



Implementing Best Practices & Educating Lawyers: Teaching Skills and Professionalism Across the Curriculum

## Workshop IB

### Enriching Your Course with a Case File

*Gretchen Viney*  
*University of Wisconsin Law School*

Gretchen Viney (B.A. with highest honors, University of Wyoming, 1974; J.D. with honors, University of Wisconsin, 1978) is a clinical professor at the University of Wisconsin Law School, where she is the associate director of the Lawyering Skills Program. The Lawyering Skills Program provides skills courses taught in a learning-by-doing format. The cornerstone is the Lawyering Skills Course (formerly the General Practice Course), a second semester, seven-credit, upper-level offering that originated at Wisconsin in 1968.

The LSC uses teams of lawyers to teach law practice skills through simulations built around substantive weeks (criminal proceedings, estate planning and probate, divorce, representing a small business, residential real estate, managing the early years of practice, preparing a case for civil trial, demonstration of a civil trial).

More than seventy lawyers participate in the course each semester, using prepared case files, texts, and teaching plans. Professor Viney and Professor Ralph Cagle, the director of the program, develop the overall curriculum, create the textbooks and teaching plans, recruit and train the faculty, coordinate instruction, teach stand-alone skills workshops, and monitor the development of the students. See

<http://law.wisc.edu/academics/lawskills/>

Outside of the Lawyering Skills course, Professor Viney teaches Client Interviewing & Counseling, Guardian ad Litem Practice in Wisconsin, and Real Estate Transactions I.

Professor Viney continues to practice law on a part-time basis in Baraboo, Wisconsin. She is recognized for her work and expertise as a guardian ad litem for children, the elderly, and the disabled. She has served on numerous state and local bar association committees and on other professional boards. See

<http://law.wisc.edu/profiles/ggviney@wisc.edu>

# Enriching Your Course with a Case File

Gretchen Viney  
Clinical Professor  
University of Wisconsin Law School  
Institute for Law Teaching & Learning  
June, 2009

# Using a Case File

- What is a Case File?
- Why use one?
- Is it onerous?
- Is it helpful?

# Creating a Case-Related Case File

- Choose fact-based appellate case
- Access briefs and appendices
- Access “original source” documents
- Organize documents chronologically

- Obtain additional documents from attorneys, if necessary
- Include all court decisions
- Example

First American Title Insurance Company v. Dahlmann  
2006 WI 65

Selections from Supreme Court Appendices

Stipulation of Facts [SOF]

Marked-up Title Insurance Commitment [Exhibit A to SOF]

Title Insurance Policy [Exhibit B to SOF]

Seller's Survey Affidavit

Johnson Survey

Held & Associates Survey [Exhibit F to SOF, Exh. 3]

Anthony Thousand Survey [Exhibit F to SOF, Exh. 4]

Report of Francis R. Thousand

Letter from City to Buyer, with Encroachment Agreement

Transcript of Circuit Court Oral Ruling

Court of Appeals Decision



First American Title Insurance Company

SCHEDULE A

*[Handwritten signature]*

1. Commitment Date: ~~November 30, 1998 at 7:00 A.M.~~ → *JANUARY 15, 1999 3:00 pm*

2. Policy (or Policies) to be issued:

ALTA Owner's Policy (10-17-92)

Amount

\$2,150,000.00

Proposed Insured: **DENNIS A. DAHLMANN**

ALTA Loan Policy (10-17-92)

\$3,050,000.00

Proposed Insured: ANCHORBANK, S.S.B., and/or its assigns

3. Fee Simple interest in the land described in this Commitment is owned, at the commitment date, by

~~MADISON INN, LLC, A Wisconsin Limited Liability Company~~

*NAMED INSURED OWNER ABW*

4. The land referred to in this commitment is described as follows:

Lot Seven (7), and the East 25 feet of Lot Six (6), Block Seven (7), Original Plat of the City of Madison, Dane County, Wisconsin.

Tax Parcel No.: 60-0709-143-0201-6

EXHIBIT  
*Ap. 2*

*[Handwritten signature]*  
*1-15-99*

Ap. 108

First American Title Insurance Company

SCHEDULE B - SECTION II  
EXCEPTIONS

Any policy we issue will have the following exceptions unless they are taken care of to our satisfaction.

1-15-99

- 1. Any discrepancies or conflicts in boundary lines, any shortages in area, or any encroachment or overlapping of improvements.
- 2. Any facts, rights, interests or claims which are not shown by the public record but which could be ascertained by an accurate survey of the land.
- 3. Rights or claims of parties in possession not shown by the public record.
- 4. Easements or claims thereof, which are not shown by the public record.
- 5. Any lien or right to lien for services, labor or material imposed by law and not shown by the public record.

6. Taxes.

The lien of taxes for the year 1998 and thereafter. *NONE NOW DUE OR PAYABLE.*

~~Net taxes for the year 1997 in the amount of \$47,670.56 after application of the lottery tax credit in the amount of \$102.85 have been paid.~~

The lien of any Special Taxes or Assessments not shown on the current status register ~~dated October 4, 1998.~~ *NONE NOW DUE OR PAYABLE.*

Assessments, if any, resulting from the Ten Year Plan to repair sidewalks in the City of Madison as adopted by the City Council on May 21, 1996. *NONE NOW DUE AND PAYABLE.*

Right-of-Way as set forth in Instrument  
Recorded: August 6, 1991 in Volume 184 of Deeds, Page 599, as Document No. 240823.  
Affects: Southerly 4 feet.

~~10. Public or private rights in such portion of the subject premises as may be presently used, laid out or dedicated in any manner whatsoever, for street, highway, and/or alley purposes.~~

~~11. Rights of tenants, if any, in possession under unrecorded leases.~~

~~9. Mortgage, and the terms and conditions thereof, to secure an indebtedness in the originally stated amount of \$2,550,000.00.~~

~~Mortgagor: Madison Inn, Inc. A Wisconsin Limited Liability Company  
Mortgagee: Capitol Bank  
Dated: September 23, 1997 Recorded: September 25, 1997, Page 790, as Document No. 2891970.~~

~~Assignment of leases, rents, and profits, given as additional security for the payment of the mortgage described above  
Assignor: Madison Inn, LLC  
Assignee: Capitol Bank  
Recorded: September 25, 1997, Page 792, as Document No. 2891971.~~

1-15-99

First American Title Insurance Company

SCHEDULE B - SECTION I  
REQUIREMENTS

The following requirements must be met:

- (a) Pay the agreed amounts for the interest in the land and/or the mortgage to be insured.
- (b) Pay us the premiums, fees and charges for the policy.
- (c) Documents satisfactory to us creating the interest in the land and/or the mortgage to be insured must be signed, delivered and recorded:
  - 1. DEED FROM MADISON INN, LLC, A Wisconsin Limited Liability Company, by all of its members, TO DENNIS A. DAHLMANN.
  - 2. MORTGAGE FROM DENNIS A. DAHLMANN TO ANCHORBANK, S.S.B..

\*The proposed instrument should either designate the subject property as non-homestead, identify the mortgagor as single, or be joined in by the mortgagor's spouse and have their marital status typed thereon.
- (d) Attention is directed to Standard Exceptions 1 through 4 of Schedule B-II. These exceptions will be deleted from loan and owners policies providing we are furnished with an acceptable owner's affidavit and an acceptable mortgage inspection or survey.

Exception 5 of Schedule B-II will be deleted from any loan policy providing the lender is a state or federal chartered bank, savings institution or credit union, a licensed mortgage banker, or any other class of lender listed in Wisconsin Statutes, Section 706.11. To delete this exception for any other lender's policy, or any owner's policy, (if available), we must be furnished with the owner's contract with the general contractor, including any change orders; supporting lien waivers evidencing payment in full for the cost of all new construction completed or contracted for within the previous six months; and an acceptable general contractor's statement.

PLEASE NOTE: An acceptable Mortgage Inspection/Survey has been received and approved by the Company. The "Survey Affidavit" attached hereto must be completed to affirm that no further changes, additions or alterations have been made to the exterior of the structure depicted on said Mortgage Inspection/Survey, nor any other improvements added, since the date of aforesaid Mortgage Inspection/Survey.

- (e) We should be furnished with authorization by all members, partners or venturers of MADISON INN, LLC, A Wisconsin Limited Liability Company, if fewer than all members, partners or venturers are to execute the proposed deed.
- (f) We should be furnished with a copy of the Operating Agreement, if any, and any amendments thereto, certified to a current date, for MADISON INN, LLC, A Wisconsin Limited Liability Company.
- (g) Coverage under the Owner's Policy should be increased to full value. A fee will be charged at that time for any additional premium due.
- (h) You must tell us in writing the name of anyone not referred to in this commitment who will get an interest in the land or who will make a loan on the land. We may make additional requirements or exceptions relating to the interest or the loan.

First American Title Insurance Company

10. Security interest as disclosed by Financing Statement filed in the Office of the Register of Deeds for Dane County, Wisconsin on certain chattels on the above described premises.  
Secured Party: ~~Capital Bank~~  
Debtor: ~~Madison Inn, LLC~~  
Filed On: ~~September 25, 1997, as No.: 013-00866851~~

11. Security interest as disclosed by Financing Statement filed in the Office of the Register of Deeds for Dane County, Wisconsin on certain chattels on the above described premises.  
Secured Party: ~~Madison Gas and Electric Company~~  
Debtor: ~~Madison Inn, LLC~~  
Filed On: ~~November 13, 1997, as No.: 013-00866847~~

12. The following matters revealed by Plat of Survey by Jeffrey B. Johnson, R.L.S. dated July 6, 1994: "Encroachment of exterior wall of parking garage and vent into 4-foot right-of-way Recorded as Document No. 240823."

Any Policy to be issued pursuant to this Commitment will include an endorsement insuring the Insured against loss or damage sustained by reason of any final court order or judgment requiring the removal of the encroachment set forth above.

13. Tax Warrant in favor of the Wisconsin Department of Revenue  
Against: ~~Madison Inn 601 Langdon Street Madison, WI~~  
Docketed on: ~~April 16, 1998, as Warrant No. 98 TW000999~~  
In the sum of ~~\$5037.00~~

DELETED

14. Tax Warrant in favor of the Wisconsin Department of Revenue  
Against: ~~Madison Inn 601 Langdon Street Madison, WI~~  
Docketed on: ~~June 2, 1998, as Warranty No. 98 TW001178~~  
In the sum of ~~\$3259.54~~

DELETED

15. Tax Warrant in favor of the Wisconsin Department of Revenue  
Against: ~~Madison Inn 601 Langdon Street Madison, WI~~  
Docketed on: ~~June 8, 1998, as Warrant No. 98 TW001242~~  
In the sum of ~~\$1874.65~~

DELETED

MARITAL RIGHTS OF THE SPOUSE, IF ANY, OF ANY INDIVIDUAL INSURED,

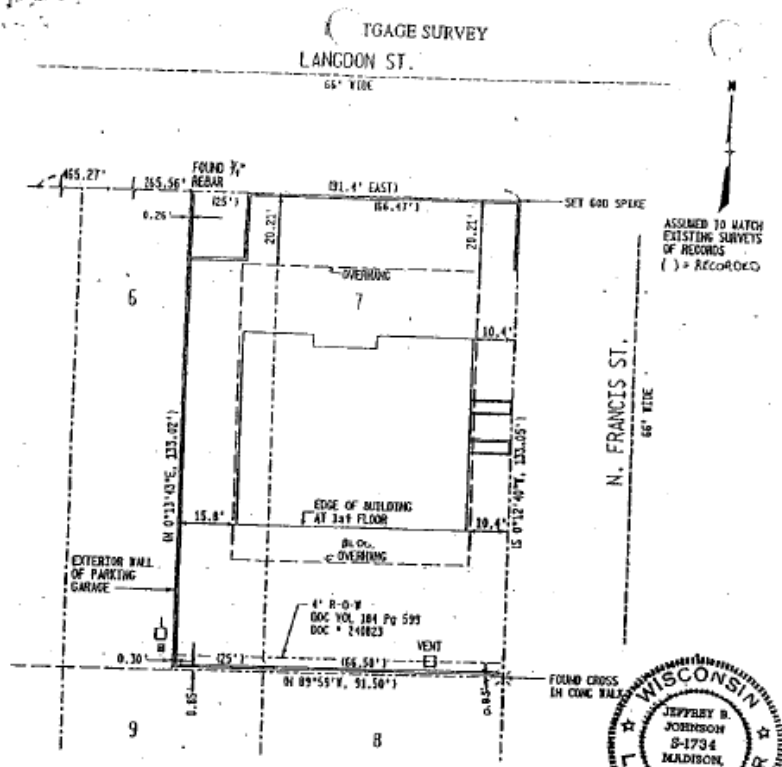
Mortgage to Anchorbank, S.S.B.

Enclose please.

\*\*\*\*\*

Covenants, conditions or restrictions indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin are hereby deleted to the extent such covenants, conditions or restrictions violate 42 USC 3604(c).

37  
49



Description: Lot 7 and the East 25 feet of Lot 6, Block 7, City of Madison, Dane County, Wisconsin, subject to a right-of-way as set forth in Volume 184 of Deeds, Page 599, as Document Number 240823, Dane County Register of Deeds.

Surveyed for: Raymond D. Veloff  
601 Langdon Street  
Madison, Wisconsin 53703

This document is a map for the purpose of boundary inspection and is not intended to be a survey of the above described premises.

Scale of Map: 1 inch = 30 feet  
All lot line distances shown are taken off the original plat.

Surveyor's Certificate: I hereby certify that I have surveyed the above described property and that the above map is a true representation thereof and shows the size and location of the property, its exterior boundaries, the location of all visible structures and dimensions of all principal buildings thereon, boundary fences, apparent easements, roadway and visible encroachments, if any.

This survey is made for the use of the present owners of the property and also those who purchase, mortgage or guarantee the title thereto within one year from date hereof.

# Creating a Unique Case File Using Community Partners

- Harder than it looks!
- Identify transaction to replicate
- Find a lawyer-partner
- Create detailed fact situation
- Identify required documents

- Identify potential partners
- Sell your idea to PPs
- Meet with now-partners
- Obtain and review documents
- Organize and duplicate the file
- Include partners in course
- Thank partners

- Include partners in update process
- Thank partners again

This case file contains the documents for the Svenson/Hollister real estate transaction, a fictitious fact situation. The cast of characters includes:

Sellers: Andrew E. Svenson and Grace G. Svenson  
 Buyers: John Jerry Hollister and Elaine West Hollister  
 Lender: Johnson Bank  
 Title Company: Dane County Title Company

**Johnson Bank** (159 Martin Luther King, Jr. Blvd., Madison, WI 53703) and **Dane County Title Company** (901 S. Whitney Way, Madison, WI 53711) created the title and loan documents for this case file using the fictitious Svenson/Hollister fact situation. Please thank these businesses when you have the opportunity and let them know that you appreciate their contribution to this class and to the University of Wisconsin Law School.

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# Using Case File Documents as Examples

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- Same v. different
- Real life!
- Example: Dahlman documents

# Using a Case File in Problem Sets

- Translating current questions into case-file questions
- Moving from appellate arguments to client advising
- Real life!
- Example

Q: How did the drafter of the deed choose the language for the “warranty” section of the deed? Could the drafter have used different language? Why or why not?

State Bar of Wisconsin Form 1-2003  
**WARRANTY DEED**

Document Number

Document Name

**THIS DEED**, made between Andrew E. Svenson and Grace G. Svenson, husband and wife and each in all capacities

\_\_\_\_\_ ("Grantor," whether one or more),  
and John J. Hollister and Elaine W. Hollister, husband and wife as survivorship marital property

\_\_\_\_\_ ("Grantee," whether one or more).  
Grantor, for a valuable consideration, conveys to Grantee the following described real estate, together with the rents, profits, fixtures and other appurtenant interests, in Dane \_\_\_\_\_ County, State of Wisconsin ("Property") (if more space is needed, please attach addendum):

Lot 33, Midnight Troll Subdivision, Village of Shoreham, Dane County, Wisconsin.

Recording Area

Name and Return Address  
The Johnson Bank  
Attn: Home Loan Dept.  
159 Martin Luther King, Jr. Blvd  
Madison, WI 53703

746-0033-110000

Parcel Identification Number (PIN)

This is \_\_\_\_\_ homestead property.  
(is) (is not)

Grantor warrants that the title to the Property is good, indefeasible in fee simple and free and clear of encumbrances except: municipal and zoning ordinances and agreements entered under them, recorded easements for the distribution of utility and municipal services, recorded building and use restrictions and covenants, general taxes levied in the year of closing, Restrictive Covenants to Midnight Troll Subdivision, recorded September 12, 1994 as Document No. 121221.

Dated November 29, Year X.

\_\_\_\_\_(SEAL) \_\_\_\_\_(SEAL)  
\* \_\_\_\_\_ \* Andrew E. Svenson

\_\_\_\_\_(SEAL) \_\_\_\_\_(SEAL)  
\* \_\_\_\_\_ \* Grace G. Svenson

**AUTHENTICATION**

**ACKNOWLEDGMENT**

Signature(s) \_\_\_\_\_

STATE OF WISCONSIN )  
 ) ss.  
DANE \_\_\_\_\_ COUNTY )

authenticated on \_\_\_\_\_

\* \_\_\_\_\_  
TITLE: MEMBER STATE BAR OF WISCONSIN  
(If not, \_\_\_\_\_  
authorized by Wis. Stat. § 706.06)

Personally came before me on November 29, Year X,  
the above-named Andrew E. Svenson and Grace G. Svenson  
to me known to be the person(s) who executed the foregoing  
instrument and acknowledged the same.

THIS INSTRUMENT DRAFTED BY:

Helen S. Hamilton, Attorney SBN 4032859  
Shoreham, WI \_\_\_\_\_

\* Joseph Brill  
Notary Public, State of Wisconsin  
My Commission (is permanent) (expires: 1-15-Year Y)

(Signatures may be authenticated or acknowledged. Both are not necessary.)

Q: How did the drafter of the deed choose the language for the warranty section of the deed? Could the drafter have used different language? Why or why not?

Deed language:

Grantor warrants that the title to the Property is good, indefeasible in fee simple and free and clear of encumbrances except: municipal and zoning ordinances and agreements entered under them, recorded easements for the distribution of utility and municipal services, recorded building and use restrictions and covenants, general taxes levied in the year of closing, Restrictive Covenants to Midnight Troll Subdivision, recorded September 12, 1994 as Document No. 121221.

# Excerpt from Offer to Purchase:

## TITLE EVIDENCE

187  
188   ▪ CONVEYANCE OF TITLE: Upon payment of the purchase price, Seller shall convey the Property by warranty deed (or  
189 other conveyance as provided herein) free and clear of all liens and encumbrances, except: municipal and zoning ordinances  
190 and agreements entered under them, recorded easements for the distribution of utility and municipal services, recorded building  
191 and use restrictions and covenants, general taxes levied in the year of closing and no others  
192 \_\_\_\_\_ (provided none  
193 of the foregoing prohibit present use of the Property), which constitutes merchantable title for purposes of this transaction. Seller  
194 further agrees to complete and execute the documents necessary to record the conveyance. **WARNING: Municipal and zoning**  
195 **ordinances, recorded building and use restrictions, covenants and easements may prohibit certain improvements or uses and therefore**  
196 **should be reviewed, particularly if Buyer contemplates making improvements to Property or a use other than current use.**

# Using a Case File in the Final Exam

- Casting the question
- Introducing outside-the-file facts, carefully
- Assuring fairness
- Examples

# Using the Case File Indirectly

What is the purpose of a “marked up” title insurance commitment? What is the relationship between this and the title insurance policy? Give an example of what might be “marked up” in a title insurance commitment.

# Using the Case File Directly

***Use the Hollister Case File to answer this question.***

On September 1, 20xx, Vernon Krause drives by the Svenson property and likes the look of it. He sees that the property is listed by Lizard Cove Realty. He calls Lily at LCR and asks her to set up an appointment for him to look at the property. During that conversation, Vernon tells Lily that he is pre-approved for a loan of up to \$500,000. Lily has another listing in Shoreham where the sales price is \$510,000. Lily tells Vernon, "I have another listing that I think will suit you better than the Svenson house. Why don't I set up an appointment there instead?" Has Lily acted improperly? Explain your answer.