During the 1L second semester, our students work on an appellate brief that involves a First Amendment student speech issue. Early in the semester I ask the students to research this area of law and provide a list of at least ten cases they think an attorney might cite in a brief to the appellate court. I ask the students to provide the proper Bluebook citation and a parenthetical with the case holding. Each year, I find that many students cannot distinguish between the case holding and the rule the court establishes in that case. This interferes with their ability to synthesize rules in their briefs, analogize and distinguish cases, and to succinctly answer questions during oral argument. Although I would explain the difference between a rule and a holding, many students struggled to articulate the rule and holding from a specific case.

Rule v. Holding.

A "rule is the legal standard that the court applies in deciding the issue before it."\(^1\) A holding contains two parts: the rule and the facts of the specific case before the court.\(^2\) Thus, "the holding of a case must include the court's decision as to the question that was actually before the court. That decision is a function of the important facts of the litigated case and the reasons that the court gave for deciding the issue as it did based on those facts."\(^3\)

For example, in the leading First Amendment student speech case, the U.S. Supreme Court established the rule that students have a First Amendment right to free speech at school, unless their speech materially disrupts the classroom, involves substantial disorder or a forecast of


\(^2\) *Id.* at 873 ("[A] holding has two components: a reference to the applicable rule of law and a reference to the specific facts to which that rule was applied.").

\(^3\) Helene S. Shapo et al., *Writing and Analysis in the Law* 14 (6th ed. 2013).
disorder, or invades the rights of others. See Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503, 513 (1969). In Tinker, the Court held that school officials violated the students' First Amendment right to free speech when they suspended the students for wearing black armbands to protest the Vietnam War because the students engaged in political speech that did not cause any disturbances or disorder, nor could the speech have reasonably led school officials to forecast a substantial disruption or material interference with school activities. Id.

Small Group Activity.

My students are paired so one represents the appellant student and one represents the appellees school officials. For this exercise, I grouped the pairs so there were four to six students in each group. I then asked the students to state the rules from three of the four leading cases we were using and to state the rules and holdings found in those cases. I told the students to state how the rules and holdings would be stated in an objective memo and then to state how each party would persuasively state the rules and holdings for their client.4 I walked around as students discussed the rules and holdings so I was able to get them to focus on the differences between the rules and the holdings, and the differences between stating a rule or holding objectively and persuasively. I only discussed three of the four cases. This way the students had to take the concepts they learned and apply them to the fourth Supreme Court case and to the remaining cases they cited in the research assignment that was due the following week.

Student Feedback.

Several students told me after class that they found the exercise to be very helpful. They found it especially helpful to have to orally state the rules and holdings.

My Assessment.

I left the classroom thinking the exercise had been successful. The next week, when the students turned in their written assignment, I found that the students had done a better job stating the case holdings than students had done in the past. I plan to use this exercise again. I plan to use it during first semester when the students are working on their objective memos and again second semester when they are working on their appellate briefs.

4 See Oates & Enquist, supra, at 332-39, 443-45 (demonstrating how to state rules persuasively).