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**CROSSING THE DIVIDE: TEACHING
NARRATIVE REASONING AND
EXPLANATORY SYNTHESIS TO CIVIL
LAW-TRAINED LAWYERS AND LL.M.S**

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Context: Comparative Legal Analysis

- **Legal Analysis:** Civil Law and Common Law
- Differing views of **precedent** – binding power of case law, *Stare Decisis*, *jurisprudencia* (or *jurisprudence constante*), *opinio juris*

Comparative Legal Analysis

- **Civil Law:** (traditional view) there should be no judge-made law; thus, cases (judicial opinions) are not a source of law, not binding
- **Common Law:** judges make law through cases; cases create precedent; cases are binding; *Stare Decisis* applies

Comparative Legal Analysis of Facts

- **Civil Law** (traditional view): the code makes the law; the code is the law; cases and their facts are merely supplemental aids
- **Common Law: Facts** make the law
- **Facts** play a role in determining the law through the ways we use precedent and apply *Stare Decisis*
- *Law is built through synthesis of rules from cases (rule synthesis) and synthesis of facts from cases and the applications of law to facts (explanatory synthesis)*

Bridging Civilian-Common Law concepts of Facts

NARRATIVE IN LAW

- Facts are essential to an understanding of how the law will be interpreted and applied
- There is a narrative of how the law developed

EXPLANATORY SYNTHESIS

- Synthesis of authorities using the facts and how the law applied to those facts to produce the outcome in the case

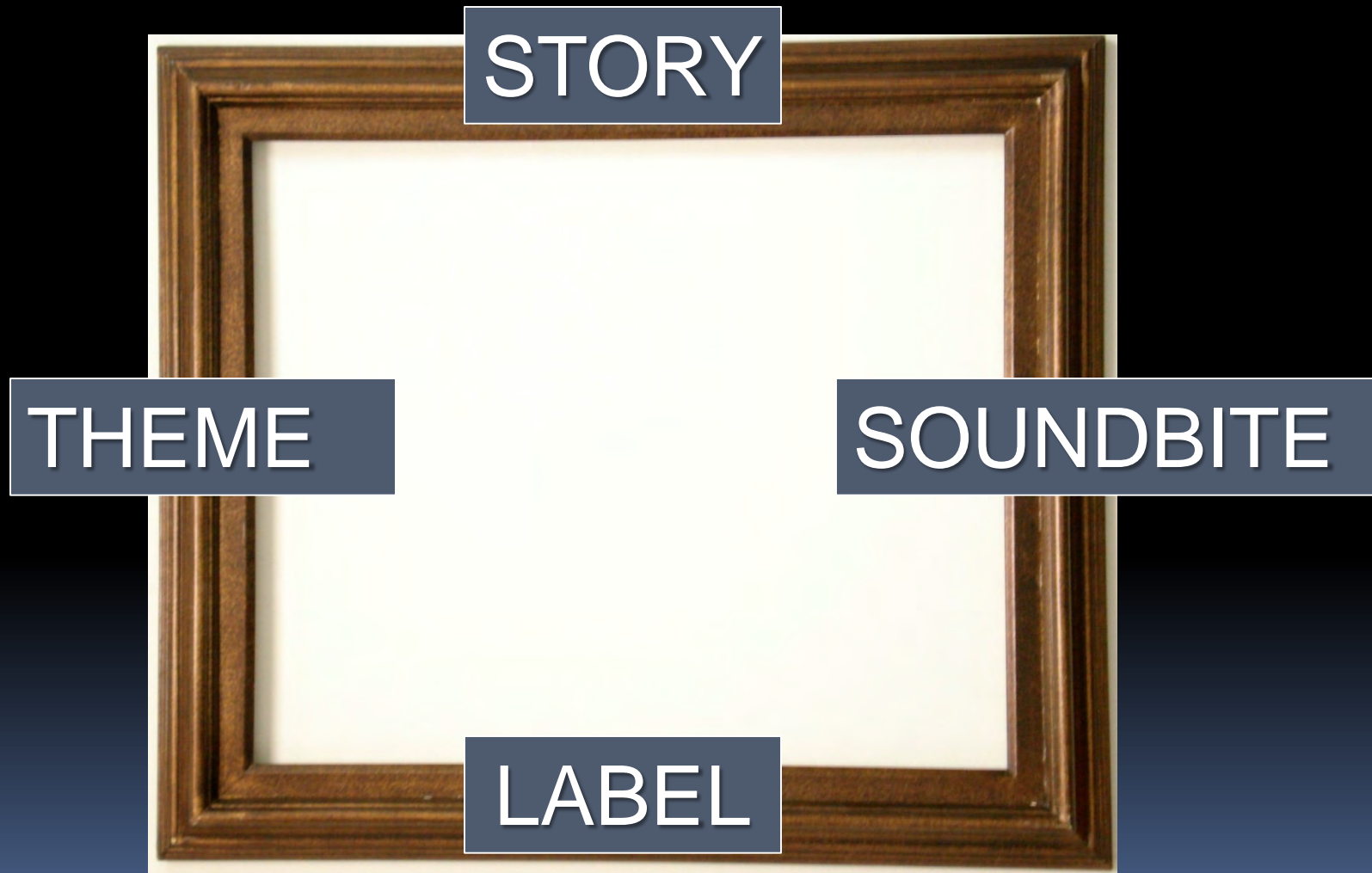
Bridging Civilian-Common Law concepts of Facts in Legal Writing

Facts (throughout the memo or brief) play a role in framing (priming), and the communication of the **narrative** of the client's situation

Explanatory Synthesis (E Section) communicates the lessons from the facts of the precedent authorities

The **Application** section brings together the **narrative** of the case with the lessons of **explanatory synthesis**

NARRATIVE FRAMING/PRIMING DEVICES



FACTS THROUGHOUT THE WRITING

Label (and soundbite)
Questions Presented


Soundbite, Theme
Introduction

Label, Soundbite, Theme
**Thesis Headings
and Table of Contents**

Story
Statement of Facts

Label, Soundbite, Theme
Explanation Section

Label, Soundbite, Theme
Application Section



Statement of Facts is the Story—the whole narrative of the client's situation

Target: Emotions by targeting values, public policies

Level of detail communicates level of importance

Consider: Archetypical story-types and character types

Work on: Conflict, plot, point of decision (unstated resolution – leaving it for the decision maker)

- Get visual with the facts
- The best writers always are visual
- Consider the two stories reflected in these two depictions



Paul Revere engraving, Henry Pelham image, The Bloody Massacre (1770)



Alonzo Chappel, The Boston Massacre (1770)

Each tells a very different story. Each frames the issue differently.

Explanation Sections:

Explanatory synthesis can combine common *storylines* of favorable or unfavorable authorities through a process called **narrative synthesis**

Basic function: Analogize to the favorable storylines, distinguish the unfavorable storylines

Advanced function: Target the values, emotions, and policies underlying and connecting precedents

Explanatory Synthesis

- **Explanation** of how rules work that relies on synthesis of factual scenarios from cases
- **In legal analysis** – responds to precedent as source of law and source of reasoning
- **But you have got to *ILLUSTRATE*** – not just write the law from the cases, but illustrate how the law applied to the facts with specific factual detail



APPLICATION SECTIONS should:

-Retell the story in the context of the law

The law is met, the policy is upheld when ...

-Draw on the synthesized illustrations from the explanation section

-Especially highlight how the client's story furthers and matches values, emotions, & policies underlying and connecting precedents

– all requiring attention to the client's narrative in the context of the synthesized narratives of the precedents

THE END

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