Your Legal Writing Coach

The Writing Sample

Certain aphorisms hold true for nearly every legal writing sample you will ever need to submit, either as a law student seeking summer employment or a lawyer applying for a new position. First, a future supervisor or employer wants to know you can analyze facts in light of law and express your conclusions clearly. Notice that I don't say simply that future bosses want to know you can "write." Legal *analysis - most often in writing* - wins cases, expresses complex ideas and convinces others. Second, no one really wants to read more than they have to. No legal reader wants to hunt for the heart of your analysis if it is scattered throughout a document or buried under paragraphs of barely relevant prose. That is why the world of legal writing is replete with word counts and page limits. Thus, a good writing sample demonstrates your proficiency at legal writing with a minimum of effort on the part of the legal reader who is evaluating you. With this in mind, never use the entire brief you wrote for your second semester of legal writing, no matter how your professor raved your product as a whole. Instead, here is a time-tested way to produce an "award winning" writing sample.

First, make it stand out as *your* sample. On a cover page put your name. Indicate that it is your writing sample. Subtlety is not prized. Larger font is good.

"Writing Sample of

Joan Catherine Bohl"

Next, give some context.

"This is an excerpt from an office memo written to fulfill the requirements of my first semester legal writing class. It addresses the First Amendment issues raised by a recently enacted "panhandling" ordinance. The stated purpose of the ordinance is to enhance public safety by outlawing exchanges between pedestrians and drivers at intersections. The ordinance specifically allows exchanges between pedestrians and drivers, however, when the pedestrian is selling

newspapers. My analysis takes the position that our client, a disheveled person holding a blank piece of cardboard up to oncoming traffic, should not be liable under the ordinance because his conduct is symbolic speech. The limitation imposed by the statute thus violates Free Speech."

Although this summary eliminates some nuances in the problem, it allows you to omit the parts of the memo that will be of less interest to your legal reader: Questions Presented, Brief Answers, and Statement of Facts. Instead, you move straight to the heart of the writing sample: an excerpt of your analysis.

At this point, you must obviously consider any page limitations provided. After you select the portion of analysis you will include, check the topic sentences, to make sure they reflect the point of each paragraph. The person evaluating your writing – like any busy legal reader – will use the topic sentences to understand the main points you make. Next, look for any typos or awkward word choices. Don't worry about expanding or redoing any part of your analysis with new cases. It is highly unlikely that your reader knows much about the issue you have addressed. The reader will be focused on the quality of your analysis and the care with which you present it.

Writing Sample Cover Letter

Sometimes you may be forwarding a writing sample after the fact to a potential employer. In that case it may be necessary to send a cover letter with some detail. This sample letter contains a useful summary of information the recipient might need. Here, the writer includes a little information about the case that was the source of the legal writing problem. This is a nice addition, because the reader may well be aware of that case. Your moot court problem may well be based on a real life pending case, too. Seriously, you didn't think your research and writing instructor actually thought up all those facts, did you?

Your moot court brief will be a writing sample for years to come. Although you may be called upon to write other documents during or after law school moot court is sort of a rite of passage and your brief is important for that reason alone. Everyone, from the newest associate in a firm to the judge nearing retirement age, remembers his or her own moot court problem, and is predisposed to be interested in yours.

Your name
Your address
Your contact information

Ms. Joanna Jones
Jones & Jones, P.A.
315 South Collier Street
Suite 430
San Jose, CA 95120

June 29, 2014

RE: Writing Sample

Dear Ms. Jones:

The following is an excerpt from the appellate brief I submitted in my Research and Writing II class in the spring semester of my 1L year. I would be happy to provide a copy of the entire work upon request. The fact pattern involved Mr. XX, who brought a lawsuit against agencies of the State for a warrantless blood draw that allegedly violated his Fourth and Fifth Amendment rights. The class was given a transcript of record that contained the plaintiff's complaint, the defendants' answer, along with supporting documents from each side. The transcript of record is cited as R. The research was open to any source. All citations are in accordance with THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION (19th ed. 2010).

I represented Mr. XX. This excerpt addresses the Fourth Amendment issue and does not start from the beginning of my brief. The assignment was heavily related to *Missouri v. McNeely*, _ U.S._, 133 S. Ct. 1552 (2013), which was decided the week after my brief was due. The Supreme Court's ruling was favorable to my Fourth Amendment argument. I received the second highest grade out of the thirty-five students in the class. I have had other success in legal writing; last semester I took an upper level writing course called Business Law, and I received the fourth highest grade out of the twenty-six students in that class. I am currently taking Advanced Legal Research and continuing to sharpen my legal writing skills.

Sincerely,

Your name

Juris Doctor Candidate, Month and Year

Your College of Law

ARGUMENT

I. THE STATE'S BLOOD DRAW FORCED UPON REYNOLDS IS UNCONSTITUTIONAL BECAUSE THE INTRUSION WAS AN UNREASONABLE SEARCH AND SEIZURE UNDER THE FOURTH AMENDMENT.

The State forced Reynolds to submit to a blood draw that violated his Fourth Amendment rights because a nonconsensual, warrantless blood draw, under other than exigent circumstances is an unreasonable search and seizure. The Fourth Amendment affirms the 'right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.' *Griswold v. Connecticut*, 381 U.S. 479, 484 (1965). The State may not conduct a warrantless search if there is sufficient time and means to obtain a warrant. *Mincey v. Arizona*, 437 U.S. 385, 394 (1978). Precedent suggests warrantless searches are permissible only under strictly limited conditions. *Schmerber*, 384 U.S. 757, 771-72 (1966). Reynolds was involved in a minor traffic accident in a parking lot, and was cooperating with the State, thus the totality of the circumstances suggests the warrantless blood draw was unnecessary. *State v. Rodriguez*, 156 P.3d 771, 782 (Utah 2007). Nonetheless the State proceeded without taking proper medical precautions for the blood draw for which Reynolds suffered and was injured. *Breithaupt v. Abram*, 352 U.S. 432, 437-38 (1957). Accordingly, this argument focuses on the State's need for a warrantless blood draw to advance interests in law enforcement against Reynolds's privacy interests in his body. *Wyoming v.*

kate bohl 11/8/14 9:18 AM

Comment: The author of the sample might have included the following information on the cover page.

"This is an excerpt from the appellate brief I submitted in my Research and Writing II class in the spring semester of my 1L year.

I represented Mr. Reynolds. This excerpt addresses the Fourth Amendment implications of an unconsented blood draw. It does not start from the beginning of the brief. The assignment related to *Missouri v. McNeely*, 133 S. Ct. 1552 (2013), which was decided the week after my brief was due. The Supreme Court's ruling was favorable to my Fourth Amendment argument

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Houghton, 526 U.S. 295, 300 (1999). Reynolds established that his due process rights in the Fourth Amendment should have been maintained by the State because law enforcement is not the primary purpose of the Constitution, *Breithaupt*, 352 U.S. at 442-43 (Douglas, J., dissenting).

A. <u>The Court Should Be Suspicious of the State's Warrantless Tactics Because Individual Privacy Rights Embedded in the Fourth Amendment are at Stake</u>

The nonconsensual, warrantless blood draw forced on Reynolds must be scrutinized because precedent favors judges issuing warrants over law enforcement jumping to conclusions. For sixty-five years, the Supreme Court has held that the Fourth Amendment requires that inferences from the evidence be drawn by a neutral and detached magistrate, instead of the officer engaged in the "competitive enterprise of ferreting out crime." *Johnson v. United States*, 333 U.S. 10, 13-14 (1948). This rule does not exist to deny the State from making reasonable inferences from the evidence, but to protect individuals from overzealous law enforcement. *Id.* The state claims an exigent circumstances exception existed the morning of Reynolds's arrest to merit a warrantless search. (R.20). Exigent circumstances exist when incident to an arrest there are threats to officer safety or to the preservation of evidence. *United States v. Chadwick*, 433 U.S. 1, 15 (1977). The other exception applicable to the State's blood draw would be consent from Reynolds. *Breithaupt v. Abram*, 352 U.S. at 441 (Warren, C.J., dissenting). The State made a quick decision to negate the warrant and infringe on

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Reynolds's Fourth Amendment rights. (R20). The State's lack of exigency will be addressed later in this argument, for now assuming no exigency existed, the State was required to obtain a warrant. *Johnson,* 333 U.S. at 13-14. The "informed, detached and deliberate determination" made by a judge, was denied to Reynolds and the State decided to "invade" his body "in search of evidence." *Schmerber*, 384 U.S. at 770. The State's blood draw tactics must be scrutinized because precedent heavily favors a judicial role over warrantless frolics.

The State's error in not obtaining a warrant and wrongfully drawing Reynolds's blood is reprehensible because it threatens privacy interests deeply rooted in the Constitution. The Fourth Amendment established '(t)he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated.' *Schmerber*, 384 U.S. at 767. This wording protects against the "physical entry" that occurred when the State put a syringe into Reynolds. *Payton v. New York*, 445 U.S. 573 (1980). The State's physical intrusion into Reynolds's body violates the "most personal and deeply rooted expectations of privacy." *Winston v. Lee*, 470 U.S. 753, 760 (1985). If physical intrusion into the home is of great importance and the Supreme Court has gone to great length to protect it, then the same holds true for the body. *Payton*, 445 U.S. 573. The State's blood draw was a search of Reynolds's body that required probable cause and thus a warrant, or else the search was unreasonable.

Mincey, 437 U.S. at 390. Reynolds's blood should only have been drawn after the

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State obtained a warrant because without a warrant his right to be secure in his person was violated.

B. <u>The State Violated the Fourth Amendment Because Exigent Circumstances Did Not Exist and Without a Warrant the Search of Reynolds was Unreasonable.</u>

Exigent circumstances did not allow for the State's blatant disregard for Reynolds's privacy because the dissipation of blood alcohol content is not so fast that it creates exigency. For exigent circumstances to exist, there must be a situation that requires the officer to make a determination that the evidence of guilt will be destroyed if time is taken to obtain a warrant. *Mincey*, 437 U.S. at 394. The State claims exigent circumstances existed on the morning of January 1, 2013, and that Reynolds gave every appearance of being intoxicated. (R.12, 20). This infers that if police suspect someone of drinking and driving, that suspicion creates exigency and allows for a warrantless blood draw. *Schmerber*, 384 U.S. at 771. When *Schmerber* was decided more than fifty years ago, exigency was probable because the time required to obtain a warrant was more likely to threaten preservation of evidence. *Id.* at 770. Today, scientific data suggests there is a span of time lasting three hours or longer where a suspect's blood sample can be used for analysis. A.W. Jones, *Biochemical and Physiological Research on the Disposition and Fate of Ethanol in the Body*, in Garriott's Medicolegal Aspects of Alcohol 47, 88 (James C. Garriott ed., 5th ed. 2008). The State was not faced with

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an exigent circumstance that required Reynolds's blood to be drawn because the blood alcohol content could be determined after obtaining a warrant.

The State erred in assuming the mere natural dissipation of blood-alcohol content invoked the exception to the warrant requirement, because the totality of the circumstances must be considered to evaluate exigency. The Constitution allows minor intrusions into an individual's body under stringently limited conditions that must be considered in light of the "special facts" of each case. *Schmerber*, 384 U.S. at 771-72. To apply *Schmerber*, exigency should be evaluated under the totality of the circumstances. *State v. Rodriguez*, 156 P.3d 771, 782 (Utah 2007). When arresting Reynolds the following mattered to the State: the warrant, investigation of the accident, and drawing blood for evidence. (R.12). It was not reasonable for the State to believe obtaining a warrant under these circumstances threatened preservation of evidence. *Preston v. United States*, 376 U.S. 364, 367 (1964). The state could have obtained a warrant in under an hour. *State v. Flannigan*, 194 Ariz. 150, 978 P.2d 127, 131 (App.1998). Next, Reynolds's accident involved minor property damage, at low speeds in a parking lot. (R.3, 4). This was not a serious wreck, where a car skidded across the road, slammed into a tree, injured the driver and the passenger so badly both were taken to the hospital. *Schmerber*, 384 U.S. at 758. The State was not bogged down with an investigation or injuries, and the person at fault was cooperating at the scene. (R.3). Police resources are readily accessible in urban areas like Jacob. *Rodriguez*, 156 P.3d at 779. The State could locate a hospital to draw blood as easily as a

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sobriety checkpoint. Thus, the State failed to evaluate the totality of the circumstances and should not have conducted a warrantless blood draw because exigency did not exist.

C. That State's Warrantless Blood Draw was Unconstitutional Because the Lack of Medical Precautions and Treatment of Reynolds Made the Blood Draw an Unreasonable Search.

When the State took Reynolds's blood the State violated Due Process because of the lack of medical precaution, and the unnecessary pain inflicted on Reynolds. Prior to and during the indiscriminate taking of blood, every proper medical precaution should be afforded the accused, and the blood should be drawn by a competent medical professional. *Breithaupt*, 352 U.S. at 437-38. When Reynolds's blood was drawn there was no physician oversight and the medical procedure occurred in a temporary, mobile unit, with only one medical technician on site. (R.16). As a result, Reynolds suffered severe pain, and later physical bruising with continued pain that required medical treatment and medication. (R.4). Unlike *Winston, Schmerber or Breithaupt*, which suggest a blood draw take place in a hospital, Reynolds was worked on in a blood test vehicle. (R.2). Had Reynolds's blood been drawn in a hospital under the protective eye of a physician or other medical professionals, proper medical precautions could have been taken to avoid 'brutal' and 'offensive' blood sampling. *Breithaupt*, 352 U.S. at 435 (quoting *Rochin v. California*, 342 U.S. 165, 174 (1952)). Reynolds suffers from cerebullum ataxia brought on by a stroke, making it incredibly difficult and

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painful for blood to be drawn from the body. (R.8) For that reason, Reynolds refused to consent to the test. (R.4). It took the technician four attempts to pierce Reynolds's skin to draw blood. (R.16). Other medical professionals were necessary in this situation because the medical technician did not have the wherewithal to realize the harm she was causing. (R.4, 16).

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That was an excerpt from the appellate brief I submitted in my Research and Writing II class. I would be happy to provide a copy of the entire work upon request.

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kate bohl 11/8/14 9:18 AM

Comment: This is a much better tactic than providing the entire brief as a writing sample!

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