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Creating a Writing Sample

Herbert N. Ramy*
Director and Professor of Academic Support, Suffolk University Law School

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The original 2009 paper can be downloaded without charge from the Social Science Research Network:
http://ssrn.com/abstract=1393906

Creating a Writing Sample[1]

Most law students have never prepared a writing sample for a prospective employer. While all 1Ls will have something that they can use as a writing sample, most students will have several basic questions about editing, organizing and presenting their work in a way that places their application in the strongest light. In the following materials, I have tried to anticipate and answer these questions. My hope is that students who follow these simple instructions will improve their chances of obtaining legal employment.

Will I need a writing sample? Yes. Most employers require that prospective employees submit a writing sample. Even if an employer does not request one during the initial résumé gathering stage, one may be requested should you be invited for an interview. Do not automatically send employers a writing sample, unless they have asked for one. However, you should always take a writing sample to an interview and be ready to submit it, if requested. In fact, you may want to offer a writing sample even if you have not been requested to do so.

What kind of document should I use for my writing sample? While there is no absolute answer to this question, most students should submit a legal memorandum that they wrote for a class or for a summer employer. Legal memoranda are among the more common documents that attorneys write, so it only makes sense that you demonstrate your ability to write one. Just as importantly, a legal memorandum requires the writer to perform legal analysis. Remember, legal analysis is your prediction as to how a set of facts might be resolved based on the current body of law. Above all else, employers want to read a writing sample that demonstrates strong analytical skills.

Because analytical skills are in such high demand among legal employers, students should be hesitant to use seminar papers or law review articles as writing samples. Lawyers rarely write in this style, and applicants are unlikely to impress prospective employers with their ability to do so. More important, writing samples should highlight your analytical abilities, and seminar papers are a poor vehicle for doing so. In addition, writing samples should be relatively short, and seminar papers or law review articles are difficult to follow in anything other than their complete form. An exception to this general rule would be a seminar paper or law review article on a topic that would be of particular interest to an employer. For example, if the employer engages in a great deal of intellectual property work, a piece on the Digital Millennium Copyright Act may be an appropriate choice for a writing sample.

I have written both objective and persuasive legal memoranda in my legal writing class. Which would make a better writing sample? Most employers judge writing samples based on the strength of the legal analysis. While objective and persuasive analysis are certainly different, both forms are acceptable for purposes of a writing sample. Therefore, pick the memorandum that best demonstrates your analytical abilities. Legal writing skills improve dramatically over the course of the first year of law school, and therefore, your last paper likely represents your best writing, making it the best choice for a writing sample.

[1] The following materials were created by Professor Herbert N. Ramy, Director of the Academic Support Program at Suffolk University Law School. These materials will ultimately appear in the second edition of Succeeding in Law School, (Carolina Academic Press, Summer 2010).

How long should the document be? While the sample should provide employers with enough writing so that they may accurately judge the writer's abilities, most employers do not have the time to read long writing samples. Therefore, unless the job posting indicates otherwise, try to keep the sample between 8-12 pages long. This will also make it easier to edit the document, if time is of the essence. If the memo is longer, simply choose to include one or more of the better arguments and leave out the rest. If the sample is something less than the entire memo, be sure that the material provided makes sense without the excluded sections, and provide a cover sheet explaining which sections you excerpted.

Should I include all of the sections of my office memorandum? It depends. While sections like "Questions Presented" and "Statement of the Facts" are important parts of any memo, employers want to see an accurate explanation of the law and analysis of the facts. This type of writing occurs in the "Discussion" or "Argument" sections of the memo. Further, students tend to spend more time writing this section of their memos, so they often represent a student's best work. Finally, if you include all of the other sections of the memo, the writing sample will be several pages long before reaching the sections the reader wants to see. Thus, if you need to shorten your paper to prevent exceeding the page limit, you may want to remove certain sections and provide a brief explanation in a cover sheet in lieu of the deleted sections.

If I choose to include a cover sheet, what should I include? All writing samples should include a cover sheet that helps set the context for the reader. The cover sheet should include the following information: (1) for whom the memo was written (professor vs. summer employer); (2) if the memo was written for a class, which class; (3) a quick summation of the factual scenario and the area of law analyzed in the document; (4) whether the sample is solely the student's work or has been edited[2]; (5) whether the document is written objectively or persuasively; (6) if you have selected an excerpt from a longer memo, make an offer to provide the entire memo to the reader; and (7) note name changes to clear up possible confusion. Optional information includes the grade received, whether an employer submitted the document to a court, and the outcome of the case, if the memo was written in an office setting. I have included a sample cover sheet at the end of this document.

Should I have more than one writing sample? If there is enough time to spend on a second writing sample, then it is an excellent idea to have more than one ready, should the need arise. Employers like to read memos on topics they recognize, so it is always a good idea to dovetail the writing sample to a prospective employer's area of practice when possible. This shows the writer has spent time researching the firm as opposed to simply sending out résumés to every potential employer. At the very least, be ready to submit the complete version of the memo that was cut down to a shorter length.

Is there any particular format I should follow? The format for an office memo is fairly similar from office to office, and this is the format most legal writing professors use in class. Use basic fonts, such as Times New Roman; keep one-inch margins all around, and be sure that the font size is large enough to read easily, but not so large that it looks amateurish. For example, Times New Roman works best using a 12-point size while Courier should be a bit smaller, typically size 10 or 11. It is also a good idea to create a header for the document that provides your name and the words "writing sample" at the top of the page. The header will help avoid pages getting lost and is a nice way of reminding a prospective employer of your name!

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[2] If the memo was written for a legal writing class, then it has likely been edited by another. Similarly, if your office supervisor suggested changes to a document that you then incorporated, it is not solely your work.

Are little things like grammar and citation really that important? The "little things" are much more important than students tend to realize. Employers will often receive dozens, sometimes hundreds, of résumés for a single job opening. With that many résumés, the employer needs a quick way to shorten up the list of prospective candidates. Obviously, grades and class honors play an important role, but another way to shorten the list is to remove candidates whose writing samples have grammar, punctuation, and citation errors. The law is a very detail-oriented profession. If job applicants make errors that are easily avoided, why should an employer trust their judgment on larger issues? Memos with mistakes look unprofessional, a characteristic that is not in high demand among employers.

Is client confidentiality an issue if I am using a memo I wrote during a summer job?
Technically, any document submitted to a court is a matter of public record, unless a judge has sealed the file. Internal office documents, however, are not a matter of public record and issues regarding client confidentiality, or even trade secrets, may arise. Instead of trying to determine whether any of these issues apply to a document, the best course of action is to simply remove the names of any parties, including clients and attorneys. Also, if the memo was created during a summer job, contact that employer to request permission to use the material as a writing sample. Note name changes on the cover sheet to clear up confusion and subtly remind the reader that you understand the importance of confidentiality.

Is it appropriate to use a writing sample that I did not author in its entirety? It depends. Employers need to evaluate your writing skills. Therefore, submitting a document that has been drafted wholly by you is best. However, if your best option is a document that has been coauthored, make sure you provide a cover sheet that clearly explains which portions you wholly authored.

A Few Final Do's and Don'ts

- Address the cover sheet to the interviewer or hiring partner of the firm in order to tailor the writing sample, at least somewhat, to an individual employer.

- Avoid using terms that, while commonly used elsewhere, are simply not appropriate in a professional document. For example, avoid contractions like "isn't" or "can't."

- Do not use words that are not words! This may seem obvious, but a number of these "words" have slowly crept into everyday speech and must be avoided. For example "irregardless" is not a word and is often confused with irrespective.

- Know the difference between "infer" and "imply." Some students use the words almost interchangeably even though they have very distinct meanings. Imply means to provide information indirectly. Therefore, those who provide information – the writer of a document or a speaker – may be implying additional information in an indirect fashion. The word infer means to draw conclusions from incomplete information. Only the recipients of information – those reading a document, viewing a scene, or hearing information (jurors) – may infer. Consider the statement "I brought my umbrella with me today." The speaker may be implying that it is likely to rain later in the day, a point that the listener may very well infer.

- Be sure to correctly use all legal terminology. Words like finding (found, find), holding (held, hold), and reasoning (reasoned, reason) all have specific legal meanings and should not be used interchangeably.

- Cite correctly, but be aware that Bluebook citation form is not necessarily used by legal practitioners within your jurisdiction. Look to local court rules to determine what citation rules are followed. When in doubt, remember the primary reasons to cite in legal documents: to provide support for legal assertions and to direct the reader to that support. If a reader might want to view the material that supports a conclusion or assertion, then cite it.

- Quotation and citation are not the same thing. Placing material in quotation marks does not relieve the writer of the obligation of providing the reader with a citation to where the quoted material first appeared. Similarly, citing at the end of the sentence is not enough if that sentence contains information lifted directly from another source. In this instance, use quotation marks *and* cite to avoid a charge of plagiarism.

- Finally, avoid quoting too extensively in documents. Employers want to see how well an applicant writes, and they will not get a true sense of this ability if most of the sample consists of quotations. It may feel like it is safer to quote, but the job of the writer is to explain the relevant legal principles to the reader. As a senior partner once told me, "If I wanted to read the case I would have pulled it off the shelf myself." Of course, one should quote when failure to do so might change the meaning intended by the original author, but this occurs much less frequently than many students think.

SAMPLE COVER SHEET

- We highly recommend that you use a cover sheet in the following circumstances:
    1. You use excerpts from a longer document.
    2. You use a writing sample that has been coauthored by others. You need to identify the sections that you wholly drafted.

- Cover sheets are not always necessary and do not have to be as extensive as this sample. There is more than one way to format a cover sheet. The level of detail on your coversheet will vary depending on how much additional information may be needed for a reader to understand your writing sample.

To: John Smith
Smith, Jones, and Harper, LLC
From: Herbert Ramy
RE: Attached Writing Sample, State v. Baxter
Date: April 25, 2008

I completed the following memorandum during my first year of law school for Professor Barfield's class, *Introduction to Legal Research and Writing*. This is the final draft of the memorandum I submitted, and I revised it based on comments and suggestions I received from Professor Barfield. I received an "A" on the assignment, and I received the "Best Memorandum" award for this work.

For purposes of this memorandum, Prof. Barfield placed me in the role of an Assistant District Attorney in the mythical state of Acadia. At trial, the state had secured a conviction against Ted Baxter for assault and battery by means of a dangerous weapon, with the weapon in question being the defendant's shoes. The defendant and the victim had been drinking in a bar when a disagreement over the defendant's girlfriend occurred. The defendant followed the victim out of the bar where he punched and kicked him several times.

The defendant appealed his conviction, arguing that the District Attorney's Office failed to submit sufficient evidence to the jury and that the trial court should have allowed the defendant's Motion for a Judgment as a Matter of Law. More specifically, the defendant attacked two aspects of the prosecution's case. First, Baxter contended that the description of the defendant's shoes was too vague to support an inference that they caused the victim's injuries as opposed to merely the blows themselves. Second, the defendant argued that the victim's injuries were not so significant that they could support the jury's finding that the defendant used a weapon.

In my role as an Assistant District Attorney, the DA asked me to assess the strengths and weaknesses of the defendant's appeal. Therefore, I wrote the memorandum from an objective rather than persuasive standpoint.

For the sake of brevity, I have only included the discussion section of the memorandum. I can provide you with the other sections of the document—facts, brief answer, and question presented—upon your request.

I. Discussion[3]

Baxter is likely to prevail on his appeal of the trial court's denial of his motions for a directed verdict and judgment notwithstanding the verdict. The Acadia Court of Appeals will apply the *de novo* standard of review in determining whether our office presented sufficient evidence at trial for the jury to find the existence of a weapon beyond a reasonable doubt. See State v. Georgette, 199 Acadia 216 (1995) (noting *de novo* standard appropriate when reviewing denial of motion for required finding of not guilty). Acadia's ABDW statute actually contains two separate definitions of a weapon. First, an item is a weapon if it is specifically designed to cause harm. 30 Acad. Stat. Annot. § 17(A). Obviously, shoes are not designed to cause harm, making § 17A of the statute inapplicable to this case. Under, § 17(B) of the statute, however, any item may be a weapon if it is intentionally used to cause harm, and it has the "capability of causing serious bodily harm." See 30 Acad. Stat. Annot. § 17(B). Importantly, the item, and not just the blow to the victim, must be capable of causing the requisite harm. *Id.* The state may establish an item's ability to cause "serious bodily harm" through a sufficient description of the item or based on the severity of the victim's injuries. State v. Carlton, 88 Acadia 77 (1952); State v. Morgenstern, 98 Acadia 17 (1950). In this instance, the description of the defendant's footwear as "shoes" or "sneakers" is insufficient to establish their ability to cause serious bodily harm. The bruising over much of the victim's body was serious, but still not sufficient evidence to establish that the defendant's footwear was a weapon.

[3] Portions of this sample memo first appeared in Chapter IX of Succeeding in Law School. Herbert N. Ramy, (Carolina Academic Press 2006).

Description of Defendant's Shoes Insufficient

The jury did not hear a sufficiently detailed description of Baxter's shoes to find that they were a weapon. Under Acadia's ABDW statute, an item may be a weapon only if it is capable of "causing serious bodily harm." It is difficult for a jury to make this finding without an adequate description of the item in question. 30 Acad. Stat. Annot. § 17(B); see State v. Carlton, 88 Acadia 77 (1952); State v. Morgenstern, 98 Acadia 17 (1950).

If the jury receives a relatively detailed description of the item in question, they may be entitled to find that it was used as a weapon. In State v. Morgenstern, a jury convicted the defendant of using her shoes as a weapon. Morgenstern, 98 Acadia at 19. During trial, a witness described the shoes as "sharp and pointy." Id. at 18. In addition, the defendant's shoes punctured and broke two bones in the defendant's hand. Id. From this evidence, the court concluded that a reasonable jury could find that the shoes in question had the "capability of causing serious bodily harm." Id. at 19. The Morgenstern Court went on to reason that it was irrelevant whether the injuries were more severe than could have been accomplished without a weapon. Id. The key was whether the weapon, in this case the defendant's shoes, could cause more harm than could the blow by itself. Id. In contrast, the Court in Georgette held that the jury had not received a sufficient description of the defendant's weapon, again a pair of shoes, to determine that they were capable of causing serious harm. State v. Georgette, 199 Acadia 216 (1995). In Georgette, the state failed to introduce any description of the defendant's shoes. Id. at 218. From the evidence at trial, the jury could have inferred that the defendant was wearing some type of footwear. Id. Yet, the court reasoned that any additional inference as to the type of footwear would be "tantamount to guesswork" and impermissible. Id.

In the instant case, the prosecution failed to introduce a sufficient description of the defendant's shoes to warrant the jury finding that they were a weapon. Initially, the victim testified that the defendant was wearing "shoes" during the attack, but later modified his testimony on cross examination. On cross, he admitted that he had used the term "shoes" as another word for footwear, explaining that he "just meant that [the defendant] wasn't barefoot." Reviewing the evidence in a light most favorable to the prosecution, the district attorney established that the defendant was wearing shoes, but this description is little more than was presented in State v. Georgette. 199 Acadia at

218. In both instances, the evidence required the jury to infer that the term "shoes" described an item capable of causing serious bodily harm. The drawing of such an attenuated inference amounts to the kind of guesswork proscribed by the Georgette court. Further, the term "shoes" is extremely general as compared to the description of the weapon in State v. Morgenstern. 98 Acadia at 18. In Morgenstern, the Court emphasized the specific description of the shoes as "sharp and pointy" in upholding the defendant's conviction. Id. When one considers the broad range of footwear that could be described as shoes, this description standing alone cannot establish their capability of causing serious bodily harm. However, the jury is allowed to review evidence beyond the description of the shoes in determining whether they were used as a weapon.

Severity of Defendant's Injuries

The jury may use the severity of the victim's injuries as some basis for establishing that the defendant used an otherwise innocent item as a weapon. In State v. Carlton, the court looked to a general description of the defendant's footwear as well as the extent of the victim's injuries in upholding the defendant's conviction. State v. Carlton, 88 Acadia 77, 78 (1952). The jury heard sufficient testimony for a finding that the defendant was wearing "shoes," but the Court reasoned that, without more, this description was insufficient to uphold the conviction. Id. The jury did hear more, however, in the form of testimony that the victim suffered from broken ribs and a dislocated shoulder as a result of the defendant's kicks. Id. In contrast, another victim, who had not been kicked with shod feet, sustained a few bruises. Id. The Carlton Court held

that the severity of these injuries allowed for a jury finding that the defendant was armed with a weapon that was capable of causing serious bodily harm.

Slaughter's injuries were not sufficiently severe to establish that the defendant's shoes were a weapon. Unlike the broken bones sustained by the victim in Carlton, our victim merely sustained severe bruising over his entire body. While these injuries are not to be minimized, it is doubtful that they support a finding that the shoes were used as a weapon. Our office needed to prove that the shoes had the capability of causing more harm than would the kicks alone. Without some additional details regarding the extent of the victim's injuries, no reasonable jury should have found that these bruises established the presence and use of a weapon.

II. Conclusion

The court is likely to agree with the defendant's contention that the jury did not hear sufficient evidence to find that he was armed with a weapon. While the jury could have inferred that the defendant was wearing shoes during the attack, they did not receive enough of a description of the shoes to determine they were capable of causing "serious bodily harm." Similarly, the defendant's injuries were not sufficiently severe to warrant a finding that they could only have been caused by a weapon, defendant's shoes, as opposed to the blows themselves.