

CRIMINAL JUSTICE & LAW WRITING

Chapter 5

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Introduction

Legal writing requires adherence to specific criteria to be effective. There are several different types of legal writing, and this chapter will discuss three distinct types. The first type takes place after a criminal incident has occurred. The police will write a police report of the incident. If the criminal incident proceeds to a court case, an attorney will be tasked with writing a legal brief to submit to the court.

There are different types of police reports and a variety of individuals who will read and use the police report that you write. Police reports are an account of an event detailed in writing. These can be used as evidence and also serve to assist decision-makers in criminal processes and procedures. Be sure to use both the correct form and format, and know your reading audience. If you are consulting with other individuals outside your jurisdiction, be sure to check for the specific writing rules that apply to you. Also, be aware that there may be a variety of terms to refer to a police report, such as a crime report or criminal incident report. Some of these are the same, and some may be different.

When police reports lead to court cases, an often lengthy trial process begins. One of the steps in the trial is filing a legal brief by the attorney for each side in the case. A legal brief is the attorney's



opportunity to provide a written restatement of the facts of the case to the court followed by an argument supported by prior case law, which is designed to persuade the judge or jury to rule in favor of the party represented by such attorney.

Once a case is decided, the case serves as precedent for other cases with similar fact patterns. Students studying in a variety of disciplines may develop a case brief to aid their understanding of the meaning of the case.

The information below will further describe each of these types of legal writing. To illustrate each document, the following hypothetical situation will be used. Rolling Hills Coffee Roasters is an independent coffee producer in Anytown, Pennsylvania, conceived and launched by Tara L., the sole owner. The business consists of acquiring coffee beans from a variety of sources as well as roasting, packaging, and distributing the beans to stores and coffee shops across the eastern United States. In addition, Rolling Hills opened a small café in Everycity, Pennsylvania, two years ago. Simon J. was hired to manage the café and, by all accounts, has done a great job with the

Chapter Objectives

After studying this chapter, you should be able to:

- Understand the process and importance of police writing
- Develop the content appropriate for a police report
- Construct a police report
- Understand the standard elements of a legal brief and identify legal issues
- Formulate a legal brief by developing persuasive legal arguments supported by facts
- Understand the standard elements of a legal case brief

establishment. Rolling Hills Café is always busy and has a loyal customer base. Simon J. works hard, never takes a vacation, and is the sole employee authorized to balance the cash register, make the daily deposit, pay bills, and order supplies. Tara L. recently noticed that the café was steadily losing money despite steady sales and product orders. Tara L. called the police, who responded and completed and submitted a crime report in the course of their investigation.

Given the amount of video and documentary evidence compiled by the police, the district attorney filed criminal charges against Simon J. in court. Attorney S. was hired to represent the Commonwealth of Pennsylvania in the court case, and, in the course of the proceedings, Attorney S. wrote and filed a legal brief.

The discussion below will review how each of those legal documents is effectively developed.

Police Reports

Description

Police report templates are typically found within each department. Once completed, they are filed within the department's system and become part of each case's file or official record. Police reports can then be shared with the accused and his counsel, and the prosecution. Sometimes police reports can be made available to the general public pursuant to Right to Know laws.

There are two determinations to make to begin police reporting: format and process. When choosing the reporting format, determine if there are rules within your organization on both content and

process. For example, when gathering evidence, you will most likely use a distinct form, such as an evidence log, to document information. For process, some departments may require approval of your report before it is filed or finalized. Be sure you understand these steps related to both content and process. When in doubt, ask a colleague in your department or your supervisor.

Police reporting is essential and can play a significant role in the outcome of a case. These reports can be used both in criminal and civil proceedings. The writer should remain objective and write in the first person. Attorneys, judges, juries, and other decision-makers rely heavily on the contents of police reports. Helpful guidelines are provided in the next section, but also be sure to check within your department for added nuance.

Guidelines

Format and appearance

Most reports will be in a template that you will fill out via type. There may be specific blocks or placeholders on the report to fill in identifying information about yourself, such as your name, Badge/ID number, and title or rank. Then there should also be a location to fill in the narrative or description of the incident and your observations. If you need to handwrite your report for some reason, ensure that your handwriting is legible, and you are using the appropriate color ink as determined by your department.

Do not use punctuation unless it is factual. For example, do not use an exclamation point to emphasize anything opinion-based.



The report should be kept as neat and orderly as possible. When printing the report, be sure to keep it free from any creases or folds and ensure that it does not stain with any substances by keeping it in a secure place or folder.

Voice/tone/language/style expectations.

Your report should include factual information and be in the first-person perspective. In the sample report below, you will see the sentence states, "This officer ..." You should consider writing your narrative in chronological order, starting with the incident's time, date, and location and how you came to be involved, respond or be present. You can then detail your observations and all witness information, including members of your organization who were present, keeping to the who, what, when, where, and why of what happened. Do not include assumptions, guesses, conclusions, or opinions. For example, in the sample, the officer wrote, "TL was crying during this officer's interview" The officer did not write, "TL was sad, upset," as those would be conclusions instead of descriptions. Please note that opinions may be included if you are writing an expert report, but only after you have listed your credentials factually



on which to base such an opinion. Expert reports should be discussed with your supervisor prior to initiating or authoring.

You can include direct quotes from witnesses and other people involved in the incident. However, be sure that you are accurately quoting the entire sentence. If you cannot ensure that every word you are writing was spoken by the witness, then do not use quotations. The sample report does not have quotations but accounts for what the officers heard from the witness. We could envision a police officer standing in front of a crying witness who would not be transcribing notes simultaneously.

When describing your own role in the course of what occurred, be sure to be honest and objective. For example, if you needed to escalate your voice or use language to diffuse the situation, you should report it accurately. Be sure to include the facts that preceded and occurred afterward as well. For example, you would not just write: "This officer had to yell and curse at the defendant." Instead, you could write, "The defendant failed to respond to my requests to get out of the car. I could not see his hands. He was shifting around in his seat. I then shouted louder to exit the vehicle. The defendant still did not get out of his vehicle and bent down and reached under his seat. I then shouted louder to get out of the g-damn car. The defendant then got out of the car with his hands in the air."

Required elements

All of the fields in the report should be complete. Completion may include a requirement for a supervisor's signature in some departments. The narrative should state all facts known to date and may also include steps in progress at the time the report is written. As further facts become known, you may need to complete and file a Supplemental Report based on your department's standard operating procedure. Be sure to share these reports with the appropriate people in a timely manner, as the facts contained within are discoverable and may lead to suppression if not shared within the correct time frame.

Helpful Tips & Considerations

Write your report the same day as your observations or as soon as possible thereafter. If, for some reason, you have to wait to write your report, document briefly as many facts as possible to help your later recall. Strive to write your report as soon as possible and consult with your department for any required timeline. Consult your department on its policy for preserving notes or destroying them once properly transmitted into your report.

Be as accurate and detailed as possible. Include as much as you can remember, so there is a complete account of the events. Think about the interpretation of your words and ensure that the words you are using accurately reflect your observation and cannot be taken the wrong way. Do not make conclusions. You may, however, write about the weather conditions, witnesses' demeanor or other observations to allow others to make conclusions.

It would be best if you avoided police jargon in your report. According to the department's process, you should proofread your report for accuracy, format, and grammar before filing your report.

Legal Briefs

Guidelines

Legal briefs combine factual summaries and persuasive arguments. They are written to aid a court in understanding the issues and legal authority and persuade the court to decide in favor of the party on whose behalf the brief is submitted. Legal briefs also require the writer to apply proper Bluebook legal citation form and format. By their nature, there are two sides to each court case. Each side submits a legal brief asking the court to adopt their selected cases, statutes, and rules of law and apply them to the matter at hand in favor of their client and provides a persuasive argument to encourage the court to adopt their arguments. A good legal brief is well organized, easy to follow, and persuasive.



Format and appearance

Legal briefs may be filed in an original trial court case or a case on appeal. In either situation, the court may be a state or federal court. Each court has its formatting requirements for all documents filed in court, including legal briefs. The court prescribes formatting standards for the cover page of the legal brief and the font size, margins, and other formatting guidelines that must be followed. Legal briefs that do not follow the proper format established by the court in which the brief will be filed may be rejected by the court.

All legal briefs include support for the arguments made in the brief. The support comes from prior case law, also known as precedent, statutes, rules, and possibly even a state constitution or our Federal Constitution, depending on whether the matter is filed in a state or federal court. All support used in a legal brief must be cited using The Bluebook. The current edition of The Bluebook is the 20th edition, and it is available in both hard copy and as a subscription service online.



Voice/tone/language/style expectations

Legal Briefs use facts to ground persuasive arguments to convince the reader to adopt your arguments. The facts tell the story and provide answers to what happened. The persuasive writing that follows the facts answers the question of what should be done about the issue to benefit the party on whose behalf you are writing the legal brief. The factual writing should not be dry but should engage your reader by presenting facts pertinent to your argument. Facts that are important to your side should be included and emphasized. Facts that are harmful to your side can be excluded or downplayed. The legal brief for the other side will include those facts, but you may also want to include some or all to provide a persuasive argument as to why those facts do not affect the outcome of the case in a manner detrimental to your side. For example, in the hypothetical included at the beginning of the chapter, if you are writing a legal brief on behalf of Simon J., you will want to emphasize how hard he worked and how much he did for the company, increasing its earnings. The opposing side will include evidence from the police investigation showing that Mr. J. was taking cash from the cash register. It would be essential to have those facts in your legal brief so that you can present additional facts

that explain that Mr. J. was using the money for business purposes rather than for personal purposes.

In the argument section, you will emphasize your strongest arguments and provide case precedent and other legal support for your position. Your research will also result in discovering precedent that is unfavorable to your side. Use persuasive writing to distinguish the unfavorable precedent and show the reader why that case or statute does not apply to the facts in this case. Use the legal brief to make those arguments, rather than rely on the reader of the legal briefs on both sides to make those connections for themselves. Your goal should be to walk your reader through the facts and arguments so that they arrive at a conclusion favorable to your side.

Required elements

The major components of a legal brief consist of a cover page in the form required by the court.

Typically, the cover page includes the court where the matter is filed, the attorneys' names, the docket or case number, each of the parties, and the date.

The cover page is followed by a brief Introduction followed by Questions Presented, Table of Contents, Table of Authorities, Statement of Facts, Argument, and Conclusion.

- The Questions Presented section of a legal brief states the legal issues for which the author intends to provide legal arguments intended to persuade the reader to adopt the conclusions presented in the legal brief. The Questions Presented should each be one to two sentences that clearly summarize the issues.



- The Table of Contents serves as an outline of the legal brief. Each of the headings from the Statement of Facts, Argument, and Conclusion section are included in the Table of Contents on a separate line. The page on which the heading is found is also included.
- The Table of Authorities lists the authorities cited in the legal brief grouped by type of authority. Each authority listed also includes the page or pages at which each is cited. The court's rules of procedure may also specify the order in which each category of authority is to be cited. Authors must follow the standard order of authorities as provided in Bluebook Rule 1.4. Rule 1.4 specifies that Constitutions are listed first, followed by Statutes, Treaties, and then Cases (The Bluebook, 2020). The rule lists further ordering within each category. Some rules of court procedure also require that the portion of a statute, rule, or regulation that was used must be included in addition to the citation (Martin, 2020).
- In the Statement of the Facts section, the author includes all relevant facts of the situation that the author will use in the Argument section that follows to persuade the reader to draw the conclusions desired by the author of the legal brief. Facts that are helpful to the author of the legal brief are always included. Facts that negatively impact the author's conclusion may also be included to write an argument that persuades the reader that the facts can be interpreted or understood in a more favorable way to the author's side.
- The Argument section is the longest section of the legal brief and uses persuasive arguments to drive the reader to the conclusions in the next section. The Argument is divided into sections, and each section will have a numbered heading and possibly subheadings.
- The Conclusion section is the final section of the legal brief. In the Conclusion section, the author summarizes the answer to the Questions Presented in the first section of the legal brief. The goal is to have the reader arrive at the same conclusion as the author after reading the Argument section. The legal brief is concluded with a signature in similar format to a letter.



Helpful tips & considerations

Authors often discount the Questions Presented in a legal brief. However, this section is the writer's opportunity to create a meaningful first impression and frame the issues carefully and in a way that indicates clearly and succinctly to the judge the author's position in the brief. Supreme Court Justice William J. Brennan, Jr. remarked that if the Questions Presented struck him as "worthy of review," he did not spend much time on the rest of the brief (Brennan, 1973).

Headings are another opportunity to help signal the author's intent and help begin persuading the reader to adopt the conclusions provided in the legal brief. Headings should be considered as thoughtfully as the full arguments in the legal brief. Headings should make a point, not just introduce a topic. Some legal briefs include headings that are an entire paragraph, but since the goal of headings is to help lead your



reader to your conclusion, a more concise heading is preferred.

The headings are included in the Table of Contents. Therefore, you can check the effectiveness of your headings by reviewing your Table of Contents to ensure that it provides a clear outline of where you are trying to drive your reader with your arguments (Brook, 2016).

The author should avoid exaggerating in the Statement of Facts or dramatizing the Statement of Facts.

Do not use the first person in legal briefs.

Case Briefs

Guidelines

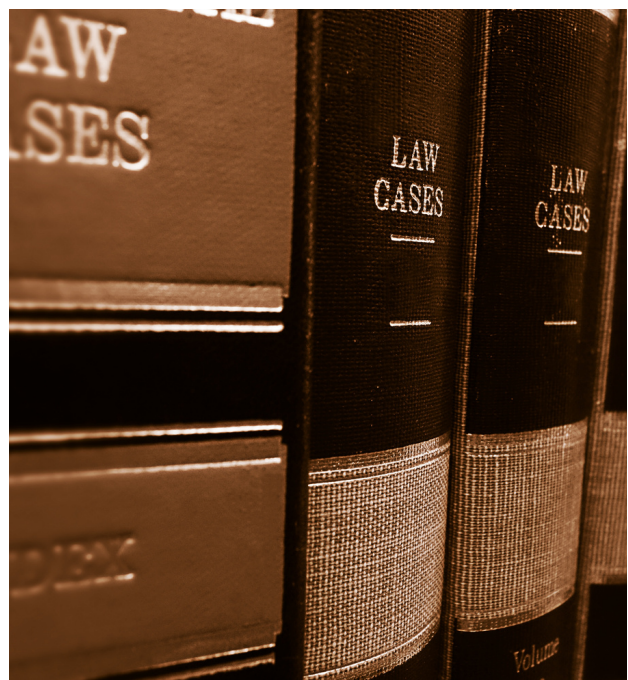
Students develop Case Briefs either as a study aid to help them learn and remember legal cases in a course or as a course assignment. The student creates a case brief using some predetermined format for writing case briefs in both situations. One of the more common formats is the "IRAC" format. IRAC stands for "Issue, Rule, Application, and Conclusion."

Format and appearance

There is no required format or appearance for a Case Brief that a student creates to help them understand a court decision they are studying or using in research. If the Case Brief is assigned in a class, the professor may require a general formatting style such as APA or MLA. If the Case Brief is prepared for the student's use for class discussion, the student can use any format to keep them organized and prepared for such class participation.

Required elements

- A student writing a case brief using IRAC begins by writing a brief summary of the facts leading up to the case being filed in court. After summarizing the facts, the student summarizes the case's procedural history that brought it to the current court. It may be an initial court decision or an appeal that a party filed after an original court decision. Any facts not used by the court in its decision are not included in a case brief. Once the facts and the procedural history are summarized, the student moved to the IRAC analysis of the decision itself.
- In the first section of the IRAC analysis, the student identifies the legal Issues that the court is deciding on in the case.
- In the second section, the student states the Rule(s) of law that the court uses to decide those issues.
- Once the correct rule(s) is identified for each issue, the student summarizes the Application of the rule(s) by the court to the facts of the case.
- The student identifies the court's final decision on each issue identified in the first section of the IRAC analysis in the last Conclusion section of the case brief.





Helpful tips & considerations

Court decisions are often long and involved. A student would be well-advised to take notes throughout their first reading of the case. Notetaking will make the final writing of the case brief much more manageable and will minimize the number of times a lengthy case must be read to synthesize it down into a Case Brief.

After writing a police report, legal brief, or case brief, you should proofread for grammatical and factual errors. It is acceptable and sometimes required to have your police report checked before filing. However, you should not have another witness proofread your report to avoid bias. It is also good to have a legal brief reviewed before filing it with the court and a case brief proofread before turning it into a professor. Technology can assist with spelling and grammar as various excellent software applications can catch many errors.

File your report in the appropriate location and according to the governing process. Police reports are filed according to proper department procedures, and legal briefs are filed in the court where the legal action was started.

Conclusion

Legal writing is very different from storytelling and other types of writing. Starting with the police report, legal writing consists of a reporting of facts. Facts are the initial element of a legal brief, but legal briefs also contain persuasive arguments supported by prior case law. There are specific formatting and procedural rules for both police reports and legal briefs. In addition to writing in the style required by each report, the proper format and process must also be followed. Case briefs are informal reports students can develop to understand a court decision or as a class assignment. The student determines the format for a case brief if it is for their own use. The professor defines the format if it is completed as a course requirement.



Writing Activity

Your friend contacts you and tells you that a bicycle was stolen from their garage by a woman who was seen on a doorbell camera and identified. This leads to a two-part assignment.

- Fill in the story's details, adding information you devise from your own creativity, and draft a police report containing the pertinent information. You can either use the form in the example in this chapter or research your own form of report.
- Write two versions of the facts to be included in a legal brief – one as the attorney for the state bringing the charges against the woman stealing the bicycle and the other as the attorney for the woman charged with stealing the bicycle. How might the two versions of facts be different while both being accurate?

Review & Discussion Questions

1. What things should you avoid when writing a police report?
2. Who reads police reports, and why are they important?
3. When and how do you write police reports?
4. How is the writing in a legal brief different from storytelling?
5. What are the necessary elements of a persuasive legal argument?
6. Why is it important to provide support for each legal argument in a legal brief?
7. What is the IRAC format of a case brief used for a class?





Glossary

Appeal: A process or action that allows the review of a previous decision or ruling.

Civil proceedings: Process where parties bring a matter to court for a decision.

Criminal proceedings: Vary by jurisdiction. This is the steps in the process to adjudicate criminal laws by a governmental agency.

Discoverable: Information that must be made available to the opposing party in a legal matter.

Evidence log: A document that lists each and all items of evidence collected by law enforcement. Evidence logs will list a description of each item and detail where it was collected, by whom, and the date and time it was obtained.

Party: The person or group of people who are involved and or have an interest in the legal proceedings.

Precedent: A court decision used as support for deciding a later court decision. The new issue must involve identical or similar facts to be considered precedent.

Statute: A law that is typically enacted by a legislative authority.

Suppression: A term used to describe evidence that will be excluded from trial proceedings.

There is a process that attorneys must follow to motion to suppress evidence. Law enforcement and prosecutorial offices will then address whether there was a constitutional basis for suppression.

References

- The Bluebook: A Uniform System of Citation. (2020). Harvard Law Review Association.
- Brennan, William J., Jr., (1973). The National Court of Appeals: Another Dissent, University of Chicago Law Review, 40, 473-485.
- Brook, Julie, (2016, May 11). Headings Are Key to an Effective Document. CEB Blog – Your Partner in Practice.
- Martin, Peter W. (2020). Introduction to Basic Citation, §6-700 Table of Authorities, Legal Information Institute, <https://www.law.cornell.edu/citation/6-700>.

CHAPTER APPENDICES

Sample documents based on the Rolling Hills Coffee Roasters example from the introduction

Police Report

On xx-yy-zzzz, this officer responded to a call from Tara L., DOB xx-yy-zzzz, at the Rolling Hills Coffee Roasters located on the Northeast corner of ABC Street and DEF Street, Anytown, PA. TL owns and operates the Rolling Hills Coffee Roasters. I met with TL at the Coffee Roasters location in Anytown. TL told me that she also owns and operates the 123 Café in Everycity, PA, located on xxx Street Road. TL told me that she believed that her manager Simon J. was taking cash from the register at the Everycity location and making personal purchases on the company credit card. TL said she was surprised by this because she had known SJ to be a hard worker and never take a vacation. TL said she gave SJ authority to balance the cash register, make daily deposits, pay bills, and order supplies. TL was crying during this officer's interview, and TL said she was ashamed that she trusted SJ. This officer asked TL how she knew SJ was taking cash from the register without her permission. TL explained that she noticed that the café was steadily losing money despite steady sales and product orders. TL also captured video surveillance of SJ taking the cash out of the drawer.

On xx-yy-zzzz, this officer traveled to 123 Café and met TL upon arrival at the front entrance. TL directed this officer to the video hard drive and authorized this officer to view, obtain and seize six [6] video drives. This officer placed the six [6] video drives into evidence bags and sealed the bags on the scene. See Evidence Log 1-6. TL also gave this officer a photograph of CJ. This officer placed the photograph into an evidence bag and sealed the bag at the scene. See Evidence Log 7. TL also gave this officer credit card statements from the company. This officer placed the credit card statements totaling twenty-four 24 pages into evidence bags and sealed the bags on the scene. See Evidence Log 8. TL apologized to this officer for not paying closer attention to her employees and that this was an inconvenience to her other employers and to this officer's department. TL said she highlighted the statements in yellow marker to indicate items personal to SJ and not part of her business. This officer also seized the cash register and will send for fingerprints. See Evidence Log 9.

At HH:MM hours on the same date xx-yy-zzzz, this officer returned to the station and placed the nine [9] evidence bags into the evidence locker with Officer Q present.

On xx-yy-zzzz date, this officer unsealed evidence bags 1-7 along with Officer Q and viewed each video from start to end while comparing the photo image of CJ to the video. On 18 occurrences, this officer viewed CJ remove US currency in the form of paper bills from the drawer and then place them into his inside coat pocket. The officer also observed the videos were image only, and there was no sound recording. The coat appeared to be navy blue with three silver [buttons]. After viewing the video drives and comparing the photo image, the items were returned to the same evidence bags and sealed with Officer Q present. The bags were then returned to the evidence locker.

On xx-yy-zzzz date, this officer unsealed the evidence bag 8 with Officer Q present. This officer examined the credit card statements and prepared a search warrant listing all of the credit card items that were highlighted in yellow. The bags were then returned to the evidence locker.

A search warrant for the items will be served, and the cash register processed for fingerprints-supplemental report to follow.

Signed This Officer & Date

2.Insert your second major heading for Argument 1.....5
a)Insert your first subheading for Argument 1.....6
b)Insert your second subheading for Argument 1.....7
B.Insert your second Heading8
1.Insert your first major heading for Argument 2.....8
a)Insert your first subheading for Argument 2.....9
b)Insert your second subheading for Argument 2.....10
2.Insert your second major heading for Argument 2.....10
a)Insert your first subheading for Argument 2.....11
b)Insert your second subheading for Argument 2.....12
V.CONCLUSION.....13

TABLE OF AUTHORITIES

Cases

Savel v. Coastal Waterway Corp.
XX Pa. App. 4th XXX (2003).....5,12

(etc.)

Statutes

PA. Penal Code §488.....13

Other Authorities

Etc.

ARGUMENT

I.THE POLICE REPORT ERRED IN CONCLUDING THAT THE MONEY SIMON J. TOOK FROM THE CASH REGISTER WAS A THEFT BECAUSE MR. J. HAD LAWFUL ACCESS TO THE CASH AS THE BOOKKEEPER AND USED IT TO PURCHASE ASSETS FOR THE BUSINESS.

After inserting the first heading, as shown above, the writer will then proceed to discuss legal theory with support from case, statute, and other authorities cited. The writer will proceed throughout the arguments presented in this manner before summarizing in a conclusion and signing off on the legal brief.

CONCLUSION

As demonstrated in the argument above, Mr. J. was within the legal authority of his employment by Rolling Hills Coffee Roasters to remove money from the cash register and use it for purchases on behalf of Rolling Hills to purchase capital assets.

FLORA & FAUNA LLP

/s/ Rose F. _____
Rose F.
Attorney for Defendant

/s/ Fern F. _____
Fern F.
Attorney for Defendant

Case Brief

J., S. v. Commonwealth – 75X A.2d 11XX (Pa. Commw. 2020)

Facts

Simon J. was an employee of Rolling Hills Coffee Roasters, an independent coffee producer in Anytown, Pennsylvania. The owner of Rolling Hills Coffee Roasters reported him to the police because she suspected him of stealing money from the cash register. The police obtained six (6) video drives from the Rolling Hills Café that were used in the trial.

Procedural History

Mr. J. was tried and convicted for embezzlement. Mr. J. appealed the conviction, claiming that the videos introduced into evidence should have been suppressed because the police failed to establish a proper chain of custody.

Issue(s)

Whether the police maintained the proper chain of custody of the video evidence presented at the trial court to establish a foundation for authentication and admissibility.

Rule

The student will cite and summarize the Constitutional provisions and Federal and State Sections that require evidence to be properly maintained and establish chain of custody for authentication. They will also summarize the law regarding admissibility of evidence in chain of custody case law including analysis of the weight versus admissibility distinction.

Application

The student will apply the rules stated above to Mr. J's contention that the police did not follow the proper protocol for keeping authenticated evidence in the secured location and allowed unauthorized access to the video drives.

Conclusion

The student will state the decision of the Pennsylvania Court of Appeals on whether the police followed the rules stated and properly stored and accessed the evidence and explain that, due to improper storage and the implication of tampering, the videos cannot be authenticated and therefore should not have been introduced into evidence. The student will also summarize the action taken by the court to overturn the case or remand the case back down to the lower court to hear the case again without the video evidence.