, amount of money gambling at LaCasino over the last five years. However, Bucket denies using corporate monies to gamble.

If we decide to believe Bucket’s statement to police and his statement during our interview denying that he used corporate money to gamble, our IRAC might look like this:

Will the State be able to prove beyond a reasonable doubt that the fire occurred without the other owner’s consent? Section 943.02(1)(a), Wis. Stat. (2006), requires proof that the owner, other than the accused, did not consent to the arson. “Without the owner’s consent” requires that at least one owner is not involved in the crime. *State v. Jeeves*, 201 Wis. 2d 1, 399 N.W.2d 222 (1977). If all owners of record are involved in a plot to commit arson, conviction of one of the owners under §943.02(1)

cannot stand. *Id.* In *Jeeves*, the other owner, Jackson, was also charged with a crime and confessed that both he and Jeeves had planned to set fire to the apartment building they co-owned so they could obtain insurance money.

In contrast, in our case, Bucket informed police that he neither had prior knowledge of nor consented to a plan to damage the factory with fire. There is no evidence to suggest that Bucket was being untruthful with the police; in fact, the investigating officer who first contacted Bucket about the fire testified that Bucket expressed “disbelief” that the Chocolate Factory had been set on fire and that Wonka was accused of doing so. Moreover, it does not appear that Bucket was present at the scene of the fire. Therefore, the State is likely to prove the fire occurred without Bucket’s consent.

Of course, it’s possible Bucket lied to the police about having no knowledge of a plan to set the Chocolate Factory on fire; he certainly has a motive to lie (he doesn’t want to be charged criminally). Also, the objective facts about missing money and gambling debts would support an inference that Bucket lied to us about not gambling with corporate money. So, our factual counter-analysis might look like this:

✓ Example Factual Counter-analysis

However, additional facts exist which may lead a jury to discount Bucket’s statement to police and instead find that Bucket participated in the plan to damage the factory with fire. At the time of the fire, Bucket was under investigation for improper business practices. The factory had operated at a loss for three years, and \$1 million was unaccounted for in corporate record books. The amount of missing money is equal to the amount of damage done to the factory. Additionally, Bucket admitted that he has lost a substantial amount of money gambling at LaCasino. While the amount of gambling loss is undetermined, Bucket stated that he has a Preferred Player’s card, which is issued only to million-dollar gamblers. A jury could believe that the fire was set to obtain insurance money to cover the missing \$1 million. Thus, the State may not be able to prove the fire occurred without Bucket’s consent.

Legal counter-analysis

Often, there are several legal authorities relevant to the legal standard you discussed in your IRAC analysis. The purpose of legal counter-analysis is to anticipate an objective view of the legal authorities that is different from your own. Here are some suggested steps for writing legal counter-analysis:

Step 1: Review your case briefs and macro-synthesis worksheets.

In the Rule component of your IRAC analysis, you determined which court decisions were most applicable to the client’s legal question based in large part on your view of factual similarities and differences. Now it’s time to look more closely at the court decisions you determined were not applicable.

Step 2: Identify the differences in “rules of law” contained in the legal authorities.

Again, usually the differences arise in court decisions as opposed to conflicting statutes. While reviewing the court decisions, ask yourself these questions:

- Which court decisions have outcomes that are different from, or opposite to one another?
- Why are they different? There are several possibilities, such as
 - Differences in legally significant facts. Even a seemingly small difference in the facts can have a big impact on how the legal standard is applied.
 - The legal standard has changed/evolved during the time gap between the court decisions. Statutes are amended or repealed; sometimes new statutes are enacted; common law evolves. Pay particular attention to portions of court decisions describing the history of the statute/legal standard.
 - A new/different policy reason has emerged that supports a different outcome in the application of the legal standard. Courts sometimes describe the “why” behind a particular legal standard (who, or what, is being protected and why? Who is being

held responsible and why?). Frequently, due to rules relating to precedent and *stare decisis*, later court decisions include an explanation of why they deviated from previous decisions.

Don't forget to consider the possibility that a court could conclude that the precedent you used in your IRAC Rule component might actually lead to an outcome opposite to your conclusion. That's why a thorough macro-synthesis includes a detailed list of all the ways in which the facts in the court decision are different from the client's facts. Again, even a seemingly small difference in the facts can have a big impact on how the legal standard is applied, if a court decides to give more weight to those differences than you did.

Step 3: Determine how the legal authorities identified in Step 2 would change the client's outcome.

Although this primarily involves looking at the different "rules of law" from those court decisions, it also involves looking at how a different view of the client's facts would support applying those court decisions to the client's facts. In your factual counter-analysis, you considered how someone else's assessment of the reasonable assumptions, interpretations and inferences based on the client's facts might differ from yours. How would that difference impact which court decision would apply to the client? How would that difference impact the client's outcome?

Step 4: Write your legal counter-analysis.

Once again, I recommend using a formula for writing your legal counter-analysis:

- Start with a transitional word or phrase that signals the reader you are about to explain your legal counter-analysis. Some possibilities include however, nevertheless, nonetheless, conversely, on the other hand, or "A different view of the legal authorities (or case law) could lead to a different outcome."
- State the general impact of the legal counter-analysis. For example, A court could determine that [other court decisions are more applicable, or a different interpretation/application of the legal standard is appropriate].
- Explain the counter-analysis factors in detail. Describe the other court decisions that could be applied, including the "rules of law" from those decisions and the legally significant facts. Describe how different assumptions, interpretations, or inferences that can be drawn from the client fact(s) could result in other court decisions being applied to the client, or how the same court decision you applied in your IRAC Rule component could be applied differently.
- Describe the specific impact that would occur if a court viewed the legal authorities differently from you, in the context of the legal standard analyzed in your IRAC analysis.
- End your legal counter-analysis with a conclusion regarding the impact on your IRAC conclusion. For example, Therefore, the plaintiff may be able to prove our client breached a duty of care.

Going back to our client, Willy Wonka, you might recall there were some notable differences in the facts of the *Jeeves* decision used in the IRAC Rule and our client's case. Unlike Bucket, the joint owner of the property in *Jeeves* was present at the scene of the fire and confessed to the police that he and Jeeves had planned to set the fire. While our view of the facts led us to believe Bucket had not consented to a plan to damage the Chocolate Factory with fire, we've already noted in our factual counter-analysis that it's also plausible that Bucket did consent. That possibility, coupled with the *Jeeves* Court's statement that there could be a presumption of consent based on joint ownership, could support a legal determination that Bucket consented. So, our legal counter-analysis might look like this:

✓ Example Legal Counter-analysis

Additionally, there is language in *Jeeves* that suggests there could be a presumption of involvement in a crime against property on the part of Bucket a joint owner of the Chocolate Factory. Specifically, the *Jeeves* Court agreed that joint ownership of the property that was damaged could support a presumption of consent, particularly if all joint owners benefited from the damage. The Court chose not to determine whether this presumption should apply to Jackson, the other joint owner of the property, because Jackson was at the scene of the fire and confessed to planning with Jeeves to set the fire. Because Bucket apparently was not at the scene of the fire and did not confess to being part of a plan to set the fire, a court looking at the facts in our client's case would need to determine whether this presumption should apply to Bucket. Bucket certainly benefited from the payment of insurance money to cover the losses from the fire; that money

could be used to replace the money missing from the corporate books that may have been used to feed Bucket's gambling habit. These facts tending to show a motive for Bucket to agree to the plan to burn the factory, coupled with the potential application of the presumption of consent by joint owners, could make it difficult for the State to prove the fire occurred without Bucket's consent.

Counter-Analysis Pitfalls to Avoid

When writing your counter-analysis, avoid the following pitfalls:

- ☹ Labeling your counter-analysis as "counter-analysis." Counter-analysis is part of the Discussion section, so it should not be labeled separately.
- ☹ Failing to include a transition to introduce the counter-analysis paragraph that indicates whether you are providing factual or legal counter-analysis. Consider using something similar to the following: However, a different view of the [client's facts OR the legal authorities/case law]. Here are some other "signal" words and phrases:

Factual counter-analysis	Legal counter-analysis
<ul style="list-style-type: none"> • Allegedly • Apparently • [someone] asserts ... • [someone] claims ... • [someone] states ... • [someone] does not recall ... • [someone] denies ... • It is unclear whether ... • The parties dispute whether ... • It is unknown whether ... 	<ul style="list-style-type: none"> • In contrast ... • However ... • [case title] suggests ... • [case title] could apply (or be applied) ... • The case law is not settled ... • Our exact fact scenario has not been addressed... • There are conflicts between multiple cases...

- ☹ Injecting factual or legal counter-analysis into your main IRAC analysis.
- ☹ Repeating your IRAC analysis in your counter-analysis paragraphs.
- ☹ Incomplete discussion of factors to counter-analyze. Assume your reader hasn't read any of the legal authorities you have synthesized.
 - With factual counter-analysis, expressly state the reason the facts might be viewed differently (they are disputed, they are vague, there is more than one reasonable interpretation); then, explain in detail the different view
 - With legal counter-analysis, expressly state the reason the legal authorities might be applied differently (the "rule of law" could be applied differently, a court might think the factual differences between the case law and the client's facts should result in a different outcome for the client, a court might think a different precedent should be applied). Explain in detail the "rule of law" and the facts of the precedent, and then explain in detail the different view.

The Discussion Section: Putting it all Together

Once you have completed the entire process above for the discussion of your first Question Presented, repeat the process for each additional Question Presented. Keep in mind that not every discussion needs counter-analysis (but most of them do).

Following is an example of what our legal research memo looks like at this point. The components we've drafted so far have been put in the correct order.

WORK PRODUCT – PRIVILEGED AND CONFIDENTIAL LEGAL RESEARCH MEMORANDUM

TO: Supervising Attorney [insert the person's name]
FROM: Conscientious Legal Practitioner [insert your name]
DATE: April 1, 20xx [insert the date you are providing the final draft to your supervisor]
RE: Analysis of Likelihood of Arson Conviction
State v. Willy Wonka; Brown County Case No. 20xx-CF-1234
Our File: CF-Wonka-20xx-983

QUESTIONS PRESENTED

1. Will the State be able to prove beyond a reasonable doubt that Wonka “intentionally damaged” the Chocolate Factory when the facts show:
 - a. A fire occurred at the Chocolate Factory several hours after the Factory had closed for the day;
 - b. Accelerants were used at several locations around the Factory;
 - c. Wonka was identified as the person dancing across the street from the fire shouting “Burn, baby, burn;”
 - d. The Factory’s records are being audited for financial irregularities; and
 - e. Wonka owns a \$1,000,000 Preferred Player’s Card from LaCasino?
2. Will the State be able to prove beyond a reasonable doubt that the damage to the Chocolate Factory occurred “without the other owner’s consent” when the facts show:
 - a. The Chocolate Factory is jointly owned by Wonka and Charlie Bucket;
 - b. Bucket told the investigating officer that he had no knowledge of a plan to set the Chocolate Factory on fire;
 - c. Bucket told the investigating officer that he did not consent to a plan to set the Chocolate Factory on fire;
 - d. The Factory’s records are being audited for financial irregularities; and
 - e. Bucket owns a \$1,000,000 Preferred Player’s Card from LaCasino?

FACTS

Sometime after 1 a.m. on January 30, 20xx, a fire occurred at the Chocolate Factory (Police Report). The factory had closed at 5 p.m. the evening prior to the fire, and no one occupied the factory at the time of the fire (Client interview, Bucket statement to police). The fire caused \$1 million worth of damage (Insurance claim filed by Bucket).

The fire inspector’s report revealed the use of accelerants at several sites around the factory (Fire Inspector Report). A witness came forward (Mary Worth) and stated that at approximately 2 a.m., she was awakened by the sirens from fire trucks responding to the fire (Police Report). She went outside her home, which is across the street from the Chocolate Factory, to watch the firefighters put out the fire (Police Report). At that time, she noticed a man dressed in camouflage clothing dancing near the curb, about 25 yards from where she was standing (Police Report). She could hear the man shouting, “Burn, baby, burn!” (Police Report) From a police photo lineup, Ms. Worth identified Mr. Wonka as the man she saw dancing across the street from the fire (Police investigation file, lineup report).

The Chocolate Factory is jointly owned by our client, Willy Wonka, and Charlie Bucket (Client interview, Bucket statement to police, Incorporation records, Real estate records). Bucket claimed in his statement to police he was surprised and upset by the fire and did not consent to someone setting a fire (Police Report, Bucket statement to police). The investigating officer who first contacted Bucket about the fire testified that Bucket expressed “disbelief” that the Chocolate Factory had been set on fire and that Wonka was accused of doing so (Deposition of Officer X). It does not appear that Bucket was present at the scene of the fire. Further investigation of Bucket and the Chocolate Factory reveals that Bucket is currently being audited by Weegocha Auditing Company for alleged improper business practices (Client interview, records from auditing company). Weegocha states that \$1

million is unaccounted for in corporate record books (Audit report). Corporate record books also reflect that the factory has been operating at a financial loss for the last three years (Chocolate Factory financial records).

Both Willy Wonka and Bucket have Preferred Player's Cards at LaCasino (Client interview; LaCasino Preferred Players roster). LaCasino policy is to issue Preferred Player's Cards only to regular customers gambling at least \$1 million (interview of LaCasino manager; LaCasino pamphlets). Both Wonka and Bucket admit that they have lost a substantial, though unknown, amount of money gambling at LaCasino over the last five years (Client interview, Audit report). However, Wonka and Bucket deny using corporate monies to gamble (Client interview, Audit report).

Willy Wonka has been charged in Brown County Circuit Court with arson. An arraignment is scheduled on [date], at which time Wonka must enter a plea to the charge. A request for a copy of the investigative file has been sent to the Brown County District Attorney and a response is pending.

DISCUSSION

1. Did Wonka “intentionally damage” the factory with fire?

Will the State be able to prove beyond a reasonable doubt that Wonka “intentionally damaged” the Chocolate Factory with fire? To secure an arson conviction, §943.02(1)(a), Wis. Stat. (1996), requires proof that the accused “intentionally” damaged another person's building with fire. Although Wisconsin's arson statute does not define the word “intent,” Wisconsin Courts have interpreted the word “intentionally” as used in the statute.

The Wisconsin Supreme Court, while not defining “intent” directly, described the type of proof that would support a determination that the accused “intentionally” damaged another person's building with fire: “Intent can be inferred from the following facts: use of an accelerant, the setting of the fire during a time of the day when the area is likely to be unpopulated, or any other facts tending to show hostility or intent to cause damage.” *State v. Johnson*, 349 Wis. 2d 894, 455 N.W.2d 338 (1988). In *Johnson*, the defendant, Randy Johnson, was accused of arson to a school. The school caught fire at 3 a.m. on Easter Sunday. A search of Randy's home yielded some clothes that smelled of smoke and gasoline. The fire inspector's report revealed the presence of gasoline in the area where the fire started. An empty gas can was found in the football field behind the high school. Witnesses also testified that Randy's Chemistry class was scheduled to take a big exam the following Monday. Randy's Chemistry teacher testified that Randy needed to earn an A on the exam or he would fail the class. The *Johnson* court held that this evidence was sufficient to prove that Randy intentionally set fire to the school, even though there was no evidence that he was seen in the area of the fire. As a result, Randy's conviction of arson was upheld.

In a later case, the Supreme Court clarified the quantity and quality of proof based on inferences that is needed to support a determination of “intent.” *State v. Rodriguez*, 548 Wis. 2d 293, 560 N.W.2d 81 (1993). Specifically, the *Rodriguez* Court stated that more is required than just the presence of accelerants or vague suspicion. The Court clarified that proving “intent” beyond a reasonable doubt requires more than just evidence of the presence of accelerants at the site coupled with “vaguely suspicious” circumstances. In *Rodriguez*, a fire started on defendant Alex Rodriguez's back porch at 5 p.m. on a Saturday, causing damage to his home. At the time of the fire, due to a renovation project at the home, the door to the back porch had been boarded up, such that Rodriguez needed to go out the front door and around the home to access the back porch. Rodriguez was at home when the fire started, and immediately called the fire department to report the fire. Several days later, Rodriguez made a claim with his insurance company, which denied the claim, calling the fire “suspicious” and noting that accelerants were present on the back porch where the fire started. Rodriguez testified that he always kept his grill, charcoal, and charcoal lighter fluid on the back porch. Witnesses for the insurance company were unable to describe any other evidence that the fire had been set intentionally. The *Rodriguez* Court held that this evidence was not sufficient to prove that he intentionally set the fire. As a result, Rodriguez's conviction of arson was overturned.

Based on the *Johnson* and *Rodriguez* cases, a determination of “intent” needs to be based on objective evidence in addition to use of accelerants. The evidence should support an inference that the defendant had motive and desire to set the fire. Additionally, any “innocent” explanations for the circumstances surrounding the fire must be considered and weighed with all other evidence relating to a defendant's intent to damage another person's building with fire.

In this case, similar to the *Johnson* case, Mr. Wonka's intent to destroy the factory can be inferred from many facts. The fire inspector's report noted use of accelerants in several sites. The fire started sometime after 1 a.m., long after the factory was closed. Finally, a witness testified that he saw Mr. Wonka dancing around across the street from the fire, yelling repeatedly, “Burn, baby

burn!” Unlike Rodriguez, here there is ample evidence in addition to the presence of accelerants that tends to show intent. All of these facts -- and especially the witness’ testimony -- demonstrate Wonka’s general hostility toward the factory, as well as his desire that the fire damage the factory. Therefore, the State will likely be able to prove beyond a reasonable doubt that Wonka “intentionally damaged” the Chocolate Factory with fire.

2. Did the damage occur “without consent” of the other owner?

Will the State be able to prove beyond a reasonable doubt that the fire occurred without the other owner’s consent? Section 943.02(1)(a), Wis. Stat. (2006), requires proof that the owner, other than the accused, did not consent to the arson. “Without the owner’s consent” requires that at least one owner is not involved in the crime. *State v. Jeeves*, 201 Wis. 2d 1, 399 N.W.2d 222 (1977). If all owners of record are involved in a plot to commit arson, conviction of one of the owners under §943.02(1) cannot stand. *Id.* In *Jeeves*, the other owner, Jackson, was also charged with a crime and confessed that both he and Jeeves had planned to set fire to the apartment building they co-owned so they could obtain insurance money.

In contrast, in our case, Bucket informed police that he neither had prior knowledge of nor consented to a plan to damage the factory with fire. There is no evidence to suggest that Bucket was being untruthful with the police; in fact, the investigating officer who first contacted Bucket about the fire testified that Bucket expressed “disbelief” that the Chocolate Factory had been set on fire and that Wonka was accused of doing so. Moreover, it does not appear that Bucket was present at the scene of the fire. Therefore, the State is likely to prove the fire occurred without Bucket’s consent.

However, additional facts exist which may lead a jury to discount Bucket’s statement to police and instead find that Bucket participated in the plan to damage the factory with fire. At the time of the fire, Bucket was under investigation for improper business practices. The factory had operated at a loss for three years, and \$1 million was unaccounted for in corporate record books. The amount of missing money is equal to the amount of damage done to the factory. Additionally, Bucket admitted that he has lost a substantial amount of money gambling at LaCasino. While the amount of gambling loss is undetermined, Bucket stated that he has a Preferred Player’s card, which is issued only to million-dollar gamblers. A jury could believe that the fire was set to obtain insurance money to cover the missing \$1 million. Thus, the State may not be able to prove the fire occurred without Bucket’s consent.

Additionally, there is language in *Jeeves* that suggests there could be a presumption of involvement in a crime against property on the part of Bucket a joint owner of the Chocolate Factory. Specifically, the *Jeeves* Court agreed that joint ownership of the property that was damaged could support a presumption of consent, particularly if all joint owners benefited from the damage. The Court chose not to determine whether this presumption should apply to Jackson, the other joint owner of the property, because Jackson was at the scene of the fire and confessed to planning with Jeeves to set the fire. Because Bucket apparently was not at the scene of the fire and did not confess to being part of a plan to set the fire, a court looking at the facts in our client’s case would need to determine whether this presumption should apply to Bucket. Bucket certainly benefited from the payment of insurance money to cover the losses from the fire; that money could be used to replace the money missing from the corporate books that may have been used to feed Bucket’s gambling habit. These facts tending to show a motive for Bucket to agree to the plan to burn the factory, coupled with the potential application of the presumption of consent by joint owners, could make it difficult for the State to prove the fire occurred without Bucket’s consent.

The legal research memo is almost complete! In the next chapter, you’ll learn how to put in the finishing touches – the Answers to the Questions Presented and an introductory paragraph.

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