To: Dr. Michael-John DePalma  
From: Ariadne Aberin  
Subject: Investigative Report on Legal Writing  
Date: March 1, 2010

The purpose of this memo is to discuss the analysis of writing within the legal profession, specifically, the legal memorandum.

**Introduction and Objectives**

The subject of this report is to present information on analysis on a specific type of writing done in the legal profession: the legal memorandum. The legal memorandum is a document written by many types of lawyers, including civil litigation lawyers. My research aims to understand the types of writing done in my chosen field of civil litigation and to learn the essential skills needed to write adequately in that field. Additionally, writing comprises a large portion of work done in the legal profession, and having a grasp of the work lawyers do is very beneficial for me. Prior to doing this research, I had some questions about legal writing. I had preconceptions that legal writing was “dry” or that the only documents lawyers wrote were court case briefs. This report addresses issues such as whether legal writing is purely objective, or if there is any room for creativity and elegant language. It answers the question of what types of documents are written by lawyers, and it acknowledges issues that students should consider before entering the profession. My research will aid readers because many people have misconceptions about the work a lawyer does. This report discusses the main component of the legal occupation and provides more insight into the actual work done by lawyers, which may even change readers’ assumptions about the legal profession.

**Research Methods**

In order to gain more knowledge about legal writing, I consulted Professor Matthew Cordon, J.D. Professor Cordon is the director of legal research, associate director of the law library, and professor of law at the Baylor Law School. He teaches courses in Legal Analysis, Research, and Communication (LARC), as well as Advanced Legal Research. He has co-authored several major works in the field of legal research and writing, including *Researching Texas Law* (2d. ed. 2008) and *Specialized Topics in Texas Legal Research* (2005), both of which he collaborated with fellow Baylor Law School Professor Brandon Quarles. Additionally, Professor Cordon has authored essays in a variety of publications including *Gale Encyclopedia of Everyday Law*, *American Law Yearbook*, *Encyclopedia of the Supreme Court of the United States*, *The International Directory of Business Biographies*, and *West’s Encyclopedia of American Law*.

I also referred to several articles from various legal writing journals, including *The Journal of the Legal Writing Institute* and the *Journal of the Association of Legal Writing Directors*. I perused an article entitled, “When the Truth and the Story Collide: What Legal Writers Can Learn from the Experience of Non-Fiction Writers about the Limits of Legal Storytelling,” written by Jeanne M. Kaiser.

From Professor Cordon and a student at the Baylor Law School, Lee Roy Calderon, I was able to obtain three samples of legal memoranda. I examined each of these samples and conducted a genre analysis based on these writing samples. The first sample was a legal memorandum regarding a nuisance lawsuit involving two families living in units in the same condominium. The second memorandum deals with the exercising of eminent domain and a group of citizens’ threat to take legal action preventing this. The third memorandum discusses a case in which issues of successor liability are brought up in a situation where a
company is being held responsible for injuries caused by the company it replaced. I looked at the style of writing in each sample, as well as the format, writing methods, and rhetorical elements. I also considered the content of each sample to determine what a legal memorandum would usually entail. I took note of the language and diction of each sample, to see if the writers of the samples used elaborate, flowery language, or kept the language direct and concise.

However, there are limitations to my research methods. For example, not being a law student, my understanding of the legal memorandum and the way it is written may not have as much depth and may not be as accurate as that of a law student’s or a lawyer’s. Because I have never actually written a legal memorandum and have only looked at samples, I may not fully understand the methods used in writing a legal memorandum. Since I interviewed one law professor and not a great deal of people in the profession, the information I have received from Professor Cordon may not be the most objective since he may be biased toward writing a legal memorandum in a certain way. Nonetheless, working with the resources that were available to me, I have presented the information I received in a way that is true to what I have been told by Professor Cordon and that is true to the journal article and writing samples I analyzed.

**Discussion of Findings/Results**

Based on the information I obtained from the journal article, Professor Cordon, and the three writing samples, I learned that the main purpose of a legal memorandum was to present the reader with information on a court case in a manner that is clear, concise, and direct. The writing of a legal memorandum begins with research and results in a detailed analysis of a case. Additionally, it provides an objective approach to the issues raised in the memorandum.

From examining the writing samples, I saw that the legal memorandum was organized into different sections, including a Statement of Facts, Questions Presented, Short Answers, Discussion, and Conclusion. The memorandum began with a section for the Statement of Facts, which is simply an explanation of the case. It discusses the details of the case—what happened, what parties are involved, what are they filing a lawsuit for, and what the memorandum addresses. The goal in this section is accuracy and clarity; this is the section where the lawyer reading it gets a general idea of the case and what it entails. The next section is called Questions Presented, which addresses the legal and factual elements that are brought into question and that must be analyzed. The questions are numbered and correspond to the Short Answers section, which comes next. This section simply includes brief, one-sentence answers to the Questions Presented.

For example:

“Yes, the legislature allows a city to exercise its power of eminent domain to condemn property when there is a public purpose being met in taking the property for the elimination of urban blight.”

The next section is the Discussion, in which a writing method called IRAC is used. Professor Cordon explained this method to me, and stated that IRAC stood for Issue, Rule, Analysis, and Conclusion. According to him, this method is taught to law students to present them with a concrete way of coming up with an objective approach to an argument. It is a way for the lawyer to think of all possible approaches and cover all bases; that way, he is certain that the approach he has proposed is the best possible one. In each writing sample, the Discussion section was divided into different sub-sections according to the issue being addressed. Within each sub-section, IRAC must be applied. Professor Cordon explained how IRAC was applied to legal writing, specifically the Discussion section in the legal memorandum. The type of writing in this section is different from other types; it is rule-based, methodical, and uses deductive reasoning.
When using IRAC, the lawyer first begins by stating the issue at hand. For example, in my first writing sample, the issue stated in the first sub-section of the Discussion section was the question of whether alleged nuisance between the two families was temporary or permanent. Following statement of the issue, the lawyer states laws or rules that are relevant to the issue. In the first writing sample, one of the rules stated was the discovery rule. After stating the relevant laws, the lawyer then applies each stated law to specific facts of the issue and explains why a certain law does or does not apply. In the first writing sample, the legal writer states that due to the date that the suit was filed, the discovery rule did not apply. The final part of IRAC is the conclusion, which restates the issue and directly answers the question addressed in the issue. The conclusion regarding the issue in my first writing sample was that the opponent’s claim of a permanent nuisance is prohibited under the statute of limitations.

Professor Cordon also explained to me that the audience of a legal memorandum would generally be a senior attorney or fellow attorney within the legal firm. For this reason, legal terminologies, such as Latin terms (de facto), and rule names such as “eminent domain” and “statute of limitations” are used liberally. Additionally, he stated that these memoranda were meant to only be read through one time, because the attorney going through the memorandum most likely had much more of those to read. A memorandum serves to present information and analysis of a case and upon reading the memorandum, the attorney decides whether he will take on the case or not. Brevity, clarity, and accuracy are of utmost importance when writing a legal memorandum, and this is evident in the writing samples I analyzed, for the writing style was not flowery and convoluted; rather, it was concise, clear, and direct. The writing was concrete, and the conclusion of the Discussion section was reached through a logical process. Additionally, certain words in the writing samples were abbreviated, such as incorporated (Inc.), company (Co.), local (Loc.), government (Gov’t), and state names. Sources were also cited using APA format (Name. Volume number. Page number. (Year).). The abbreviated words and the use of APA style allow the reader to quickly go through a citation and the memo itself so that he can quickly refer to a source if he needs to. If he decides to take on said case, he can get started on the research right away and go on to write an appellate brief, which is an advocacy paper written to an appellate court to explain to the judge why the opponent is wrong and why the outcome of the case should be in favor of the lawyer’s client.

However, this does not mean that the writing of a legal memorandum must be dry and (for lack of a better word) boring. As Professor Cordon puts it, “The IRAC method simply serves as a sort of box.” He says that a lawyer is free to fill the “box” with whatever he wants and however he wants, but the box is like a set of guidelines. “It’s a lot more lenient than students think it is,” he adds. Moreover, Kaiser’s article addresses this same issue. In her article, Kaiser discusses how “legal writers have a professional and ethical obligation to be wholly factual in their written work” (164). She emphasizes the importance of a combination of literary writing techniques and facts, narrative and analysis, to produce a legal document that is both well-written and accurate. Kaiser stresses the benefits of looking at legal writing as a form of non-fiction storytelling. Although you must state the facts as accurately as possible, you are still free to use rhetorical techniques to subconsciously influence the reader. Applying these techniques not only makes the writing much better; it allows the reader to be more engaged and gives you more freedom to direct the reader to the conclusion you want him to reach.

Conclusion
My findings may prove significant to readers because it provides a detailed insight on the type of writing done by professionals in the field of civil litigation. The reader can get a clearer picture of the nature of the work a civil litigation lawyer does, which is much different than the way it is portrayed in movies and television shows. Professor Cordon mentioned to me that he has had many instances in which his previous
law students who had just began working were disappointed that the work they were doing was not what they expected. My research and findings shows the reader that a lawyer spends most of his time doing research and writing documents, namely, legal memoranda (and other types, such as appellate briefs and contracts). Contrary to popular belief, most cases are actually settled through the process of research, writing the legal memorandum, taking on the case, doing more research, and writing the appellate brief, which is read and decided by the appellate judge.

My findings have greatly influenced the way I think about writing in my chosen professional field. Prior to undertaking this project and conducting the research, I had this preconceived notion that lawyers only wrote contracts and the sort of court cases I would read in my political science class, which were written in such a convoluted way that only resulted in frustration on my part (and references to Wikipedia out of desperation to understand the case). Upon completing the interview with Professor Cordon, reviewing the writing samples, reading the journal articles, and doing research, my presumption changed completely. Although lawyers do write case briefs, the writing they do encompasses a much wider range of documents, and their job involves much more writing and research than I thought (a good thing, in my opinion). Learning more about what the job of a civil litigation lawyer involves had made me much more resolved in pursuing a career in law.

References