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E-MEMOS 2.0: AN EMPIRICAL STUDY OF HOW ATTORNEYS WRITE

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Abstract

Email has changed law practice. It is now changing the legal writing classroom. For over a decade, scholars have developed a foundation for teaching e-memos. But as e-memo pedagogy evolved, scholars diverged in their advice and their textbook samples, leaving professors and students with contradictory instruction. This Article seeks to bridge that divide and build upon the scholarly foundation with empirical evidence.

Between 2018 and 2019, over 100 practicing attorneys reviewed and ranked sample, substantive e-memos and answered questions about e-memo preferences and habits. The results of the study reveal attorneys prefer e-memos with explicit and detailed legal reasoning, not the terse responses some predicted. Statistically significant data additionally show a demographic split in how attorneys ranked the samples. Specifically, there is a preference for e-memos that trade a more traditional format for concise prose and organization among (1) younger practitioners, (2) those who routinely write e-memos, and (3) attorneys at larger firms. Substantiated by data, this Article proposes concrete steps for drafting e-memos and updated best practices for teaching them.

Introduction

With the advent of new mediums and technologies, writing adapts.[1] Whether clay, parchment, or screen, a writer's materials affect word choice, prose, and style.[2] These linguistic shifts are natural, making language more straightforward and accessible.[3]

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[1] *See* Matthew Kirschenbaum, *How Technology Has Changed the Way Authors Write*, THE NEW REPUBLIC (July 26, 2016), https://newrepublic.com/article/135515/technology-changed-way-authors-write; CHRISTINA HAAS, WRITING TECHNOLOGY, STUDIES ON THE MATERIALITY OF LITERACY ix (2013).

[2] *See* HAROLD A. INNIS, EMPIRE AND COMMUNICATIONS 35-36, 138-39 (2007) (examining how the movement from clay tablets to papyrus and then from papyrus to parchment changed writing); Ellie Margolis, *Is the Medium the Message?*, 12 LEGAL COMM. & RHETORIC: J. ALWD 1, 7-8 (2015) (discussing how legal writing changed with the advent of word processers).

[3] *See* Thomas Hills, *The Evolution of the Written Word*, PSYCHOLOGY TODAY (Dec. 28, 2016), https://www.psychologytoday.com/us/blog/statistical-

Such a shift is occurring in legal practice.

Email is now a practicing lawyer's primary means of communicating legal analysis.[4] Rejecting the cost, inefficiencies, and formalities of the twentieth-century memorandum,[5] clients and supervisors now demand documents that were once ten-plus pages be concentrated into emails consisting of just a few paragraphs.[6] The

life/201612/the-evolution-the-written-word (describing how language has become easier to learn and communicate over time, including American English over the last 200 years).

[4] Kristen K. Robbins-Tiscione, *From Snail Mail to Email: The Traditional Legal Memorandum in the Twenty-First Century*, 58 J. LEGAL EDUC. 32, 48-49 (2008) [hereinafter Robbins-Tiscione, *Snail Mail*]; Katrina June Lee, *Process Over Product: A Pedagogical Focus on Email as a Means of Refining Legal Analysis*, 44 CAP. U. L. REV. 655, 664 (2016); Margolis, *supra* note 2, at 9; Ann Sinsheimer & David J. Herring, *Lawyers at Work: A Study of the Reading, Writing, and Communication Practices of Legal Professionals*, 21 LEGAL WRITING: J. LEGAL WRITING INST. 63, 79 (2016) (presenting the results of a three-year ethnographic study of attorneys in the workplace and concluding that junior associates spend an enormous amount of time reading and drafting emails).

[5] Margolis, *supra* note 2, at 4 (noting the "entrenchment" of the traditional memorandum in the twentieth century); *see also* Kirsten K. Davis, *"The Reports of My Death Are Greatly Exaggerated": Reading and Writing Objective Legal Memoranda in a Mobile Computing Age*, 92 OR. L. REV. 471, 498-99 (2014) (providing a history of traditional memoranda).

[6] NANCY L. SCHULTZ & LOUIS J. SIRICO, JR., LEGAL WRITING & OTHER LAWYERING SKILLS 223 (6th ed., 2014) ("Increasingly, short emails are replacing the traditional ten-to fifteen-page memo. In your professional career, you will compose far more emails than memos."); *see* Kristen K. Tiscione, *The Rhetoric of E-mail in Law Practice*, 92 OR. L. REV. 525, 538 (2013) ("Email is the concentrate, the reduction, the essence, but by no means a summary of, a traditional memorandum.") [hereinafter Tiscione, *Rhetoric*].

traditional legal memorandum[7] has been succeeded by a quicker, leaner, and cheaper medium[8]: the e-memo.[9]

Despite some scholarly criticism, the rise of e-memos has not made fundamental legal writing skills obsolete or called for less rigorous legal analysis.[10] Quite the opposite. E-memos have heightened the need for attorneys to write crisp, clear, and concise prose quickly.[11] They have crystallized the importance of precise language while underscoring the difficulty of mastering fundamental writing skills.[12] After all, when a writer has even less space to make a point, every word must matter.[13]

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[7] This Article accepts Kirsten Davis' definition of a traditional memorandum as a document that "contains most or all of the following parts: question presented, brief answer, statement of facts, discussion, and conclusion." *See* Davis, *supra* note 5, at 482.

[8] HELENE S. SHAPO, MARILYN R. WALTER & ELIZABETH FAJANS, WRITING AND ANALYSIS IN THE LAW 167 (7th ed. 2018) ("[Emails] are less expensive in terms of billing and they accommodate the recipient's need for a fast response."); Robbins-Tiscione, *Snail Mail*, *supra* note 4, at 36; Joe Fore, *The Comparative Benefits of Standalone E-Mail Assignments in the First-Year Legal Writing Curriculum*, 22 LEGAL WRITING: J. LEGAL WRITING INST. 151, 152 (2018).

[9] *See* Margolis, *supra* note 2, at 9 (defining an e-memo as legal analysis sent "directly in the body of [an] email," rather than as an attachment).

[10] *Compare* Davis, *supra* note 5, at 487 (arguing e-memos run the risk of giving readers "poorly thought-through legal analysis"), *with* Tiscione, *Rhetoric*, *supra* note 6, at 539 (rebutting Davis by stating that "decisions that go into email are no less deliberative than those in memoranda").

[11] Sherri Lee Keene defines "conciseness" as such:

> When legal professionals refer to conciseness, they are not only speaking of the length of the document, but also of its ability to keep the reader focused on pertinent information and to explain why this information is important. While brevity is a worthwhile goal . . ., conciseness requires not only that the writer use an efficient writing style, but also that the writing be narrowly focused.

One Small Step for Legal Writing, One Giant Leap for Legal Education: Making the Case for More Writing Opportunities in the "Practice-Ready" Law School Curriculum, 65 MERCER L. REV. 467, 478 (2014) (footnote omitted).

[12] *See* Margolis, *supra* note 2, at 7-8 (discussing how writing on a screen allows a writer to instantly delete and move text, thus making "less at stake" and creating the possibility that writers "will not think through the analysis as thoroughly" as when "making corrections was more cumbersome").

[13] *See* RICHARD C. WYDICK, PLAIN ENGLISH FOR LAWYERS 7-22 (5th ed. 2005); BRYAN A. GARNER, LEGAL WRITING IN PLAIN ENGLISH: A TEXT WITH EXERCISES 24-25 (2d ed. 2013) [hereinafter GARNER, PLAIN ENGLISH].

As e-memos have grown in prominence, leaders in higher education simultaneously have pushed for law schools to create "practice-ready" graduates.[14] While it is unclear how effective law schools have been at preparing students,[15] legal writing courses have been at the forefront of the internal drive to ensure students can practice law.[16] Legal writing professors are uniquely positioned among first-year professors to create meaningful assignments based on tested, continually refined pedagogy and backed by a national repository of collaborative professionals.[17]

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[14] A.B.A. Sec. of Legal Educ. & Admis. to the Bar, *Leg. Educ. and Pro. Dev.—An Educ. Continuum, Report of the Task Force on Law Schools and the Profession: Narrowing the Gap* (1992); WILLIAM M. SULLIVAN, ANNE COLBY, JUDITH WELCH WEGNER, LLOYD BOND & LEE S. SHULMAN, EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (2007) [hereinafter CARNEGIE REPORT]; Roy Stucky et al., BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROADMAP (2007) [hereinafter Stucky, BEST PRACTICES].

[15] *See* BEST PRACTICES, *supra* note 14, at 13 ("[L]aw schools are simply not committed to making their best efforts to prepare all of their students to enter the practice settings that await them."); Margaret Martin Barry, *Practice Ready: Are We There Yet?*, 32 B.C. J.L. & SOC. JUST. 247, 250 (2012) ("Despite almost a century of critique that this approach does not provide enough preparation for the profession, law schools have been reluctant to substantially modify it."); Jason G. Dykstra, *Beyond the "Practice Ready" Buzz: Sifting Through the Disruption of the Legal Industry to Divine the Skills Needed by New Attorneys*, 11 DREXEL L. REV. 149, 184-85 (2018) (criticizing law schools' "illusory" "efficacy" for "merely affix[ing] a 'practice ready' moniker upon existing course offerings").

[16] The Carnegie Report highlights the important work done in legal writing classrooms, stating, "[T]he best legal writing classes we encountered focused on learning tasks that are typical of legal work." CARNEGIE REPORT, *supra* note 14, at 105. The Report goes on to state that legal writing courses cover "critical skills of legal practice that receive little or no attention in" first-year casebook classrooms and that students in legal writing are "beginning to cross the bridge from legal theory to professional practice." *Id. But see* Lisa T. McElroy, Christine N. Coughlin & Deborah S. Gordon, *The Carnegie Report and Legal Writing: Does the Report Go Far Enough?*, 17 LEGAL WRITING: J. LEGAL WRITING INST. 279, 281 (2011) (criticizing the Carnegie Report for failing to recognize legal writing professionals' expertise in following best educational practices).

[17] Mary Beth Beazley details how legal writing professors and courses have spurred curricular innovations because, among other reasons, legal writing professors have the "outcome-based goal of making good writers out of *all* of their students" and there is a stronger connection in legal writing courses between teaching methods and student performance than in casebook courses. *Better Writing, Better Thinking: Using Legal Writing Pedagogy in the "Casebook" Classroom (Without Grading Papers)*, 10 LEGAL WRITING: J.

As legal writing continues to lead the first-year curriculum in preparing students for practice, most legal writing programs have made e-memo assignments a perennial exercise.[18] Moreover, scholars have recognized the importance of making e-memo assignments sufficiently rigorous and realistic.[19] It is imperative, therefore, that as we continue to assign e-memos to our students, our pedagogy remains dedicated to merging theory with practice.[20]

Following Kristen Tiscione's groundbreaking 2006 study describing the significance of e-memos in practice,[21] this Article uses

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LEGAL WRITING INST. 23, 30-31 (2004); *see also* Kirsten A. Dauphinais, *Sea Change: The Seismic Shift in the Legal Profession and How Legal Writing Professors Will Keep Legal Education Afloat in Its Wake*, 10 SEATTLE J. SOC. JUST. 49, 104 (2011) (stating legal writing professors are leaders in pedagogical methodology); Susan Hanley Duncan, *The New Accreditation Standards Are Coming to a Law School Near You—What You Need to Know About Learning Outcomes & Assessments*, 16 LEGAL WRITING: J. LEGAL WRITING INST. 605, 611 (2010) (hypothesizing that legal writing professors will make "natural leaders" in meeting new accreditation standards); Keene, *supra* note 11, at 497 ("Legal writing scholars have published a wealth of scholarly articles about how to teach writing and give feedback effectively, and there are a number of scholarly journals that focus specifically on legal writing teaching pedagogy.").

[18] Ass'n of Legal Writing Dirs. & Legal Writing Inst., *Report of the Annual Legal Writing Survey 2015*, at xi, 13, https://www.alwd.org/images/resources/2015%20Survey%20Report%20(AY%202014-2015).pdf (reporting that 65% of responding legal writing programs use email assignments) [hereinafter REPORT]; *see* Fore, *supra* note 8, at 154-57 (2018) (summarizing the shift from "traditional" memoranda to e-memos in practice and the challenges and benefits of implementing such changes in the classroom).

[19] *See* Fore, *supra* note 8, at 153 (stating "email assignments should be an integral part" of the legal writing curriculum and more than summaries of a "larger memo assignment").

[20] *See* Kristen K. Robbins-Tiscione, *A Call to Combine Rhetorical Theory and Practice in the Legal Writing Classroom*, 50 WASHBURN L. J. 319, 337 (2011) ("Combining rhetorical theory and practice in the legal writing classroom is integrative because it treats each aspect of law as inseparable from the other."). *Cf.* Brent E. Newton, *Preaching What They Don't Practice: Why Law Faculties' Preoccupation with Impractical Scholarship and Devaluation of Practical Competencies Obstruct Reform in the Legal Academy*, 62 S.C. L. REV. 105, 126 (2010) ("[L]aw professors increasingly have felt the need to prove themselves as legitimate academicians in the university lest they be perceived as mere teachers at a trade school.").

[21] *See generally* Robbins-Tiscione, *Snail Mail*, *supra* note 4, at 46-49 (presenting the results of a study surveying Georgetown graduates about

empirical research to contribute to the growing scholarship about e-memos.[22] Further, this Article provides concrete suggestions that promote a sound pedagogical approach for teaching e-memo drafting.[23] Part 1 reviews past scholarship on how to write e-memos and recognizes discrepancies in scholarly advice and textbook samples. Part 2 details a 2018-2019 study that asked over 100 attorneys to rank and evaluate sample e-memos. Part 3 provides the study's results and statistical analyses. These data reveal a surprising and stark break in which sample e-memos attorneys preferred based on their age, the number of e-memos they write per month, and the size of their practice. Part 4 discusses additional research findings about attorneys' e-memo preferences and suggests what these results mean for the legal writing classroom. Part 5 then recommends professors adopt substantive e-memo assignments that require in-depth analysis presented with pinpoint concision—what this Article terms "iceberg e-memos."

1. E-Memos 1.0: A Literature Review

how they convey legal analysis and how they believe predictive writing should be taught in the classroom).

[22] Previous articles have done studies to highlight the importance of e-memos in law practice. *See* Sheila F. Miller, *Are We Teaching What They Will Use? Surveying Alumni to Assess Whether Skills Teaching Aligns with Alumni Practice*, 32 MISS. C. L. REV. 419, 434-35 (2014); Sinsheimer & Herring, *supra* note 4, at 78-79; Susan C. Wawrose, *What Do Legal Employers Want to See in New Graduates? Using Focus Groups to Find Out*, 39 OHIO N.U. L. REV. 505, 538-39 (2013). This Article contributes to past scholarship by reviewing how attorneys write e-memos.

[23] The focus of this study is limited to variations in how attorneys write substantive e-memos that answer research questions requiring application of facts to the law. It is not concerned with summaries of longer memorandum or "procedural e-memos" that provide straightforward information where there is less analysis and therefore less variation between competent writers' finished products. *See* Fore, *supra* note 8, at 276-77 (noting procedural e-memos require little predictive analysis)*; see also* Jennifer Will, *Call It an E-Convo: When an E-Memo Isn't Really a Memo at All*, 24 LEGAL WRITING: J. LEGAL WRITING INST. 269, 278 (2020) (calling procedural e-memos a "sort of perfunctory information exchange"). At the same time, this Article is no way criticizing the practical utility or pedagogical need to teach summaries or procedural e-memos. Both, especially procedural e-memos as excellently described by Fore, are necessary for practitioners and students.

When e-memos first emerged, attorneys were left to build new structures with outdated blueprints.[24] But as law practice embraced the e-memo, textbooks,[25] articles,[26] and websites[27] laid a foundation of advice for working with this new medium. Most of this guidance remains consistent, with scholars agreeing the e-memo format must be "flexible."[28] Rightly, scholars have emphasized that an organic writing process must reign over a prescribed product.[29] After all, legal

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[24] Ellie Margolis & Kristen Murray, *Using Information Literacy to Prepare Practice-Ready Graduates,* 39 U. HAW. L. REV. 1, 15 (2016); Lee, *supra* note 4, at 655 (explaining that attorneys in the late 1990s and early 2000s "became self-taught experts" on email communication).

[25] *See, e.g.,* DANIEL L. BARNETT & JANE KENT GIONFRIDDO, LEGAL REASONING & OBJECTIVE WRITING: A COMPREHENSIVE APPROACH (2016); CHARLES R. CALLEROS & KIMBERLY HOLST, LEGAL METHOD AND WRITING I (8th ed. 2018); J. SCOTT COLESANTI, LEGAL WRITING, ALL BUSINESS (2016); ALEXA Z. CHEW & KATIE ROSE GUEST PRYAL, THE COMPLETE LEGAL WRITER (2016); CHRISTINE COUGHLIN, JOAN MALMUD ROCKLIN & SANDY PATRICK, A LAWYER WRITES: A PRACTICAL GUIDE TO LEGAL ANALYSIS (3d ed. 2018); LINDA H. EDWARDS, LEGAL WRITING AND ANALYSIS (5th ed. 2019); ELIZABETH FAJANS, MARY R. FALK & HELENE S. SHAPO, WRITING FOR LAW PRACTICE: ADVANCED LEGAL WRITING (3d ed. 2015); RICHARD K. NEUMANN, ELLIE MARGOLIS & KATHRYN M. STANCHI, LEGAL REASONING AND LEGAL WRITING (8th ed. 2017); LAUREL CURRIE OATES & ANNE ENQUIST, JUST MEMOS: PREPARING FOR PRACTICE (5th ed. 2018); WAYNE SCHIESS, WRITING FOR THE LEGAL AUDIENCE, (2d ed. 2014) [hereinafter SCHIESS, LEGAL AUDIENCE]; SCHULTZ & SIRICO, *supra* note 6; SHAPO, WALTER & FAJANS, *supra* note 8; CHRISTOPHER D. SOPER, CRISTINA D. LOCKWOOD, BRADLEY G. CLARY & PAMELA LYSAGHT, SUCCESSFUL LEGAL ANALYSIS AND WRITING: THE FUNDAMENTALS (4th ed. 2017); KRISTEN KONRAD TISCIONE, RHETORIC FOR LEGAL WRITERS: THE THEORY AND PRACTICE OF ANALYSIS AND PERSUASION (2d ed. 2016) [hereinafter TISCIONE, RHETORIC FOR LEGAL WRITERS].

[26] *See, e.g.,* Charles Calleros, *Traditional Office Memoranda and E-mail Memos, in Practice and in the First Semester*, 21 PERSPECTIVES: TEACHING LEGAL RES. & WRITING 105, 105 (2013), https://pdfs.semanticscholar.org/0200/39fd721c93c7cea92360436572 61a36589c1.pdf [hereinafter Calleros, *Traditional*].

[27] *See, e.g.,* Wayne Schiess, *How to Write an E-mail Memo*, LEGALWRITING.NET (Dec. 8, 2014), http://sites.utexas.edu/legalwriting/2014/12/08/how-to-write-an-e-mail-memo/ [hereinafter Schiess, *How to Write*].

[28] Calleros, *Traditional*, *supra* note 26, at 108; CALLEROS & HOLST, *supra* note 25, at 121.

[29] Robbins-Tiscione, *Snail Mail*, *supra* note 4, at 34-35 (arguing that adhering strictly to the traditional memoranda format risks elevating form over substance); *id.* at 35 ("Although well-established, the traditional memorandum is not in itself a purpose for writing, and it should give way to

writing pedagogy targets the current and future writing process, not redlining a product ex post facto.[30] There is no boilerplate memorandum that attorneys can fill out like a Mad Libs.[31] Still, however organic, the writing process must lead to a final product,[32] and that product should fit within a familiar genre that meets a reader's needs and expectations.[33]

Therefore, while each e-memo should be flexible enough to fit its unique question presented, scholars have identified the following best practices for writing e-memos:

- Start by restating the issue.[34]

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a more purpose-driven approach to teaching written analysis."). *See generally* Lee, *supra* note 4, at 668-69 (providing an example of an e-memo assignment that emphasizes process over product).

[30] Ellie Margolis & Susan L. DeJarnatt, *Moving Beyond Product to Process: Building a Better LRW Program*, 46 SANTA CLARA L. REV. 93, 99 (2005).

[31] *See* Tracy Turner, *Flexible IRAC: A Best Practices Guide*, 20 LEGAL WRITING: J. LEGAL WRITING INST. 233, 269-70 (2015) (observing that many professors dislike providing sample briefs or memoranda "out of fear that students will slavishly copy aspects of the paradigm or sample that do not make sense in a particular situation").

[32] *See* Judith B. Tracy, *"I See and I Remember; I Do and Understand": Teaching Fundamental Structure in Legal Writing Through the Use of Samples*, 21 TOURO L. REV. 297, 306-07 (2005) ("The writer's task is to convert the analytical process into a structure . . . .").

[33] *See* Katie Rose Guest Pryal, *The Genre Discovery Approach: Preparing Students to Write Any Legal Document*, 59 WAYNE L. REV. 351, 375 (2013) ("[G]enre is a thing that exists in a recurring situation with an audience, context, and needs, with conventions that arise in response to this recurring situation.") (footnote omitted).

[34] Calleros, *Traditional*, *supra* note 26, at 107 (noting a summary of the assignment at the beginning of an e-memo may replace the traditional issue statement); COUGHLIN, ROCKLIN & PATRICK, *supra* note 25, at 322-23 (opining the introduction, which replaces the question presented and brief answer, "should include a short statement about the issue that the email addresses and your conclusion or proposed resolution"); Schiess, *How to Write*, *supra* note 27 (stating an e-memo should start with the question asked instead of skipping "right to the answer" because that could frustrate "secondary readers" or the "assigning lawyer who's reading the e-mail days or weeks later"); SCHULTZ & SIRICO, *supra* note 6, at 226 (advising writers to "begin with a brief summary of the question"); SOPER, LOCKWOOD, CLARY & LYSAGHT, *supra* note 25, at 113; TISCIONE, RHETORIC FOR LEGAL WRITERS, *supra* note 25, at 135.

- Include an analysis of the law and its application to the facts.[35]
- Rely more extensively on explanatory parentheticals than case illustrations.[36]
- Conclude with the writer's recommendations.[37]
- Omit repeating the given facts.[38]
- Keep the product to approximately one to two traditional pages.[39]

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[35] *See, e.g.*, Calleros, *Traditional*, *supra* note 26, at 107; CALLEROS & HOLST, *supra* note 25, at 121; *see also* COUGHLIN, ROCKLIN & PATRICK, *supra* note 25, at 388 (stating both traditional memos and e-memos "convey the major points of the legal analysis and the general structure of that analysis will likely be the same").

[36] *See, e.g.*, Calleros, *Traditional*, *supra* note 26, at 107; COUGHLIN, ROCKLIN & PATRICK , *supra* note 25, at 324 (stating that an e-memo's focus should be on explaining "the relevant rules" and that a writer should generally "omit case illustrations" in favor of explanatory parentheticals"); NEUMANN, MARGOLIS & STANCHI, *supra* note 25, at 173; OATES & ENQUIST, *supra* note 25, at 228 (positing that case descriptions should be "shorter, and parentheticals [] more common"); Schiess, *How to Write*, *supra* note 25 (remarking there is "usually no space" for a case illustration so "leave it out").

[37] *See, e.g.*, Calleros, *Traditional*, *supra* note 26, at 107; COUGHLIN, ROCKLIN & PATRICK, *supra* note 25, at 327; TISCIONE, RHETORIC FOR LEGAL WRITERS, *supra* note 25, at 136.

[38] *See, e.g.,* Calleros, *Traditional*, *supra* note 26, at 110-11; CALLEROS & HOLST, *supra* note 25, at 154-55. The author respectfully disagrees with the advice of Oates and Enquist, who write e-memos that apply facts to law will likely contain a summary of the "legally significant facts," the "background facts," and "any emotionally significant facts." *See* OATES & ENQUIST, *supra* note 25, at 226.

[39] *See, e.g.*, COUGHLIN, ROCKLIN & PATRICK, *supra* note 25, at 321 (remarking the "optimal length for an email is one screen"); Schiess, *How to Write*, *supra* note 27; *see also* Calleros, *Traditional*, *supra* note 26, at 105 (stating a memo should be "no more than one or two single-spaced pages"); CALLEROS & HOLST, *supra* note 25, at 121 (stating e-memos are preferred when an attorney can provide a "complete analysis in 1-3 pages of text in a streamlined format"); SCHULTZ & SIRICO, *supra* note 6, at 224 ("Most likely, the email will equal a printed page or two, at most."); SOPER, LOCKWOODY, CLARY & LYSAGHT, *supra* note 25, at 113 ("[A] one screen rule is likely too limiting"; a writer should aim for "three or four paragraphs.").

- Ensure the prose is concise[40] and professional.[41]

With the above points as a foundation, textbook authors frequently supplement their advice with samples illustrating their suggestions.[42] These samples are vital in showing the expectations of law practice, demonstrating logical organization, and turning abstract concepts into physical specimens students can dissect and internalize.[43] But for samples to be beneficial to the inquiring learner, they must follow best practices and be realistic.[44] Unfortunately, as e-memo pedagogy evolved, academic advice branched in diverse directions. Many samples reveal scholarly inconsistencies in how to write e-memos, with samples presenting differing levels of analysis for ostensibly comparable research questions.[45] Whereas some

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[40] *See, e.g.*, BARNETT & GIONFRIDDO, *supra* note 25, at 276; Calleros, *Traditional*, *supra* note 26, at 105 (2013); CALLEROS & HOLST, *supra* note 25, at 122; COUGHLIN, ROCKLIN & PATRICK, *supra* note 25, at 321 (using the words "condensed and succinct"); NEUMAN, MARGOLIS & STANCHI, *supra* note 25, at 172; SCHULTZ & SIRICO, *supra* note 6, at 223.

[41] *See, e.g.,* Calleros, *Traditional*, *supra* note 26, at 108-09; NEUMANN, MARGOLIS & STANCHI, *supra* note 25, at 170-71; SHAPO, WALTER & FAJANS, *supra* note 8, at 168.

[42] This process follows typical legal writing pedagogy: provide a list of generic conventions and then provide a sample document. Pryal, s*upra* note 33, at 377-78.

[43] Christine N. Coughlin, Lisa T. McElroy & Sandy C. Patrick, *See One, Do One, Teach One: Dissecting the Use of Medical Education's Signature Pedagogy in the Law School Curriculum*, 26 GA. ST. U. L. REV. 361, 394-95 (2010); Tracy, *supra* note 32, at 308-309; *id.* at n. 25 (providing a summary of sources detailing the benefits of samples). *See generally* Terri L. Enns & Monte Smith, *Taking a (Cognitive) Load Off: Creating Space to Allow First-Year Legal Writing Students to Focus on Analytical and Writing Process*, 20 LEGAL WRITING: J. LEGAL WRITING INST. 109, 126-31 (2015) (discussing the benefits and efficacy of using samples in the classroom); Joi Montiel, *Empower the Student, Liberate the Professor: Self-Assessment by Comparative Analysis*, 39 S. ILL. U. L.J. 249, 267-68 (2015) (explaining how to expertly provide students with samples they can critically examine and evaluate).

[44] *See* Helene S. Shapo & Mary S. Lawrence, *Surviving Sample Memos*, 6 PERSP. TEACHING LEGAL RES. & WRITING 90, 90 (1998) (asserting that "poor writing examples in a text lead to confusion").

[45] *Compare* SHAPO, WALTER & FAJANS, *supra* note 8, at 169-70 (providing samples with no citations to authority or cases to explain if a client was in a common law marriage), *with* SOPER, LOCKWOOD, CLARY & LYSAGHT, *supra* note 25, at 114 (presenting a sample with five cases to answer if a client is liable for a dog bite).

scholars advise a paradigmatic e-memo might include case illustrations[46] and counter-analyses,[47] others bluntly compare an e-memo to a "telegram"[48] and provide samples answering substantive legal questions with no reference to legal authorities.[49]

Every reader, every law firm, and every question is unique, but the contradictory samples are not merely a similar format stretching to meet distinctive needs; the differences in analytical depth from one text to another make deciphering a pattern among samples untenable.[50] Crucially, the substantive e-memo samples vary in how they apply facts to the law—"the magic moment of law practice" for

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These types of analytical discrepancies are less common with traditional memoranda. *See* Montiel, *supra* note 43, at 267 (stating that while "writers undoubtedly differ in their evaluation of an issue, . . . skilled writers employ the same analytical strategies," and ideally depth, in writing a predictive memorandum).

[46] Case illustrations are "a description of how a court applied a particular rule in another case, using the facts, reasoning, and outcome from that case, as needed." CHEW & PRYAL, *supra* note 25, at 357. Chew and Pryal continue by explaining the two primary purposes of case illustrations:

> First, case illustrations help readers *understand rules better*. Second, case illustrations *provide facts that you can use to draw analogies* between the facts of your case and the facts in case law. You can use these facts to prove to your reader that a rule of general applicability should be applied in your case, which may not always be apparent.

Id. (emphasis added).

[47] *See* Davis, *supra* note 5, at 520-21; *see also* COUGHLIN, ROCKLIN & PATRICK, *supra* note 25, at 325 (advising that opposing arguments should be explained quickly by focusing "on the rules" rather than "on the details of specific cases"); SOPER, LOCKWOOD, CLARY & LYSAGHT, *supra* note 25, at 114 (including a sample with a case illustration and counter-analysis).

[48] LYNN BAHRYCH, JEANNE MERINO, & BETH MCLELLAN, LEGAL WRITING AND ANALYSIS IN A NUTSHELL 126 (5th ed. 2017). *But see* MARY BARNARD RAY & JILL J. RAMSFIELD, LEGAL WRITING: GETTING IT RIGHT AND GETTING IT WRITTEN 108 (6th ed. 2018) (suggesting a writer treat the analysis in an e-memo "as formally and thoroughly as [they] would in a written letter").

[49] *See* SCHIESS, LEGAL AUDIENCE, *supra* note 25, at 34-35 (providing a sample answering whether a client can "prove the defense of voluntary renunciation to a charge of attempted kidnapping").

[50] *See* Pryal, *supra* note 33, at 380 (asserting that students should look for patterns in samples to understand a legal writing genre's conventions).

which attorneys are paid.[51] Most texts only provide the cursory advice that there should be an application if needed.[52]

The texts and samples further disagree about when and how to cite authority. One article recommends that e-memos should "name important statutes, refer to important cases by shorthand, and mention the jurisdiction" but not be "clutter[ed] with formal, full-form citations."[53] The article continues by recommending writers consider listing full citations at the end of the e-memo.[54] The samples from several other texts echo this advice, with some samples providing no citations and others omitting pinpoint citations or *id.* citations.[55] One text explicitly espouses this sentiment, suggesting writers include citations for "important authority" but "less frequently."[56] In contrast, other scholars observe the importance of formal citations in their samples by citing after each sentence needing support.[57]

Samples even disagree on how and when to provide conclusions—with some samples giving the reader answers with reasoning while

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[51] CHEW & PRYAL, *supra* note 25, at 35 (declaring the application "is what you will be hired for, be paid for, and feel like a superhero for when you get right").

[52] Some of the most thorough advice comes from Oates and Enquist: "[Y]ou can either 'apply the law as you go' or you can set out your summary of the applicable law and then, in a separate paragraph or block of paragraphs, apply that law to the key facts." OATES & ENQUIST, *supra* note 25, at 230. *Compare* BARNETT & GIONFRIDDO, *supra* note 25, at 276 ("[S]imply summarize the law as applied to the client's facts.").

[53] Schiess, *How to Write*, *supra* note 27; *see also* BARNETT & GIONFRIDDO, *supra* note 25, at 276 (theorizing an e-memo "would likely not include . . . complete citation[s] to legal authority").

[54] Schiess, *How to Write*, *supra* note 27.

[55] *See, e.g.*, EDWARDS, *supra* note 25, at 139-40; FAJANS, FALK & SHAPO, *supra* note 25, at 291-93; SCHIESS, LEGAL AUDIENCE, *supra* note 25, at 128; SHAPO, WALTER & FAJANS, *supra* note 8, at 167-70.

[56] COUGHLIN, ROCKLIN & PATRICK, *supra* note 25, at 325.

[57] *See, e.g.*, Calleros, *Traditional*, *supra* note 26, at 110-11 (providing sample e-memos with proper citations, including proper signals); NEUMANN, MARGOLIS & STANCHI, *supra* note 25, at 173-74 (observing the importance of citations and the possible need to hyperlink citations); OATES & ENQUIST, *supra* note 25, at 218-32; TISCIONE, RHETORIC FOR LEGAL WRITERS, *supra* note 25, at 137-40 (providing samples with proper citations). *But see* Calleros, *Traditional*, *supra* note 26, at 113-14 (providing a sample with proper citations but not including an *id.* citation after every sentence referencing supporting law).

others offer brusque responses.[58] More importantly, although most texts agree a conclusion should be stated at the beginning of an e-memo,[59] one prominent text[60] contradicts this point, urging writers to question whether to place "bad" news at an e-memo's conclusion.[61] Other texts do not overtly state this point but offer samples that hold off on answering the research question until the e-memo ends.[62]

Some discrepancies among scholars is to be expected in this new field of study. Moreover, each e-memo is unique to its research question and reader. But all legal analysis should be appropriately unique—including traditional memoranda.[63] When it comes to the widely employed e-memo, students and practitioners need more than varied samples; they need samples that follow best practices.[64] Sound pedagogy depends upon it: Without numerous realistic samples,

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[58] *Compare* EDWARDS, *supra* note 25, at 139 (answering, "My research shows she has a strong claim"), *and* COUGHLIN, ROCKLIN & PATRICK, *supra* note 25, at 325 ("The answer is that he likely does" have a claim), *and* FAJANS, FALK & SHAPO, *supra* note 25, at 294 (offering that "[t]his claim should be successful, but it will depend on the facts you can garner"), *with* TISCIONE, RHETORIC FOR LEGAL WRITERS, *supra* note 25, at 138 ("Assuming the beans he sells 'perish or decay in a limited period of time,' he could probably establish a claim with respect to lost coffee bean sales. However, since coffee drinks are not products of agriculture, they likely do not qualify for protection. It would help to know the extent to which Starbucks' drop in sales can be attributed to beans as opposed to prepared drinks."), *and* SOPER, LOCKWOOD, CLARY & LYSAGHT, *supra* note 25, at 114 ("Mr. Smith will not be liable for [a dog bite] because Ms. Johnson provoked the dog."). With this last example, I would humbly suggest adding an additional fact to recollect the reader's memory of the facts and better explain the answer, for example: "Because Ms. Johnson provoked the dog by stepping on it, Mr. Smith will not be liable for the dog bite."

[59] *See, e.g.,* SCHIESS, LEGAL AUDIENCE, *supra* note 25, at 34 ("[A]im to deliver the answer or conclusion as early as possible.").

[60] JUST MEMOS is currently on its fifth edition and is adapted from THE LEGAL WRITING HANDBOOK, currently in its Seventh Edition. *See* OATES & ENQUIST, *supra* note 25; *see also* LAUREL CURRIE OATES, ANNE ENQUIST, & JEREMY FRANCIS, THE LEGAL WRITING HANDBOOK: ANALYSIS, RESEARCH, AND WRITING (7th ed. 2018).

[61] OATES & ENQUIST, *supra* note 25, at 225.

[62] *See, e.g.*, COLESANTI, *supra* note 25, at 115-26; SHAPO, WALTER & FAJANS, *supra* note 8, at 167-70.

[63] *See, e.g.,* SCHULTZ & SIRICO, *supra* note 6, at 227-28 (providing three sample e-memos answering the same research question but with varying level of detail); *see also* Davis, *supra* note 5, at 508-09 (arguing the traditional memorandum is flexible).

[64] *See* Turner, *supra* note 31, at 270.

asking students and new practitioners to write a flexible e-memo is making "an impossible request."[65] The next stage in teaching e-memos then requires building on our pedagogical foundations with empirical evidence.[66]

2. Brief Overview of Findings and Study Methodology

To continue the ongoing process of updating and formalizing best practices for drafting substantive e-memos, the study set out to discover how practicing attorneys actually write. While I had anecdotal evidence and could continue to call friends in practice for advice, I wanted more concrete findings with which to build upon the existing foundation. Therefore, I designed this study with three objectives:

1. To provide attorneys with differing sample e-memos and ask which samples they preferred.

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[65] Pryal, *supra* note 33, at 378.

[66] The study did not examine typography or document design; educational leaders have already conducted research and presented clear findings on these issues. *See generally* Ruth Anne Robbins, *Painting with Print: Incorporating Concepts of Typography and Layout Design into the Text of Legal Writing Documents*, 2 LEGAL COMM. & RHETORIC: J. ALWD 108 (2004) (incorporating years of scientific studies on document design into legal writing). Yet, the literature review showed many textbook e-memos do not adhere to agreed-upon best practices. A future article will discuss how best practices for writing e-memos require:

- Using a sans serif font, such as Calibri and Arial, because sans serif fonts are more legible when read on a screen as compared to serif fonts, such as Times New Roman and Garamond. *Id.* at 127.
- Not indenting paragraphs, because paragraphs should already be single-spaced (not double-spaced) and white space signifies new paragraphs. *See* SUSIE H. VANHUSS, CONNIE M. FORDE, DONNA L. WOO & VICKI R. ROBERTSON, COLLEGE KEYBOARDING: KEYBOARDING AND WORD PROCESSING, LESSONS 1-110, MICROSOFT® WORD 2016, COMPLETE COURSE ch. 32d (20th ed. 2017); CAROL M. LEHMAN & DEBBIE D. DUFRENE, BUSINESS COMMUNICATION A-12 to A-13 (16th ed. 2011).
- Not centering headings, because screen readers prefer left-justified text, and because—unlike other formatting decisions—the choice to center will often not be retained for the reader. *See* SCHIESS, LEGAL AUDIENCE, *supra* note 25, at 128 (stating headings should be "left-aligned" because "aligning headings and subheadings on the left margin helps screen readers").
- Not underlining text. *See* BRYAN A. GARNER, GARNER'S DICTIONARY OF LEGAL USAGE 133 (3d ed. 2011).

2. To find any correlations between respondent demographics and sample e-memo preferences.
3. To collect general information about e-memo habits.

As fully explained in Part 3, the results show that respondents generally favored the e-memo samples that elected depth over brevity. Additionally, respondents disliked the samples with short answers and little reasoning. Thus, it is not terse conclusions with few citations that best represent modern practice. Whether the sample answered a complex client question or a simple statutory issue, respondents wanted e-memos with clear reasoning and robust recommendations.

Yet, despite some unity in preferring the more detailed samples, respondents split in their predilections towards concision. Importantly, the study reveals a surprising division between attorneys who favor longer e-memo samples mirroring traditional memoranda and attorneys who favor concision in an e-memo that still provides a complete and well-reasoned answer. Attorneys who more often value e-memos that follow a traditional format include (1) those over 40,[67] (2) those who write less than four e-memos a month,[68] and (3) those who work in private firms of 50 or fewer attorneys.[69] By contrast, the attorneys who value concise prose and organization include (1) those 40 and under,[70] (2) those who write four or more e-memos a month,[71] and (3) those who work in private firms with over 50 attorneys.[72]

As detailed in Part 4, the study's findings further provide information about respondents' general preferences and habits regarding e-memos. Of particular interest for those teaching e-memos in the classroom, the responses show writing an effective e-memo means:

- Including upfront answers with detailed reasoning;[73]
- Having crisp applications with clear recommendations;[74]
- Incorporating explanatory parentheticals;[75]
- Following proper citation formatting;[76]
- Relying on citation signals;[77]

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[67] *Infra* Section 3.1
[68] *Infra* Section 3.2.
[69] *Infra* Section 3.3.
[70] *Infra* Section 3.1.
[71] *Infra* Section 3.2.
[72] *Infra* Section 3.3.
[73] *Infra* Section 4.2.
[74] *Infra* Section 4.3.
[75] *Infra* Section 4.4.
[76] *Infra* Section 4.5.
[77] *Id.*

- Attaching applicable authority;[78]
- Hyperlinking to authority;[79] and
- Producing polished documents within 48 hours.[80]

Additionally, the study's results demonstrate that even with the rise of e-memos, legal writing courses must continue to incorporate traditional memoranda assignments. Scholars have repeatedly remarked on the pedagogical benefits of teaching learners to write traditional memoranda, regardless of whether memoranda are still heavily used by attorneys.[81] The study confirms the need to teach traditional memoranda—not only because these writing assignments are valuable teaching tools but because traditional memoranda are indeed still part of private practice.[82]

Before providing more specifics about the results, however, it is necessary to discuss the study's methodology. The next portion of this Article overviews the respondent recruitment process and respondent demographic information. The Article then details my methodology when creating the sample e-memos used in the study and compares and contrasts the samples.

2.1 Respondents

Respondents were a sampling of graduates from Indiana University Robert H. McKinney School of Law and the University of Missouri School of Law, plus a handful of practitioners from other schools who expressed interest in the survey.[83] The first participants identified included attorneys I personally know. The pool of respondents then expanded to attorneys in recent contact with IU McKinney's Office of Professional Development, those who responded to a general call through the Indianapolis Bar Association, and those who contacted me after being notified about the survey by other respondents. One hundred thirteen attorneys participated.[84]

One hundred out of the 113 respondents identified where they were employed, with the majority of attorneys—64%—working in

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[78] *Infra* Section 4.6.
[79] *Id.*
[80] *Infra* Section 4.8.
[81] *See, e.g.*, CALLEROS & HOLST, *supra* note 25, at 122.
[82] *Infra* Section 4.9.
[83] The author received approval from the Internal Review Boards of Indiana University and the University of Missouri to conduct this study.
[84] Respondents were not required to answer every question and could opt to skip sections in the survey. Some respondents further asked to take an abbreviated version of the survey that omitted questions about general e-memo habits and preferences.

private law.[85] Sixteen percent worked in city, county, state, or federal government; 10% worked in the judiciary; 5% worked for a corporation; and 5% marked "other."[86] Of those 64% of respondents working in private firms, the highest percentage—approximately 36%—worked in firms of over 150 attorneys.[87]

Figure 1: Respondent Distribution by Employment Area

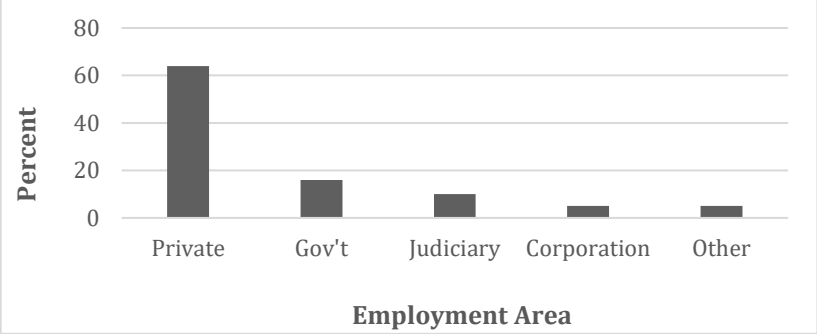
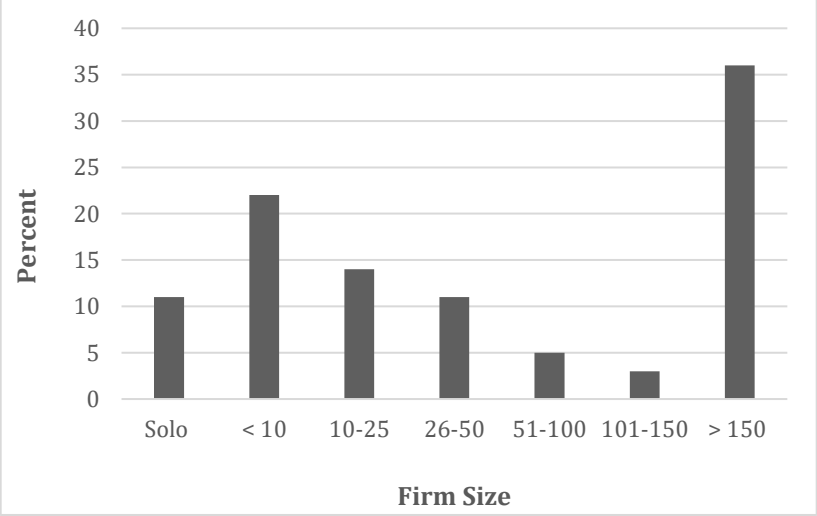


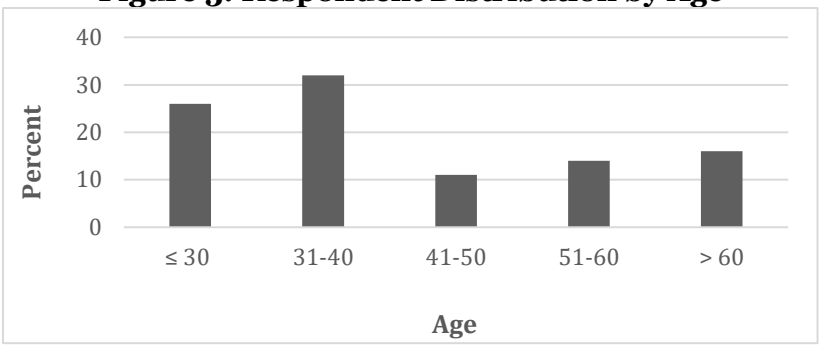
Figure 2: Respondent Distribution by Private Firm Size



[85] *See* Figure 1.
[86] *See id.*
[87] *See* Figure 2. Approximately 11% were solo practitioners, 22% worked at firms of less than 10 attorneys, 14% worked at firms of 10-25 attorneys, 11% worked at firms of 26-50 attorneys, 5% worked at firms of 51-100 attorneys, and 3% worked at firms of 101-150 attorneys.

Of the 99 attorneys who indicated their age, 26%were 30 years old or younger; 32% were 31-40; 11% were 41-50; 14% were between 51-60; and 16% were over 60.[88]

Figure 3: Respondent Distribution by Age



2.2 The Samples

Creating sample e-memos for attorneys to review first required me to write sample research questions. To ensure better data, I drafted two questions of differing complexity.[89] The first question—Question "x"—was more complicated and asked an associate to write an e-memo analyzing whether a dog qualifies as a "service animal" under the Americans with Disabilities Act (ADA).[90] Based on a problem I created with Anne Alexander,[91] the partner told the associate that the client has Post-Traumatic Stress Disorder and that petting and holding his dog alleviates the client's symptoms. In addition to the specific facts, to fully answer the partner's question, a writer needed to rely on a federal regulation and federal cases.

The second question—Question "y"—was more straightforward and required analyzing a basic statutory issue and applying the law to the client's facts. [92] Based on a problem created by Melody Daily,[93] the supervisor asked the associate to research and report whether a

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[88] *See* Figure 3.

[89] *See* Fore, *supra* note 8, at 158 (observing e-memos are not a monolithic category: "Some involve simple legal issues" and "some involve complex matters calling for complex analysis").

[90] *See* Appendix 1.

[91] Associate Teaching Professor of Law and Director of Legal Research and Writing, University of Missouri School of Law.

[92] *See* Appendix 6.

[93] Clinical Professor and Director of Legal Research and Writing Emerita, University of Missouri School of Law.

landowner could bulldoze tombstones located on his property or sell a wrought-iron fence surrounding the cemetery, and, if not, whether the client would be criminally penalized for such actions. The associate needed only to find and analyze statutory authority.

To make the survey manageable for participants, I created four sample e-memos to answer each question. For data purposes, the samples answering the more complex ADA research question are the "x samples"—A-x, B-x, C-x, and D-x.[94] The samples answering the simpler statutory question are the "y samples"—A-y, B-y, C-y, and D-y.[95]

While the four samples in each dataset were substantively similar and contained the same overall conclusions, each sample varied in length, analytical depth, use of citations, and organization. Because the survey's goal was to test substantive discrepancies in the literature review, the samples did not investigate non-substantive, agreed-upon best practices, such as typography and document design.[96]

To test the discrepancies highlighted in the literature review, each sample roughly reflected one scholar or group of scholars' advice and samples—which are denoted in the chart below. For example, the A Samples (both A-x and A-y) were the longest and most "traditional." Mirroring a traditional memorandum's question presented and brief answer, these samples included a bolded heading for the "issue" and the "answer." The A Samples also had the lengthiest discussions of legal authority: Sample A-x had two case illustrations and an explanatory parenthetical to a third case before applying the facts to the law; Sample A-y block quoted relevant statutory language while the other y-issue samples merely summarized the statute.

Following the advice of, among others, Kristen Tiscione, Charles Calleros, and Kimberly Holst, I created the C Samples in an attempt to balance a comprehensive legal analysis with concise prose and

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[94] *See* Appendices 2-5.

[95] *See* Appendices 7-10.

[96] For a textbook sample that adheres to these characteristics see TISCIONE, RHETORIC FOR LEGAL WRITERS, *supra* note 25, at 137-40. All of the study samples omit the fact section, are left justified and without indented paragraphs, and avoid all-caps. The sample e-memos in the study use the font Calibri, a sans serif font and the default font for Microsoft Outlook. *See* Eleanor Ross, *Calibri, Nawaz Sharif and Fontgate: How a Microsoft Typeset Could Bring down the Pakistani Government*. NEWSWEEK (July 13, 2017), https://www.newsweek.com/brief-history-calibri-font-could-bring-down-pakistani-government-635794*; see also* GAVIN AMBROSE, PAUL HARRIS & SALLYANNE THEODOSIOU, THE FUNDAMENTALS OF TYPOGRAPHY 144 (3d ed. 2020) (listing Calibri as a preferred email font).

formatting.[97] In this way, the C Samples best model what the Article later describes in-depth as "iceberg e-memos"—e-memos that have analytical depth but tactically omit information the reader already knows or does not need.[98] And, as discussed in Part 3, attorneys generally favored the C Samples because of this strategic concision.

I created all of the samples to be viable options.[99] Each is meant to be an authentic, acceptable e-memo, not a caricature of scholarly advice. Sample A-x, for example, is not overly verbose, pedantic, or mechanical.

The eight samples are attached as appendices, but below is a synopsis of each.

	A Samples	**B Samples**	**C Samples**	**D Samples**
Length	Longest samples, with each being over one page. A-x is 684 words. A-y is 457 words.	The third lengthiest samples. B-x is 329 words. B-y is 256 words.	The second lengthiest samples. C-x is 427 words. C-y is 368 words.	The shortest samples. D-x is 256 words. D-y is 172 words.
Issue	The most traditional issue statements.[100]	The issue statements repeat the partner's questions.	The issue statements repeat the partner's questions.	Each sample directly begins with the analysis.
Conclusion	Include headings for "answer," followed by conclusions with the most detailed reasoning.	The initial answers are more conclusory than the A samples.	The initial answers are more conclusory than the A samples.	Neither sample provides an upfront conclusion but waits until the end of the e-memo to

[97] *See* Calleros, *Traditional*, *supra* note 26, at 110-11; CALLEROS & HOLST, *supra* note 25, at 154; TISCIONE, RHETORIC FOR LEGAL WRITERS, *supra* note 25, at 137-40.

[98] *See infra* Section 5.2.

[99] All of the samples use proper grammar and a professional tone.

[100] For a discussion on issue statements see generally JOHN C. DERNBACH, RICHARD V. SINGLETON II, CATHLEEN WHARTON, JOAN RUHTENBERG & CATHERINE J. WASSON, A PRACTICAL GUIDE TO LEGAL WRITING AND LEGAL METHOD 321-26 (5th ed. 2013); OATES & ENQUIST, *supra* note 25, at 119-26.

				answer the research question.
Back-ground law	The most detailed explanations of law. Sample A-x provides case illustrations; Sample A-y provides a block quote of the pertinent statutory language.	The analyses give a brief summary of the law. Sample B-x provides statements about the legal require-ments for a pet to be a service animal followed by a citation to two cases and a one-sentence case example illustrating when the condition was met.	The analyses are less detailed than the A samples but more comprehen-sive than the B samples. Sample C-x provides statements about the legal require-ments for a pet to be a service animal and four explanatory paren-theticals to summarize precedent.	The analyses provide succinct (but accurate) statements of the law.

Application	Both samples apply law to facts with specificity. Sample A-x directly references how the facts are similar and different from the case illustrations.	The samples apply the most pertinent facts to the law and quickly explain the author's reasoning. They do not incorporate case names into their analyses and are not as explicit in their analyses as the A samples.	The samples match the B samples' applications, with Sample C-y providing a bit more explanation than B-y.	The samples match the B samples' applications.
Citations	The samples use formal citations after each sentence needing support.	Both samples use formal citations, but not after each sentence needing support; neither sample uses *id*. citations.	The samples use formal citations after each sentence needing support.	These samples do not use formal citations. While Sample D-y references the operative statutes, Sample D-x does not provide citations to case law. Rather, Sample D-x lists the relied upon cases at the very end of the e-memo.
Scholarly support	As these samples most closely	The analyses of these samples	These samples most closely	The analyses and lack of citations

	mirror a traditional memo, they moderately reflect the advice of Davis.[101]	most closely resemble the primary sample from Oates and Enquist's book[102] and the sample from the text of Soper, Lockwood, Clary, and Lysaght.[103]	follow the samples of Tiscione,[104] Calleros and Holst,[105] and Coughlin, Malmud, and Patrick.[106]	most closely resemble the sample from Schiess's text[107] and the second sample from Shapo, Walters, and Fajans' text.[108] Having the conclusions, which are "bad" for the client in these samples, at the end models the advice of Oates and Enquist[109] and samples from Shapo, Walters, and Fajans' text.[110]

[101] *See generally* Davis, *supra* note 5. The use of separate headings for the issue and answer follows the advice and samples of Bryan Garner. *See* BRYAN A. GARNER, THE REDBOOK: A MANUAL OF LEGAL STYLE 417-18 (4th ed. 2019).
[102] *See* OATES & ENQUIST, *supra* note 25, at 231-32 (the B Samples additionally resemble "example 11" on page 229, which includes a "short, focused case description").
[103] SOPER, LOCKWOOD, CLARY & LYSAGHT, *supra* note 25, at 114.
[104] *See* TISCIONE, RHETORIC FOR LEGAL WRITERS, *supra* note 25, at 137-40.
[105] *See* Calleros, *Traditional*, *supra* note 26, at 110-11; CALLEROS & HOLST, *supra* note 25, at 154.
[106] *See* COUGHLIN, ROCKLIN & PATRICK, *supra* note 25, at 325-26.
[107] *See* SCHIESS, LEGAL AUDIENCE, *supra* note 25, at 156; s*ee also* Schiess, *How to Write*, *supra* note 27 (suggesting writers consider adding full citations to relevant authorities at the end of the e-memo).
[108] SHAPO, WALTER & FAJANS, *supra* note 8, at 167.
[109] OATES & ENQUIST, *supra* note 25, at 225.
[110] SHAPO, WALTER & FAJANS, *supra* note 8, at 167-70.

The 113 respondents who agreed to participate were randomly assigned to review either the four more complex e-memos (the ADA or "x-issue" samples) or the four simpler e-memos (the cemetery or "y-issue" samples).[111] I then sent each respondent the appropriate mock research question and its corresponding sample e-memos. After they reviewed the materials, respondents proceeded to an online survey, which began by asking respondents to rank the samples and provide comments about what they liked and disliked about each.

3. Respondent E-Memo Rankings

Whether reviewing the x-issue or y-issue datasets, respondents most often gave the highest rankings to the "iceberg" C Samples and "traditional" A Samples.[112] Directly refuting the numerous textbook samples that do not include explanation of or citation to the law, the results reveal attorneys prefer substantive e-memos to be just that—substantive. Indeed, the results from both datasets show the vast majority of respondents judged the short D Samples as the worst e-memos.[113]

Crucially, although many respondents favored the longer, more traditional A Samples, others criticized the A Samples' length and formality. Respondents only ranked the D samples fourth more often.[114] In fact, higher percentages of respondents gave the A Samples a fourth-place ranking than the B and C Samples combined.[115] The "traditional" A Samples, therefore, more than any other samples, show a schism in respondents' preferences.

To better understand the data, it was thus necessary to do more than review how many respondents gave a particular sample the highest or lowest rank; each sample needed an aggregate score.[116] This was achieved by assigning each ranking a numerical weight inverse to

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[111] Seventy-three attorneys completed the survey ranking the complex ADA e-memos (the x-issue samples); 40 completed the survey ranking the simpler cemetery memos (the y-issue samples).

[112] *See* Tables 1-2.

[113] *See* Tables 1-2.

[114] *Id.*

[115] *Id.*

[116] *See Ranking Questions*, SURVEY MONKEY, https://help.surveymonkey.com/articles/en_US/kb/How-do-I-create-a-Ranking-type-question (last visited Dec. 10, 2020); *Ranked Question*, VOX, https://www.voxvote.com/Media/Default/downloads/VoxVote%20%20Ranked%20QuesionType%20Calculation%20and%20example.pdf (last visited Dec. 10, 2020).

its rank—the higher the ranking, the more weight a choice received.[117] The given weight was then multiplied by the number of respondents who assigned that weight to a particular sample. To achieve a final score for each sample, the products of the multiplied numbers were added together and divided by the number of respondents.[118]

The final calculations established respondents most preferred the C Samples.[119] The final scores between A-x and B-x were virtually tied because although many respondents preferred A-x to B-x, A-x's aggregate score was reduced by the many attorneys who gave it a low ranking.[120] Yet, the more traditional A-y outranked the more informal B-y despite the seemingly simple legal question answered in the y-issue samples and despite the number of attorneys who gave A-y a fourth-place ranking.[121] Thus even with simple issues, it appears many attorneys prefer detailed answers to quick responses.

Table 1: Scores for X-Issue Samples

Ranking	1st	2nd	3rd	4th	Score
A	34.72%	20.83%	25.35%	19.72%	**2.71**
B	20.83%	34.72%	40.85%	4.23%	**2.72**
C	37.50%	37.5%	22.54%	1.41%	**3.13**
D	6.94%	6.94%	7.04%	74.65%	**1.46**

Table 2: Scores for Y-Issue Samples

Ranking	1st	2nd	3rd	4th	Score
A	37.5%	30 %	17.5%	15%	**2.90**
B	10%	30%	52.5%	7.5%	**2.43**
C	45 %	35%	17.5%	2.5%	**3.23**
D	7.5%	5%	12.5%	75%	**1.45**

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[117] For example, a first-place ranking equaled a weight of four, a second-place ranking equaled a weight of three, and so on.

[118] Twenty-five respondents gave Sample A-x the highest ranking, which dictated multiplying twenty-five by four (the weight assigned to the top ranking). Fifteen respondents gave Sample A-x a second-place ranking; thus, fifteen was multiplied by three (the weight assigned to the second-highest ranking). These products, and the products for Sample A-x's third- and fourth-place rankings, were added together to achieve a sum of 195. One hundred ninety-five was then divided by the number of respondents who ranked Sample A-x (seventy-two respondents), providing the final score: 2.71. Expressed as formula, the score of 2.71 was achieved as such:

$$\frac{25x4 + 15x3 + 18x2 + 14x1}{72}$$

[119] *See* Tables 1-2.

[120] *Id.*

[121] *Id.*

Comments by attorneys explaining their rankings elucidate these results. When answering what they liked and did not like about the C Samples (the iceberg e-memos), respondents generally appreciated that the C Samples balanced conciseness with ample reasoning:[122]

- "This memo had the best treatment of the case law by far for an email memo. There was no superfluous language."
- "C was the most streamlined and was the easiest to get a sense of quickly and skim."
- "Sample C was very well written and seemed to have all of the information necessary. I liked that it gave the basic information necessary but didn't include too many analogous case facts, as it seemed from the prompt that the answer could be explained succinctly without a ton of extra information."
- "I liked the structure of C and that it struck a good balance between giving me detail and not giving me too much detail. I felt like I could read only this email and not have to read the cases to advise the client. I also liked that it did not use headings for the issue and answer, and the answer was bolded at the start of the email."
- "This was my preferred memo because it has the right balance of clearly answering the question asked and summarizing the research in a concise, organized fashion."

In writing about the A Samples, many respondents praised the A Samples' thoroughness:

- "I appreciated the substantially self-contained analysis and support provided in Sample A, which was in my view clearly the best. I also appreciated the visually reinforced structure in that memo."
- "A is concise but provides sufficient detail to get a handle on the law."
- "Sample A was complete in its analysis and conclusion . . . ."
- "A was most complete and lawyer-like."
- "Memo A was substantially better because it provided a brief, yet thorough, analysis of the relevant law and cases associated with the same. Furthermore, memo A included headings that focused my attention on what I needed to know."

Other attorneys, however, disliked the A Samples' formality and length:

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[122] Responses to open-ended questions are on file with the author.

- "Memo A seemed to be clearly the worst, because of how long and formal it was. I shuddered at the thought of reading it on my phone on a break at a deposition."
- "Memo A was clearly the worst because it was too long and wordy—overkill."
- "[T]oo much information for the project. It takes more time for me to read and digest, so I have to bill the client more time than necessary. It took the associate more time than I can likely justify billing the client."
- "[F]ar too long-winded for an email memo. The analysis, application, conclusion/recommendation was overkill. I'd be concerned whether the partner would read the entire email. This sample is better suited for a traditional memo . . . ."
- "A reads like a law school or traditional memo. Email is not the best form for this style."

Many respondents enjoyed the B Samples' simplicity and succinct conclusions, but they frequently criticized the B Samples' lack of clear explanations. These samples, in other words, are a model of a concise memo gone wrong—one where the writer discloses too little analysis and leaves the reader floundering.[123] As one respondent wrote, "Memo C was an improved version of Memo B. It was exactly what Memo B was missing." Further comments echoed this sentiment:

- "Concise. But not enough case support."
- "Sample B was maybe just a little bit too brief in its discussion of precedent."
- "I don't like the string citations of case law without more of an explanation."
- "Succinct but missing key information."
- "[L]acks a thorough analysis . . . and lacks citations to credible sources."
- "There also doesn't seem to be enough analysis and case support in this email. It's too short. I would question this associate's conclusion because there's not enough support provided."

In reviewing the analyses in the D Samples, respondents lamented that the explanations required readers to do more work to understand the writers' answers:[124]

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[123] *See* Calleros, *Traditional*, *supra* note 26, at 108-10 (noting that because e-memos can be a "more flexible, less formal presentation of legal analysis," there may be a risk for oversimplification).

[124] The D samples, therefore, failed what Richard Neumann and others have described as the "need-to-read test," which is when the writer has not

- "D is too cursory[] and does not give comfort that the associate has thoroughly researched the issue."
- "D correctly answered the research assignment but left it [to] the requesting attorney to read the attached C.F.R. and cases for a complete understanding of the legal reasoning."
- "D did not provide context for the answer or organization to help the partner understand the answer after a quick read."
- "Borders on appearing as though the associate didn't spend enough time or take the project seriously."

Respondents further wrote that they disliked the D Samples' lack of more formal, in-line citations and distrusted the authors' propositions:[125]

- "The list of citations is useless."
- "[I]ncluding legal citations at the bottom is unhelpful without more context. In practice, legal citations are mostly after sentences, and there is not an emphasis on footnote citations. Therefore, the email is unlike what lawyers see on a day-to-day basis."
- "[I]t doesn't really give me any indication of the proposition(s) for which each authority stands."

Finally, respondents loathed that the D Samples did not provide upfront conclusions.[126] Conclusions, whether "good" or "bad," must be given up front; readers can handle bad news, but they do not tolerate waiting:[127]

- "Waiting until the end to give the conclusion was a killer for this sample. It really needed to say it in the first two sentences."

"explained enough" that the reader will be able to "agree with [the writer] without actually studying the authorities" the writer cited. NEUMANN, MARGOLIS & STANCHI, *supra* note 25, at 125.

[125] *See* Alexa Z. Chew, *Citation Literacy*, 70 U. ARK. L. REV. 869, 882 (2018) ("In-line citations give legal readers ready access to . . . information because the information appears right next to the text it supports, removing physical barriers to information transfer.").

[126] *See* Suzanne E. Rowe, *Legal Research, Legal Writing, and Legal Analysis: Putting Law School into Practice*, 29 STETSON L. REV. 1193, 1207-08 (2000) ("[A] legal memorandum that does not follow accepted organization will seem odd, and will likely indicate that the writer is a novice.").

[127] *Cf.* JOSH BERNOFF, WRITING WITHOUT BULLSHIT: BOOST YOUR CAREER BY SAYING WHAT YOU MEAN, 35-36 (2016) (explaining that "writing driven by fear" includes failing to start by addressing a problem).

- "Disliked: - No answer right off the bat."
- "D didn't have the conclusion up front which is the FIRST thing I teach new associates. Busy partners need to be hit with the bottom line first. So do clients."

The narrative responses provide color to the rankings, but correlating the data by demographic group exposed a wide gap in preferences between groups. Specifically, further analysis explains the respondents' divergent views over the merits of the A and C Samples. The next three sub-sections of the Article therefore review the striking schism between attorneys based on their age, the number of e-memos they write, and the size of their law firm.

3.1 Rankings According to Age Group

In ranking either the x-issue or y-issue samples, those over 40 preferred the more traditional A Samples; respondents 40 and below favored the concise but substantive iceberg e-memos—the C Samples.[128] As Tables 3 and 4 illustrate, more than half of respondents over 40 gave A-x and A-y the highest rank.[129]

Table 3: X-Issue Samples for Those over 40

Ranking	1st	2nd	3rd	4th	Score
A	51.85%	18.52%	29.63%	0.00%	**3.22**
B	29.63%	33.33%	29.63%	7.41%	**2.85**
C	23.08%	46.15%	30.77%	0.00%	**2.92**
D	0.00%	0.00%	7.69%	92.31%	**1.08**

Table 4: Y-Issue Samples for Those over 40

Ranking	1st	2nd	3rd	4th	Score
A	64.29%	28.57%	7.14%	0.00%	**3.57**
B	0.00%	16.67%	71.43%	7.14%	**2.14**
C	35.71%	50.00%	7.14%	7.14%	**3.14**
D	0.00%	0.00%	14.29%	85.71%	**1.14**

[128] *See* Margolis & Murray, *supra* note 24, at 3 (theorizing "more senior practitioners" are resistant to rapid changes in law practice); *id.* at 14 (predicting a greater tension between older and younger generations as shorter, more "informal" writing "increasingly permeate[s]s the legal profession").

[129] *See id.* at 31 ("[S]enior practitioners often approach research and writing with a traditional mindset, even when using more modern technologies.").

By contrast, respondents 40 and under significantly preferred the C Samples.[130] Additionally, it was these "younger" attorneys who were divided over the A Samples.[131] In fact, approximately 30% of respondents under 40 gave A-x the lowest possible rank.[132]

Table 5: X-Issue Samples for Those 40 and Under

Ranking	1st	2nd	3rd	4th	Score
A	28.21%	20.51%	20.51%	30.77%	**2.46**
B	17.94%	30.77%	48.72%	2.56%	**2.64**
C	43.59%	38.46%	15.38%	2.56%	**3.23**
D	10.26%	10.26%	15.38%	64.10%	**1.67**

Table 6: Y-Issue Samples for Those 40 and Under

Ranking	1st	2nd	3rd	4th	Score
A	27.78%	33.33%	22.22%	16.67%	**2.72**
B	5.56%	33.33%	50.00%	11.11%	**2.33**
C	61.11%	27.78%	11.11%	0.00%	**3.50**
D	5.56%	5.56%	16.67%	72.22 %	**1.44**

This is not to state that those 40 and under are a monolith. Though respondents 40 and younger gave the C Samples the highest scores, respondents 30 and younger preferred the traditional A Samples more often than respondents age 31-40.[133] Those age 31-40 even favored the succinct B Samples to the traditional A Samples.[134]

The distaste for the traditional A Samples thus mostly came from those age 31-40, with the youngest attorneys exhibiting greater acceptance and tolerance for formalism. One explanation for these results is that the youngest practitioners are less confident and more likely to emulate the writing styles of senior practitioners. Similarly, they may be less prone to rebel and reject the traditional format inculcated upon them in law school.[135]

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[130] *See* Tables 5-6.

[131] *See id.*; *see also* Margolis & Murray, *supra* note 24, at 3-4 (stating new lawyers will need to bridge the gap between technological changes and the desires of senior practitioners "wedded" to older methods and technologies).

[132] *See* Table 5.

[133] *Compare* Tables 7-8 *with* Tables 9-10.

[134] *Id.*

[135] *See generally* REPORT, *supra* note 18, at xi, 13 (reporting that all responding legal writing programs teach the traditional memorandum).

Table 7: X-Issue Samples for Those 30 and Under

Ranking	1st	2nd	3rd	4th	Score
A	26.67%	40.00%	20.00%	1.33%	**2.80**
B	6.67%	40.00%	53.33%	0.00%	**2.53**
C	60.00%	20.00%	20.00%	0.00%	**3.40**
D	6.67%	0.00%	6.67%	86.67%	**1.27**

Table 8: Y-Issue Samples for Those 30 and Under

Ranking	1st	2nd	3rd	4th	Score
A	45.45%	27.27%	18.18%	9.10 %	**3.09**
B	0.00%	27.27%	63.64%	9.10%	**2.18**
C	45.45%	45.45%	9.10%	0.00%	**3.36**
D	9.10%	0.00%	9.10%	81.82%	**1.36**

Table 9: X-Issue Samples for Those 31-40

Ranking	1st	2nd	3rd	4th	Score
A	29.17%	8.33%	20.83%	33.33%	**2.17**
B	25.00%	25.00%	45.83%	4.17%	**2.71**
C	33.33%	50.00%	12.50%	4.17%	**3.13**
D	12.50%	16.67%	20.83%	50.00%	**1.92**

Table 10: Y-Issue Samples for Those 31-40

Ranking	1st	2nd	3rd	4th	Score
A	0.00%	42.86%	28.57%	28.57%	**2.14**
B	14.29%	42.86%	28.57%	14.29%	**2.57**
C	85.71%	0.00%	14.29%	0.00%	**3.71**
D	0.00%	14.29%	28.57%	57.14%	**1.57**

Notably, much of these data have statistical significance,[136] making the results more than a fluke arising from a random sampling of attorneys. To test for statistical significance, the data for the x-issue

[136] Famed statistician R.A. Fisher "proposed the use of the term 'significant' to be attached to small P values, and the choice of that particular word was quite deliberate. The meaning he intended was quite close to that word's common language interpretation—something worthy of notice." Steven Goodman, *A Dirty Dozen: Twelve P-Value Misconceptions*, http://www.ohri.ca/newsroom/seminars/SeminarUploads/1829%5CSuggested%20Reading%20-%20Nov%203,%202014.pdf; *see* Amy Gallo, *A Refresher on Statistical Significance*, HARV. BUS. REV. (Feb. 16, 2016), https://hbr.org/2016/02/a-refresher-on-statistical-significance (explaining the definition and importance of statistical significance).

samples were run through two hypothesis tests:[137] the Chi-Square Test for independence and the Fisher's Exact Test for independence.[138]

These tests are useful in determining whether the data indicate a trend, such as whether different age groups are generally inclined to prefer certain samples. Below is a breakdown of the statistically significant age data for the x-issue samples:[139]

1. Attorneys over 40 tend to give Sample A-x the best rank more often than those 40 and under.[140]
2. Following this trend, attorneys over 50 tend to give Sample A-x the best rank more often than those 50 and under.[141]
3. Those 40 and under tend to rank Sample A-x the worst and Sample C-x the best more often than those over 40.[142]
4. Those 30 and under tend to give Sample A-x the second-best rank more often than attorneys 31-40.[143]
5. Those 31-40 tend to rank Sample A-x as the worst sample more often than attorneys 30 and under and more often than attorneys over 40.[144]
6. Those 31-40 tend to rank Sample A-x the worst and Sample C-x the best more than those 30 and under and those over 40. Furthermore, those 30 and under and those over 40 more often tend to rank Sample A-x two levels higher than sample C-x more often than those 31-40.[145]

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[137] Statistical calculations were performed by Professor Fang Li, Associate Professor in the Mathematical Sciences Department at Indiana University–Purdue University Indianapolis.

[138] For information about the Chi-Square Test, see 1 THE SAGE ENCYCLOPEDIA OF EDUCATIONAL RESEARCH, MEASUREMENT, AND EVALUATION, VOL. 268-71 (Bruce B. Frey ed., 2018). For more information about the Fisher's Exact Test see *id.* VOL. 2 at 679-82.

[139] All statistical calculations are on file with the author.

[140] Chi-Square P-Value = .0105; Fishers Exact Test P-Value = .0045.

[141] The sparsity of the frequency table makes the Chi-Square test invalid; the Fisher's Exact Test P-Value = .0451.

[142] The sparsity of the frequency table makes the Chi-Square test invalid; the Fisher's Exact Test P-Value = .0130.

[143] The sparsity of the frequency table makes the Chi-Square test invalid; the Fisher's Exact Test P-Value = .0020.

[144] The sparsity of the frequency table makes the Chi-Square test invalid; the Fisher's Exact Test P-Value = .0023.

[145] The sparsity of the frequency table makes the Chi-Square test invalid; the Fisher's Exact Test P-Value = .0241.

7. Those over 40 tend to give sample D-x the worst ranking more often than those 31-40 and those 30 and under. Those 31-40 tend to assign D-x a better rank than the other groups.[146]

3.2 Rankings According to Number of E-Memos Written Per Month

Similar to the results based on the respondents' ages, respondents ranked the samples differently based on the number of e-memos they write per month. When comparing those who write less than four e-memos per month with those who write four or more e-memos per month, there was again a break in how respondents viewed the A and C Samples.[147] While the C Samples received the highest overall score regardless of the number of e-memos respondents write per month, respondents who write less than four e-memos per month have a much more favorable view of the A Samples than their more prolific counterparts.

Showing their predilection for the traditional format, 64% of respondents who write less than four e-memos per month assigned Sample A-x with a first- or second-place ranking.[148] Divergently, less than 40% of respondents who write four or more e-memos per month gave A-x such a high score.[149] Regarding the y-issue samples, over 83% of attorneys who write less than four e-memos per month assigned Sample A-y with a first- or second-place ranking, with 0% giving A-y a fourth-place ranking.[150] Attorneys who write four or more e-memos per month had a more favorable view of A-y than they did of A-x, but over 20% of y-issue respondents still gave A-y a fourth-place ranking[151] Therefore, respondents who write more e-memos have a dissonant, if not negative, view of the A Samples—even more so than attorneys 40 and under.[152]

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[146] The sparsity of the frequency table makes the Chi-Square test invalid; the Fisher's Exact Test P-Value = .0096.

[147] Attorneys were given the following choices when asked how many e-memos they write per month: 0, 1-3, 4-6, 7-10, 11-14, and 15 or more.

[148] *See* Table 11.

[149] *See* Table 12.

[150] *See* Table 13.

[151] *See* Table 14.

[152] *Compare* Table 12 & Table 14 *with* Tables 5-6, *supra* note 130.

Table 11: X-Issue Samples for Those who Write Less Than 4 E-Memos per Month

Ranking	1st	2nd	3rd	4th	Score
A	44.00%	20.00%	22.00%	14.00%	**2.94**
B	20.00%	34.00%	42.00%	4.00%	**2.70**
C	34.69%	40.82%	22.45%	2.04%	**3.08**
D	2.04%	6.12%	12.24%	79.59%	**1.31**

Table 12: X-Issue Samples for Those who Write 4 or More E-Memos per Month

Ranking	1st	2nd	3rd	4th	Score
A	19.05%	19.05%	33.33%	28.57%	**2.23**
B	23.81%	33.33%	38.10%	4.76%	**2.76**
C	45.00%	40.00%	15.00%	0.00%	**3.30**
D	15.00%	10.00%	10.00%	65.00%	**1.75**

Table 13: Y-Issue Samples for Those who Write Less Than 4 E-Memos per Month

Ranking	1st	2nd	3rd	4th	Score
A	44.44%	38.89%	16.67%	0.00%	**3.28**
B	0.00%	27.78%	66.67%	5.56%	**2.22**
C	55.56%	33.33%	5.56%	5.56%	**3.39**
D	0.00%	0.00%	11.11%	88.89%	**1.11**

Table 14: Y-Issue Samples for Those who Write 4 or More E-Memos per Month

Ranking	1st	2nd	3rd	4th	Score
A	42.86%	21.43%	14.29%	21.43%	**2.86**
B	7.14%	28.57%	50.00%	14.29%	**2.29**
C	42.86%	42.86%	14.29%	0.00%	**3.29**
D	7.14%	7.14%	21.43%	64.29%	**1.57**

There again is statistical significance to the data when reviewing the x-issue samples, further proving that those who spend their time writing e-memos prefer the conciseness of the C Samples to the formality of the A Samples. Below is a breakdown of the statistically significant e-memo per month data for the x-issue samples:

1. Attorneys who write less than four e-memos per month are more likely to give Sample A-x a higher rank than attorneys who write more than four memos per month.[153]

[153] Chi-Square P-Value = .0018; Fishers Exact Test P-Value = .0030.

2. Attorneys who write four or more e-memos per month are more likely to rank C-x higher than A-x more often than attorneys who write less than four e-memos per month.[154]

As to be expected, the data further shows that those who write four or more e-memos per month are disproportionately more likely to be 40 and under.[155] This raised the question of whether the statistically-significant results above were not because of the number of e-memos respondents wrote per month, but because respondents 40 and under generally preferred the C Samples. Put another way, it was necessary to analyze whether the data about preferences and number of e-memos written per month are valid regardless of whether respondents are 40 and under or over 40. A secondary analysis was thus completed and confirmed the above statistical findings are true, regardless of the age of respondents.[156]

While the results in this section are useful in understanding preferences based on how many e-memos attorneys write, future studies should be done to identify the preferences of those who read and supervise e-memos. This will help determine if there is a gap between the preferences of writers and their audience.

3.3 Rankings According to Private Firm Size

There is not a significant difference in sample preferences between those who work in private practice versus those in public practice, with both groups reflecting the overall rankings expressed above.[157] There is a difference, however, among respondents at private

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[154] Chi-Square P-Value = .0012; Fishers Exact Test P-Value = .0153.

[155] With a P-Value of 0.0188 under the Chi-Square test, there is significant evidence to show that the number of e-memos written depends on attorney age. In particular, attorneys who are 40 and under are more likely to write four or more e-memos per month than attorneys who are over 40 (42.11% vs. 14.81%).

[156] This meant breaking attorneys into two groups: (1) those who write four or more e-memos per month and (2) those who write less than four. Each group was then separately examined for whether those 40 and under and those over 40 preferred A-x over C-x or C-x over A-x. Because the P-Value of both the Chi-Square test and Fisher's Exact test were above .05, there was no significant evidence to show that age determined a preference in this analysis. If the sample size increased, the evidence might become more significant.

[157] Results are on file with the author.

law firms of different sizes.[158] Yet again, the respondents' preferences split between the A Samples and the C Samples.

Respondents who work at firms of over 50 attorneys favored the C Samples, demonstrating a "big law" preference for substantive brevity.[159] Respondents took a more conservative view at "smaller firms," where the traditional A Samples received the highest ranks.[160]

Table 15: X-Issue Samples for Private Firms with Over 50 Attorneys

Ranking	1st	2nd	3rd	4th	Score
A	16.67%	33.33%	25.00%	25.00%	**2.42**
B	16.67%	33.33%	50.00%	0.00%	**2.67**
C	54.45%	27.27%	18.18%	0.00%	**3.37**
D	18.18%	9.09%	0.00%	72.73%	**1.73**

Table 16: X-issue Samples for Private Firms with 50 or Fewer Attorneys

Ranking	1st	2nd	3rd	4th	Score
A	46.43%	21.43%	21.43%	10.71%	**3.04**
B	25.00%	25.00%	39.29%	10.71%	**2.64**
C	25.00%	50.00%	21.43%	3.57%	**2.96**
D	3.57%	3.57%	17.86%	75.00%	**1.36**

Table 17: Y-issue Samples for Private Firms with Over 50 Attorneys

Ranking	1st	2nd	3rd	4th	Score
A	40.00%	40.00%	6.67%	13.33%	**3.07**
B	6.67%	13.33%	60.00%	20.00%	**2.07**
C	46.67%	40.00%	13.33%	0.00%	**3.33**
D	6.67%	6.67%	20.00%	76.92%	**1.53**

[158] Respondents were asked how many attorneys were employed in their office or firm and told that "if your employer has several offices, provide the total number of attorneys for all offices." They were given the following options: solo practitioners, less than 10, 10-25, 26-50, 51-100, 101-150, and 151 or more.

[159] *See* Tables 15, 17.

[160] *See* Tables 16, 18.

Table 18: Y-issue Samples for Private Firms with 50 or Fewer Attorneys

Ranking	1st	2nd	3rd	4th	Score
A	62.50%	25.00%	12.50%	0.00%	**3.50**
B	0.00%	37.5%	62.50%	0.00%	**2.38**
C	37.5%	37.5%	12.50%	12.50%	**3.00**
D	0.00%	0.00%	12.50%	87.50%	**1.13**

The data for the x-issue samples initially did not offer statistically-significant information that would indicate that rank distributions for Sample A-x or Sample C-x are different between practitioners at firms with 50 or fewer attorneys and practitioners from firms with over 50 attorneys. This is likely because the sample size was too small.

Therefore, to further analyze the data for statistical significance, it was necessary to specifically compare if respondents at firms of different sizes ranked Sample A-x higher than C-x or, instead, Sample C-x higher than A-x. This more-tailored comparison shows the following statistically significant data:

> Practitioners at a private firm with over 50 attorneys are more likely to rank Sample C-x better than Sample A-x than practitioners at a private firm with 50 or fewer attorneys.[161]

4. Respondent E-Memo Preferences and Habits

After ranking the samples, respondents answered questions about their preferences for writing substantive e-memos, with a focus on discrepancies from the literature review. This included asking respondents about what sample e-memos provided the "best" analytical depth and how much reasoning a writer should include in an upfront conclusion. The study then asked respondents about habits in the workplace, such as the typical turnaround time for an e-memo and what mediums supervisors use to read memoranda.

4.1 Analytical Depth Matters

When asked to rank the samples "simply [for] the depth of legal analysis and nothing else," respondents greatly favored the A Samples: 83.33% of respondents gave A-x the top rank, while 76.19%

[161] The sparsity of the frequency table makes the Chi-Square test invalid; the Fisher's Exact Test P-Value = .0066. This result is also confirmed by a two-sample t-test of the equality of the mean rank differences (DifAC) between the two groups, with a P-Value of .0254.

gave C-x the second-highest rank. Again, the D Samples were plainly last.[162]

Remarkably, though respondents overwhelmingly acknowledged the A Samples had more apparent analytical "depth," that alone did not directly translate into the samples' overall ranks, as seen in the results above. The C Samples, which balanced depth with concision, remained the overall favorite because of the number of respondents who gave the A Samples a third- or fourth-place ranking. Therefore, while depth is valued and recognized, respondents—especially those 40 and under, those who write four or more e-memos per month, and those working at private firms of over 50 attorneys—value it more when the analysis is also concise.[163]

Table 19: X-Issue Samples Ranking Simply for Depth of Analysis

Ranking	1st	2nd	3rd	4th	Score
A	83.33%	7.14%	4.76%	4.76%	**3.69**
B	11.90%	16.67%	71.43%	0.00%	**2.40**
C	4.76%	76.19%	16.67%	2.38%	**2.83**
D	0.00%	0.00%	7.14%	92.86%	**1.07**

Table 20: Y-Issue Samples Ranking Simply for Depth of Analysis

Ranking	1st	2nd	3rd	4th	Score
A	72.22%	22.22%	5.56%	0.00%	**3.67**
B	0.00%	5.56%	88.89%	5.56%	**2.00**
C	27.78%	72.22%	0.00%	0.00%	**3.28**
D	0.00%	0.00%	5.56%	94.44%	**1.06**

4.2 Upfront Conclusions Need Reasoning

The study next asked respondents to review sample conclusions. As seen in Appendix 11, respondents who reviewed the x-issue samples could choose between two sample conclusions, each with differing levels of reasoning, or to have no upfront answer. Those responding to the y-issue samples reviewed two samples with

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[162] *See* Tables 19-20.

[163] Davis may be correct "that legal readers do not prioritize brevity over a complete and soundly-reasoned legal analysis," but I respectfully disagree in so far as she suggests concision is not a touchstone of legal writing. *See* Davis, *supra* note 5, at 505.

differing levels of reasoning and a third sample that provided no reasoning at all.[164]

Conflicting with most textbook samples, the results show that respondents not only preferred conclusions with reasoning, they preferred the reasoning be detailed.[165] Not one respondent stated an initial answer was unnecessary in the x-issue samples, and 90.91% of the attorneys responding to the y-issue samples gave the lowest rank to the most conclusory answer with no reasoning.[166]

Table 21: Ranking X-Issue Sample Conclusions

Ranking	1st	2nd	3rd	Score
A	88.89%	11.11%	0.00%	**2.89**
B	11.11%	88.89%	0.00%	**2.11**
None	0.00%	0.00%	100.00%	**1.00**

Table 22: Ranking Y-Issue Sample Conclusions

Ranking	1st	2nd	3rd	Score
A	72.73%	21.21%	6.06%	**2.67**
B	24.24%	72.73%	3.03%	**2.21**
C	3.03%	6.06%	90.91%	**1.12**

One scholar predicted such results, stating the upfront conclusion should be an "answer with reasons."[167] This can be a "single, short paragraph," or "you can write the answer and give the reasons in bullet points."[168] This advice follows what we so often teach: Legal reasoning is the meeting of law and facts. Only when the two are combined does the reader have a true answer.

Legal analysis requires constantly answering "why" and responding with an instructive "because." This point is particularly true for the upfront answer in an e-memo, which is read by an impatient reader who needs the major and minor premises of the writer's conclusion articulated from the start.[169] If a writer is to be

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[164] *See* Appendix 12.

[165] The preferred sample answers best reflect the sample in Tiscione's text. *See* TISCIONE, RHETORIC FOR LEGAL WRITERS, *supra* note 25, at 137-38.

[166] *See* Tables 21-22.

[167] Schiess, *How to Write*, *supra* note 27.

[168] *Id.*

[169] As multiple renowned scholars have stated, legal logic follows classical syllogisms, where a conclusion is formed from two propositions. *See, e.g.*, Lucille A. Jewell, *Old-School Rhetoric and New-School Cognitive Science*, 13 LEGAL COMM. & RHETORIC: J. ALWD 39, 42 (2016) (calling this deductive structure of syllogisms "the bedrock of legal reasoning").

believed, especially a novice writer, their credibility must be immediately earned with clear reasoning.[170] After all, because the upfront conclusion in an e-memo is an adaption of the traditional memoranda's brief answer, such initial reasoning is customary.[171]

4.3 Applications Are Necessary

Part 1 explained there is currently little scholarship regarding how to apply facts to law in e-memos.[172] To partially address this gap, the study asked respondents the importance of the x-issue and y-issue samples' applications.[173] Respondents could choose "important," "somewhat important," "not important," or "other."[174]

As to be expected, a significant majority of respondents who reviewed the more complex x-issue samples—75%—stated the application was "important."[175] Not one respondent stated the application was "not important."[176] With the simpler y-issue samples, the application might seem a bit perfunctory; the writer's sole contribution was that the client's facts met a statutory definition. Even so, as seen by Table 24, over 83% of y-issue respondents deemed the application "important." Again, not one respondent stated the application was "not important."[177]

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[170] Kendra Huard Fershee, *The New Legal Writing: The Importance of Teaching Law Students How to Use E-Mail Professionally*, 71 MD. L. REV. ONLINE 1, at 7 (2012) (discussing the importance of an attorney establishing ethos in their writing immediately "upon entering legal practice"); *see also* Tracy, *supra* note 32, at 306-07 (stating an attorney must provide a "clear explanation of the legal analysis and instill[] confidence in the reader that the application of the analysis to the client's situation is reliable").

[171] *See* COUGHLIN, ROCKLIN & PATRICK, *supra* note 25, at 322-23.

[172] *Supra* Part 1.

[173] *See* Tables 23-24.

[174] *See id.*

[175] *See* Table 23.

[176] *See id.*

[177] *See* Table 24.

Table 23: Importance of the Application in X-Issue Samples

How important is the application?	Percent of Respondents
Important	75%
Somewhat important	20.45%
Not important	0.00%
Other	4.55%

Table 24: Importance of the Application in Y-Issue Samples

How important is the application?	Percent of Respondents
Important	83.30%
Somewhat important	16.67%
Not important	0.00%
Other	0.00%

When assigning students e-memo problems, therefore, no matter the research question's complexity, professors must ensure students are including an application of facts to the law.[178] Even in e-memos answering basic, procedural research questions, if the question references a specific (or even hypothetical) client, applications matter.[179]

4.4 Attorneys Use Explanatory Parentheticals

Supporting the advice from the literature review and respondents' general preference for the C Samples, attorneys rely on explanatory parentheticals when providing caselaw within e-memos. As shown in Table 25, over 42% of the 96 respondents answering this question stated explanatory parentheticals are used "very frequently" or "frequently" in e-memos.

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[178] *Cf.* Fore, *supra* note 8, at 166 (noting "limited scholarship on real-world emailing practices" led him to believe "many" e-memos have "little application").

[179] *Id.* at 184, 186 (providing an example of a procedural e-memo research assignment and a model answer with a straightforward application).

Table 25: Use of Explanatory Parentheticals

How frequently do you or those you supervise use explanatory parentheticals in e-memos?	96 Respondents
Very Frequently	12.50%
Frequently	30.21%
Moderately	23.96%
Infrequently	16.67%
Very Infrequently	16.67%
Other	4.17%

Legal writing professors must teach the art of writing explanatory parentheticals.[180] Having students draft and redraft parentheticals can be done side-by-side with asking students to draft case illustrations, as parentheticals are a condensed form of case illustrations.[181]

4.5 Preferences Towards Formal Citations Are Complicated

With traditional memoranda, it is general knowledge that authority must back each sentence needing support. There is no such consensus about when and how a writer should cite in an e-memo.[182] Not only are there discrepancies in scholarly advice, but respondents also lacked unity about the importance of formal citations in e-memos.

When asked "[h]ow important" "formal Bluebook citations" are in e-memos, just 4% of respondents selected "very important."[183] Seventeen percent choose "important," 35% responded "somewhat important," and 35% answered "not important."[184]

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[180] For more information on the art of writing explanatory parentheticals *see generally* MICHAEL R. SMITH, ADVANCED LEGAL WRITING: THEORIES AND STRATEGIES IN PERSUASIVE WRITING Chapter 3 (3d ed. 2014).

[181] *See id.* at 40 (stating legal writing relies upon "illustrative narratives," which can be done through case illustrations or "parenthetical illustrations").

[182] *See supra* notes 53-57 and accompanying text.

[183] *See* Table 26.

[184] *See id.*

Table 26: Citations

How important are formal Bluebook citations in e-memos?	100 Respondents
Very important	4%
Important	17%
Somewhat important	35%
Not important	35%
Other	9%

The relative lack of concern or agreement for proper citations might rest in the wording of the question and the term "formal Bluebook citations." It also could rest with the question existing in a vacuum and not being tied to a sample document. Attorneys often view proper legal citation as a "necessary evil"—a tedious exercise in memorizing gnostic knowledge.[185] In practice, this view is unhelpful to writers, readers, and law students; legal citation is a core convention of the law.[186]

When respondents earlier commented about the e-memo samples, many criticized the D Samples, and to a lesser extent, the B Samples, for missing citations or crucial citation information.[187] In contrast, not one survey respondent disparaged the A or C Samples for citing per The Bluebook's or the ALWD Guide to Legal Citation's rules and including pinpoints to specific pages. True, there is a clear delineation between perfect citations and unusable ones, but telling students that citations are "somewhat important," that e-memos do not need to use "formal, full-form citations,"[188] or that e-memo writers can cite "less frequently"[189] creates an amorphous and

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[185] Chew, *supra* note 125, at 875; David J.S. Ziff, *The Worst System of Citation Except for All the Others*, 66 J. LEGAL EDUC. 668, 668 (2017) ("Everybody hates *The Bluebook* . . . ."). *See generally* Susie Salmon, *Shedding the Uniform: Beyond a "Uniform System of Citation" to a More Efficient Fit,* 99 MARQ. L. REV. 763 (2016) (providing a thorough and compelling argument against the "fetishization" of perfectly formatted citations).

[186] Chew, *supra* note 125, at 875.

[187] A respondent commenting on the samples wrote, "Sample [D-x] was clearly the weakest memo, as it had very few citations (and few very in-text citations) and did not set out the issue clearly." Regarding Sample B-x, one attorney wrote that "the associate has not provided pinpoint cites in the decisions, making it more time-consuming for the partner to assess the associate's conclusion."

[188] *See* Schiess, *How to Write*, *supra* note 27.

[189] COUGHLIN, ROCKLIN & PATRICK, *supra* note 25, at 325.

unworkable standard. It is better for new writers to assume a high degree of formality in their citations.[190]

Even in "informal" e-memos, proper in-line citations[191] are indispensable guideposts, rapidly providing thoughtful readers with information about the value of the writer's propositions.[192]

As compared to Bryan Garner's preferred footnoted citations,[193] in-line citations are particularly advantageous in e-memos and other documents read on a screen.[194] Readers using a computer, tablet, or phone should not be forced to scroll down to the bottom of a document to check the efficacy of a proposition and then back up again to continue reading.[195] In-line citations are not, as Garner claims, "speed bumps" interrupting a reader's thought process.[196] Rather, properly-formatted, in-line citations within e-memos give skeptical and busy readers the proof they need and the conciseness they desire.[197]

Respondents' use of citation signals further highlights the importance of fashioning proper citations in e-memos.[198] Over 60%

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[190] CHEW & PRYAL, *supra* note 25, at 366 (claiming that citations affect a writer's credibility); *see* SMITH, *supra* note 180, at 187 (discussing the importance of complying with citation rules when writing persuasive documents).
Even if readers falsely equate proper citations with quality writing, as some scholars fear, law schools must prepare students for these readers: They are the ones hiring our graduates. *Cf.* Salmon, *supra* note 185, at 795, 798.

[191] Chew, *supra* note 125, at 876-77 (defining "in-line citations" as a citation directly following a proposition).

[192] *Id.* at 880 (stating legal writers use citations to convey information about the precedent they use and legal readers use citations to understand the weight of the authority).

[193] GARNER, PLAIN ENGLISH, PLAIN ENGLISH, *supra* note 13, at 94-95. *See generally* Bryan A. Garner, *The Citational Footnote*, 7 SCRIBES J. LEG. WRITING 97 (2000).

[194] Betsy Brand Six, *In Defense of the Stick-in-the-Mud: A Case for In-Text Footnotes*, 85 J. KAN. B. ASS'N Nov./Dec. 2016, at 12.

[195] *Id.*

[196] GARNER, PLAIN ENGLISH, *supra* note 13, at 94.

[197] Chew, *supra* note 125, at 875 ("Citation is a core convention that addresses the need in a common law system to show the provenances of statements of law and balances that need with the competing one of brevity.").

[198] *See* Ryan Miller, *Bluebook Signals Explained*, GEORGETOWN UNIVERSITY LAW CENTER 1 (2019), https://www.law.georgetown.edu/wp-content/uploads/2019/08/BLUEBOOK-SIGNALS-EXPLAINED.pdf (explaining that signals placed before a citation "can tell the reader that the material you cited directly supports your proposition, indirectly supports it, or even refutes it").

of respondents indicated they or those they supervise use citation signals in e-memos "moderately," "frequently," or "very frequently."[199]

Table 27: Use of Citation Signals

How frequently do you or those you supervise use citation signals in e-memos?	99 Respondents
Very Frequently	6.12%
Frequently	23.47%
Moderately	35.71%
Infrequently	23.47%
Very Infrequently	11.22%
Other	3.06%

Citation signals might be even more important in e-memos than in traditional memoranda. Because e-memos must be exceedingly concise, squeezing more information into each sentence—and each citation—is critical. Signals are especially beneficial in e-memos then; they quickly give meaning and context to a citation, telling a reader precisely how the source supports or contradicts the writer's proposition.[200]

These data complement the importance of explanatory parentheticals, which are often needed in conjunction with signals to explain a source's relevance.[201] Professors should therefore consider teaching rudimentary signals (e.g., *see*, *see also*) and explanatory parentheticals together.

4.6 Attachments and Hyperlinks Are Useful

As seen by Table 28, the majority of respondents—53%—reported "it is common practice to electronically attach" cases and statutes to e-memos. An additional 11% agreed that although attaching applicable law is not yet common practice at their workplace, it "should" become one.[202]

In addition to attaching applicable law, one suggestion professors might make to students is to highlight the portions of an opinion they directly quote or paraphrase in their e-memo. The highlights will save

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[199] *See* Table 27.
[200] Miller, *supra* note 198, at 1.
[201] *See id.*at 4, 7.
[202] *See* Table 28.

a skeptical reader time and better direct the reader than a pinpoint citation alone.

Table 28: Attachments

Is it common practice at your place of work to electronically attach applicable cases or statutes to an email memo?	**100 Respondents**
Yes	53%
No	36%
No, but it should be	11%

When it comes to hyperlinking citations, about half of the 76 respondents answering this question agreed that hyperlinking is or "should be" common practice.[203] This information supports the argument that hyperlinking is becoming a general trend in legal writing.[204] Some courts explicitly state they prefer hyperlinking in briefs and other court filings because hyperlinking allows readers to immediately verify an attorney's argument.[205]

Table 29: Hyperlinks

In an email memo, is it common practice to hyperlink citations to their authority?	**76 Respondents**
Yes	23%
No	49%
No, but it should be	24%
Other	4%

[203] *See* Table 29.

[204] Salmon, *supra* note 185, at 802-04*; see* Chew, *supra* note 125, at 882, 884. *But see* Jonathan Zittrain, Kendra Albert & Lawrence Lessig, *Perma: Scoping and Addressing the Problem of Link and Reference Rot in Legal Citations*, 127 HARV. L. REV. F. 176, 177 (2014) (discussing the problem of hyperlinks becoming inaccessible in the future—what is known as "link rot").

[205] *See, e.g.*, CALIFORNIA COURT OF APPEALS, GUIDE TO CREATING ELECTRONIC DOCUMENTS/FILINGS 25 (2017), https://www.courts.ca.gov/documents/DCA-Guide-To-Electronic-Appellate-Documents.pdf.

4.7 Readers Rely on Computers Screens

One of the last survey questions asked how supervising attorneys read office memoranda of any kind—not just e-memos. Respondents could choose as many options as applied.

Of the 88 attorneys who responded, 88.64% stated supervisors read memos on their computers.[206] Almost 60% of respondents stated supervisors still read memoranda in print.[207] Phones were the third most-used medium, with nearly 40% of supervisors sometimes reading memoranda on the small screen.[208]

Table 30: Supervisor Reading Method

Method	88 Respondents
Print	59.09%
Computer Screen	88.64%
Tablet, e.g., iPad	30.68%
Phone	39.77%
Other	5.68%

Respondents next ranked the methods supervising attorneys use "the most for reading legal memoranda" and were asked to skip the question if they did not know the answer. Seventy-five attorneys responded. Sixty percent of respondents stated computer screens are the most used method for reading memoranda.[209] Print came in second, with 32%.[210] Only 8% of respondents said tablets or phones were the primary methods used by supervisors.[211]

The results are much closer when reviewing the answers of the 75 respondents who indicated supervisors' secondary means for reading

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[206] *See* Table 30.
[207] *See id.*
[208] *See id.*
[209] *See* Table 31. The top number in each cell represents the number of attorneys who made that selection as a method supervisors use (e.g., twenty-one attorneys stated print is a supervisor's second-most used means for reading memoranda). The bottom number in each cell is the percent of attorneys who made that selection based on the total number of attorneys who indicated supervisors use that particular method for reading memoranda (e.g., 28% of the seventy-five attorneys who stated supervisors use print indicated print is a supervisor's second-most used means for reading memoranda).
[210] *See id.*
[211] *Id.*

memoranda. While computer screens again took the top spot (32%), print (28%) and phones (26.67%) were close behind.[212]

Table 31: Ranking Reading Methods

Rank	Print	Computer	Tablet	Phone	Other
1st	24 32%	45 60%	3 4%	3 4%	0
2nd	21 28%	24 32%	10 13.34%	20 26.67%	0
3rd	9 12%	6 8%	30 40%	24 32%	0
4th	17 22.67%	0	21 28%	18 24%	0
5th	2 2.67%	0	0	3 4%	40 53.34%
Total	**73** **97.33%**	**75** **100%**	**64** **85.33%**	**65** **86.67%**	**29** **38.67%**

4.8 E-Memos Are Quick-Turnaround Projects

Even as e-memos are rigorous writing projects, the general expectation is that an associate will research, draft, edit, and complete an e-memo within one to two days. About half of respondents—49.48%—stated the typical turnaround time for an e-memo is within 24 hours. Nearly all respondents—91.75%—said the typical turnaround time is within 48 hours.[213]

[212] *Id.*
[213] *See* Table 32.

Table 32: Turnaround Time

Typical turnaround time for e-memos	97 Respondents
Within 6 hours	8.25%
Within 12 hours	13.40%
Within 24 hours	27.84%
Within 36 hours	16.49%
Within 48 hours	25.77%
Within 60 hours	5.15%
Over 60 hours	3.09%

4.9 Traditional Memoranda Are Not Dead in Private Practice

Much of the scholarly debate over e-memos has rightly focused on whether the e-memo explosion has eviscerated the traditional memorandum.[214] According to Tiscione's study, around 40% of her respondents wrote no traditional memoranda in a year.[215] An overwhelming majority—75%—wrote no more than three traditional memoranda per year, and around 87% wrote no more than six.[216] Only a dismal 4% wrote more than 20.[217] Tiscione, therefore, posits that traditional memoranda are "all but dead."[218] My survey instead suggests that the demands of modern practice have merely hobbled traditional memoranda.[219]

As seen by Table 33, of the 100 respondents answering this series of questions in my survey, just 17% stated they do not write traditional memoranda. And just a slight majority—54%—stated they write no

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[214] *Compare* Robbins-Tiscione, *Snail Mail*, *supra* note 4, at 32 (arguing "the traditional legal memorandum is all but dead in law practice"), *with Davis*, *supra* note 5, at 476 (rejecting there are "foundational differences" between traditional memoranda and e-memos and positing the "complexities of the law and ubiquity of written communication" does not mean the demise of traditional legal memoranda).

[215] Robbins-Tiscione, *Snail Mail*, *supra* note 4, at 32-33.

[216] *Id.*

[217] *Id.* at 33, 36.

[218] *Id.* at 32.

[219] *Cf.* Fershee, *supra* note 170, at 2 ("Whether the traditional legal memorandum is in its twilight is not yet clear . . . .").

more than five traditional memoranda per year.[220] Further, 10% actually write 31 or more traditional memoranda per year.[221]

Table 33: Traditional Memoranda Per Year

Number of Memos	Percent of Respondents
0	17%
1-5	37%
6-10	23%
11-15	11%
16-20	1%
21-25	1%
26-30	0%
31 or more	10%

In addition to writing more traditional memoranda, respondents to my survey also wrote far more non-traditional memoranda—including e-memos—than respondents to Tiscione's survey. Thirty-five percent of my respondents wrote or assigned more than 20 non-traditional memoranda per year.[222] In Tiscione's survey, by comparison, approximately 25% wrote more than 20 informal memoranda, and just around 19% assigned more than 20.[223] There is an even starker distinction when looking at those who wrote or assigned the fewest non-traditional memoranda. Only 19% of my respondents wrote or assigned five or fewer informal memoranda per year.[224] Approximately 34% of Tiscione's respondents, however, wrote six or fewer non-traditional memoranda per year, and approximately 47% assigned six or fewer per year.[225]

[220] *See* Table 33.
[221] *Id.*
[222] *See* Table 34.
[223] Robbins-Tiscione, *Snail Mail*, *supra* note 4, at 39, 57-58.
[224] *See* Table 34.
[225] *See* Robbins-Tiscione, *Snail Mail*, *supra* note 4, at 57-58.

Table 34: Informal Memoranda Per Year

Number of Memos	Percent of Respondents
0	5%
1-5	14%
6-10	17%
11-15	16%
16-20	13%
21-25	9%
26-30	5%
31 or more	21%

There are a number of possibilities that might explain the differing results between Tiscione's survey and my own, including disparities in respondent demographics and more than a decade between when we conducted the studies. Still, respondents in both studies share much in common: 69% of Tiscione's respondents practiced private law,[226] while 64% of my respondents are in private practice.[227] Similarly, the greatest percent of Tiscione's respondents worked at a firm with over 200 attorneys,[228] and the greatest percent of my respondents in private practice worked in firms of over 150 attorneys.[229]

And, even when singling out my respondents working in firms of over 150 attorneys, over 40% of respondents stated they wrote or supervised more than five traditional memoranda per year.[230] Further, although traditional memoranda can be expensive, in firms of 50 or fewer attorneys, again, over 40% of my respondents wrote or assigned more than five traditional memoranda per year.[231]

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[226] *Id.* at 35.
[227] *See supra* Section 2.1
[228] Robbins-Tiscione, *Snail Mail*, *supra* note 4, at 35, 52.
[229] *See supra* note 87 .
[230] *See* Table 35.
[231] *See* Table 36.

Table 35: Traditional Memoranda Per Year by Attorneys at Private Firms of Over 150 Attorneys

Number of Memos	Percent of Respondents
0	9.09%
1-5	50%
6-10	18.18%
11-15	18.18%
16-20	0%
21-25	4.54%
26-30	0%
31 or more	0%

Table 36: Traditional Memoranda Per Year by Attorneys at Private Firms of 50 or Fewer Attorneys

Number of Memos	Percent of Respondents
0	16.67%
1-5	41.67%
6-10	30.56%
11-15	2.78%
16-20	2.78%
21-25	0%
26-30	0%
31 or more	5.56%

5. Curricular Implications

Adding any single e-memo assignment to first-year legal writing courses is not enough. E-memos come in a variety of vintages,[232] including summaries of traditional memoranda[233] and "procedural"

[232] *See* Fore, *supra* note 8, at 158-61 (observing there are various types of e-memos and then providing "a basic taxonomy" of possible assignments).
[233] *See, e.g.*, Ellie Margolis, *Incorporating Electronic Communication in the LRW Classroom*, 19 PERSPECTIVES: TEACHING LEGAL RES. & WRITING 121, 124 (2011) (discussing an assignment requiring students to add an e-mail summary to their final memoranda of the semester) [hereinafter Margolis, *Incorporating Electronic Communication*].

e-memos.[234] Ideally, students will complete these types of e-memo assignments during their studies.[235] Still, limited course hours dictate choosing first-year assignments that mirror practice and provide students a chance to build their analytical muscles.[236] For this reason, professors teaching first-year legal writing courses should consider standalone, substantive e-memo assignments similar to the research questions used in this study. And they should contemplate reorganizing their course curriculum to include more short assignments.[237]

A complete discussion on how courses might be formatted in the future will be discussed in a future article, but one reasonable reform is assigning students an e-memo as their first writing assignment.[238] Before discussing the unfamiliar components of a traditional memorandum, the assignment introduces students to a recognizable means for developing legal analysis.[239] With little instruction regarding format and just one judicial opinion to provide applicable law, students draft a short email analyzing a client's situation. Immediately, students in the legal writing classroom are reading, writing, and creating like a lawyer. Just as notably, they are introduced to legal writing as the process of forming legal analysis, not mimicking a rigid format.[240]

5.1 Choosing E-Memo Samples

When setting goals and objectives for substantive e-memo assignments, we come back to the ultimate question the study set out to answer: How should an e-memo be formatted and written? The

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[234] Fore, *supra* note 8, at 178-82 (describing a short, "standalone" e-memo assignment focused on researching and reporting district court local rules).
[235] *Id.* at 162.
[236] *Cf. id.* at 166 (stating that emails dealing with clear rules and limited application of law to facts require little analytical rigor from the writer).
[237] *See* Wawrose, *supra* note 22, at 549 (discussing how she incorporated short assignments with quick turnarounds into her legal writing course).
[238] *See* Calleros, *Traditional*, *supra* note 26, at 109-10 (suggesting an e-memo might make a good introductory assignment if the required analysis is "exceedingly simple"). *But see* Tiscione, *Rhetoric*, *supra* note 6, at 540-41 (expressing concern that the skill necessary to write an efficient e-memo takes experience, but also noting the role of the legal writing professor in teaching students different analytical forms).
[239] *See* Lee, *supra* note 4, at 668 ("By virtue of its form, the memorandum, with all of its requirements and its unfamiliarity to students can be intimidating and daunting.").
[240] *Id.* at 663.

overall preference for the A and C Samples means examples similar to these should serve as training models. Indeed, students should review and critique samples of varying length, depth, and formatting. But students should particularly scrutinize e-memos analogous to the A and C samples and learn about the disharmony trilling between tradition and innovation.[241]

If we must signal to students a "best" e-memo to emulate, a reasonable solution is to place significant emphasis on the C Samples. Many respondents appreciated the A Samples' thoroughness and more conventional format,[242] but—critically—those who regularly write e-memos chose the C Samples.[243] The C Samples further provide students the best example for incorporating explanatory parentheticals, essential instruments for modern practice. Moreover, while the A Samples were some practitioners' favorite e-memos, many respondents despised their length and formality.[244] There was no such animosity towards the C Samples.[245] Consequently, the C Samples are the safest benchmark for an aspiring attorney.

There is, of course, the age divide between how attorneys ranked the A and C Samples, but this split makes sense. Senior practitioners are more attached to legal writing that matches their law school experience; younger attorneys are more accustomed to writing shorter messages with digital devices.[246] But even if senior attorneys prefer the more traditional e-memo, "digital natives" are quickly becoming the supervisors.[247]

For now, our students must be "bilingual," altering e-memo style depending on their reader's preferences.[248] Yet our courses cannot ignore the trend towards conciseness for two reasons. First, because writing memoranda already makes students fluent in tradition, it is imperative our e-memo assignments teach the nuances of succinct yet incisive e-memos.[249] Second, e-memos are sent to a targeted audience

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[241] *See* Tiscione, *Rhetoric*, *supra* note 6, at 541 (suggesting professors have students compare the "two analytical forms" of memoranda and concise e-memos).
[242] *Supra* Part 3.
[243] *Supra* Section 3.2.
[244] *Supra* Part 3.
[245] *Id.*
[246] Margolis & Murray, *supra* note 24, at 32.
[247] *Id.* at 16.
[248] *Id.* at 4; *see also* CHEW & PRYAL, *supra* note 25, at 136.
[249] *Cf.* Robbins-Tiscione, *Snail Mail*, *supra* note 4, at 35 ("Although well-established, the traditional memorandum is not itself a purpose for writing, and it should give way to a more purpose-driven approach to teaching written analysis.").

as part of an ongoing conversation.[250] Presumably, the intended reader already knows the issues, the basics of the law, and the steps of legal logic. The inherent nature of email thus favors moving towards e-memos closer to the C Samples.

5.2 Teaching Students with the Help of Practicing Attorneys

As students progress through their first semester, professors can formally introduce substantive e-memo assignments. The first formal e-memo exercise can come after the initial traditional memorandum assignment and might either present the students with a new client or have a previous client ask a question corollary to a previous problem. For example, if the client for the traditional memorandum needed to assess their liability for false imprisonment, a follow-up e-memo assignment could ask students to assess whether the client's conduct rose to the level of "extreme and outrageous conduct"—without asking students to consider the other elements of intentional infliction of emotional distress. Thus, while students would be operating in a familiar universe of facts, the e-memo assignment would ask students to conduct independent legal research and write a standalone legal analysis.

An assignment I have found useful in teaching substantive legal analysis relies on the help of friends and colleagues in practice. After completing two class periods of instruction and exercises, students receive an email from their "supervisor" asking them to complete a substantive e-memo within 48 hours. But, importantly, to give students a taste of legal practice, the assignment does not come from me: It comes from a practicing attorney.

Before students ever receive their assignment, I provide research questions, sample answers, and checklists to a group of reliable and ethical lawyers. These attorneys then email the students with my research question and a request for an e-memo response within 48 hours.[251] To help students and ease their nerves, I tell students they can first email me their e-memo to receive general critiques before sending their assignment to their "supervisor."

Writing for attorneys gives each student a desire to excel in their work and a contact practicing in an area of the student's interest. If a student says they want to explore working at a large firm in

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[250] Tiscione, *Rhetoric*, *supra* note 6, at 530.

[251] Students had to opt-in to receiving their assignment from an attorney, and I clearly state they do not need to participate. Rather, I serve as the supervising attorney if the student so chooses.

environmental law, I can assign the student a supervising attorney who does just that. If the student is interested in working for the public defender's office, I can email a former colleague. Some students have even gone on to complete internships or begin careers with their attorney-contact's practice.

The exercise has always been a success; students treat the e-memo with urgency and practitioners praise the assignment's realism and the students' work products.[252] Crucially, the assignment has given students an enhanced sense of audience and a chance to write a document that is part of direct conversation with an informed reader. It has given students a chance to create an "iceberg e-memo."

5.3 The Iceberg E-Memo

As Tiscione noted, email is a "cool" medium—one that requires the audience's "participation or completion." [253] Email is often part of a dialogue among disciplinary experts.[254] It asks a reader to "fill in gaps" that would clearly (and perhaps repeatedly)[255] be expressed in a traditional memorandum.[256] In this way, the e-memo's rhetoric should mirror Ernest Hemingway's "Iceberg Theory" of writing.[257]

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[252] *Cf.* Margolis, *Incorporating Electronic Communication*, *supra* note 233, at 124 (noting students turned in their best writing of the semester with their e-memo assignments).

[253] Tiscione, *Rhetoric, supra* note 6, at 528 (citing MARSHALL MCLUHAN, UNDERSTANDING MEDIA 22-23 (1964)); s*ee also* Will, *supra* note 23, at 302 ("[E]-memos are situation-specific . . . because they are likewise directed to a particular audience . . . .).

[254] Tiscione, *Rhetoric, supra* note 6, at 530.

[255] Calleros, *Traditional*, *supra* note 26, at 107 (stating an e-memo "necessarily will dispense with the more complex format and overlapping elements of a traditional office memorandum"); Davis, *supra* note 5, at 486 (admitting traditional legal memorandum can sometimes seem redundant); Fershee, *supra* note 170, at 2 (calling traditional memoranda "redundant"); Robbins-Tiscione, *Snail Mail*, *supra* note 4, at 48 (asserting e-memos are "less redundant" than traditional memoranda).

[256] *See* Will, *supra* note 23, at 302 (stating a traditional memorandum is more "designed to be a declaration that may have general application" than an e-memo, which is written for a specific and known audience).

[257] *See* ERNEST HEMINGWAY, DEATH IN THE AFTERNOON, 192 (1933).

> If a writer of prose knows enough of what he is writing about he may omit things that he knows and the reader, if the writer is writing truly enough, will have a feeling of those things as strongly as though the writer had stated them. The dignity of movement of an ice-berg is due to only one-eighth of it being above water. A writer who omits things because

According to Hemingway, a writer who truly "knows enough of what [they are] writing about" may omit explicit themes, yet a knowledgeable reader will still understand the writing's meaning.[258] Like most of an iceberg's mass, some information might be submerged beneath the surface.[259] But the writer's points will resonate truly with the reader because the writer will carefully choose what information to include and, just as importantly, to exclude.[260] If the writer, however, does not understand the subject matter or have confidence in her work, her omissions will strip the writing of clear meaning.[261] She will render her work ineffective.[262]

The Iceberg Theory is acutely applicable for those writing e-memos; Hemingway fostered his discipline "to prune language and avoid waste motion" by writing short stories.[263] With the "Iceberg Theory of e-memo writing," the writer may omit known facts, clearly understood logical steps, and overly-duplicative conclusions—while still providing sharp substantive analysis. Elegance replaces redundancies.

Thus, a proper e-memo is not less rigorous than a memorandum;[264] it is perhaps even more so. Writers must consider

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> he does not know them only makes hollow places in his writing.

Id. According to Hemingway's "Iceberg Theory," an informed writer can communicate with the reader both explicitly and implicitly, allowing the reader to grasp the writing's full meaning even though explicit points might be submerged beneath the surface. KENNETH G. JOHNSTON, THE TIP OF THE ICEBERG: HEMINGWAY AND THE SHORT STORY 3 (1987); *see also* Robert O. Stephens, *Hemingway's Old Man and the Iceberg*, 7 MODERN FICTION STUDIES, no. 4, 1961, at 295-304 (noting that Hemingway had authority to write *The Old Man and The Sea* because he knew many fishing stories).

[258] CARLOS BAKER, HEMINGWAY: THE WRITER AS ARTIST 117-18 (1972); *see* Hubert Zapf, *Reflection vs. Daydream: Two Types of the Implied Reader in Hemingway's Fiction*, 15 COLLEGE LITERATURE, no. 3, 1988, at 289-90 (stating Hemingway's writing requires participation by the reader).

[259] JOHNSTON, *supra* note 257, at 3.

[260] *See id.*

[261] Hemingway, *supra* note 257, at 192.

[262] *See id.*

[263] BAKER, *supra* note 258, at 117-18. Note that Supreme Court justices have praised Hemingway's prose as the "paradigmatic form of legal writing." Eugene McCarthy, *In Defense of Griswold v. Connecticut: Privacy, Originalism, and the Iceberg Theory of Omission*, 54 WILLAMETTE L. REV. 335, 353 (2018).

[264] Davis notes the Obama White House created a fifty-page internal memorandum supporting the killing of an American in Yemen as correlative proof that competency equates to a memorandum's length. *See* Davis, *supra*

not only what to include but also what to exclude.[265] Writing such expertly-crafted documents requires the writer have empathy for her reader and the self-restraint not to announce all that the writer knows.[266]

Likewise, the analysis in iceberg e-memos (such as the C Samples) is not shallower than the "deep" analysis of a traditional memorandum.[267] There should be no meaningful difference between the analytical depth of a memorandum and a well-crafted e-memo.[268] The only distinction is the reader's expectation of how much information is appropriately submerged.[269]

This kind of thoughtful omission can occur only when the writer has internalized the law, just as Hemingway's aesthetic was grounded

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note 5, at 479. But the existence of a lengthy memo in the White House on issues of terrorism and presidential powers does not prove that a lawyer is only competent when she provides page after page of advice. Such advice could actually bury the writer's point where the competent course of action would be a short and well-reasoned email. While the Model Rules of Professional Conduct require an attorney provide "competent representation" through her "legal knowledge, skill, thoroughness, and preparation" the Rule does not require a minimum word count. *Cf.* Model Rules of Prof'l Conduct R. 1.1 (2020).

[265] *See* COUGHLIN, ROCKLIN & PATRICK, *supra* note 25, at 320-22; Lee, *supra* note 4, at 657 (asserting e-memos "create an opening for deeper analysis").

[266] Barbara P. Blumenfeld, *Rhetoric, Referential Communication, and the Novice Writer*, 9 LEGAL COMM. & RHETORIC: J. ALWD, 207, 211-12 (2012) (discussing how novice legal writers fail to grasp the importance of audience); Susan E. Provenzano & Lesley S. Kagan, *Teaching in Reverse: A Positive Approach to Analytical Errors in 1L Writing*, 39 LOY. U. CHI. L. J. 123, 162 (2007) ("The expert's written product is . . . reader-centered, with a clear focus on the document's communicative purpose. Novice legal writers . . . concentrate on telling what they know irrespective of their audience's needs.").

[267] Tiscione, *Rhetoric*, *supra* note 6, at 540. *Compare* Davis, *supra* note 5, at 514-15. *See also* Lee, *supra* note 4, at 657 (asserting e-memos "create an opening for deeper analysis").

[268] Will, *supra* note 23, at 290 ("[L]awyers in fact draft emails far more carefully than one might speculate."); *see* Davis, *supra* note 5, at 476 (rejecting "that there are foundational differences between formal and informal legal memoranda"). *But see* CALLEROS & HOLST, *supra* note 25, at 122 (arguing that once a writer has mastered the memorandum they "easily adapt [their] presentation style to provide a more streamlined e-mail" with "less depth").

[269] *See* Tiscione, *Rhetoric*, *supra* note 6, at 533-38 (comparing a sample memoranda and sample e-memo addressing the same issue and concluding the e-memo is a better product).

in writing based on personal experiences.[270] If an e-memo drafter "writes what she knows," she can write in assertive, straightforward prose. For example, a writer can omit superfluous facts in a case explanation. She can omit information that muddles her analysis and fails to help a reader understand the conclusion. In other words, a writer determined to model an iceberg e-memo will understand the difference between (1) a case explanation written like a book report exclaiming her own knowledge and (2) an extraction of key information crafted to benefit the reader.

With this necessary focus on key information, iceberg e-memos force a writer to concentrate on the fundamentals of good legal writing.[271] Thesis sentences, headings, and deliberate reasoning are as crucial as ever.[272] By comparison, Hemingway knew how to write selective statements, reiterating "key phrases for thematic emphasis."[273] He repeated key words, finding "a synonym strains the writer's eyes and the reader's ears."[274] Similarly, an iceberg e-memo's writer makes each sentence punch with meaning, repeating key legal terms of art without fear that she should consult a thesaurus.[275] The writer carries key words throughout the paper, using them in her thesis sentences for emphasis and structure. She invokes them like an incantation, quickly letting her reader know when the legal definition is met—and why.

Hence, iceberg e-memos are like a martial artist's devastating jab: quick, precise, and powerfully understood upon impact.[276] The conciseness of proper e-memos teaches the writer to get to the point without hesitation, without clumsy, meandering movement that

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[270] BAKER, *supra* note 258, at 117.

[271] *See* Davis, *supra* note 5, at 520 (noting an e-memo should still follow "fundamental and traditional techniques of legal writing").

[272] *Id.* at 521 ("Thesis sentences, roadmap paragraphs, and headings can help a reader, particularly an on-screen one, navigate more easily through the document and see . . . logical connections . . . .").

[273] BAKER, *supra* note 258, at 118.

[274] ROY PETER CLARK, WRITING TOOLS: 50 ESSENTIAL STRATEGIES FOR EVERY WRITER 65 (2008).

[275] *See* Mary Beth Beazley, *The Self-Graded Draft: Teaching Students to Revise Using Guided Self-Critique,* 3 J. LEGAL WRITING INST. 175, 182 (1997) (calling key legal terms "the phrase that pays" and describing them as the words or phrases in controversy).

[276] *See* William Herkewitz, *The Science of the One-Inch Punch*, POPULAR MECHANICS, May 21, 2014, https://www.popularmechanics.com/science/health/a3093/the-science-of-bruce-lees-one-inch-punch-16814527/ ("[S]trikes that synchronize the many peak accelerations in one complex move—like Bruce Lee's— [are] the most powerful.").

diminishes what could otherwise be a concussive blow.[277] E-memos teach accuracy.

6. Conclusion

There is no silver bullet for writing substantive e-memos. No sample is a panacea. But the results of this study confirm the foundational points of past scholarship, and provide additional, practical guidance for teaching and drafting e-memos. E-memos, with their necessarily concise format, create the ability to share complex ideas in straightforward terms. Moreover, e-memos provide the academy a chance to teach students to effectively provide clients with cheaper and more accessible documents, thus delivering greater access to justice.

E-memos, of course, have their shortcomings. They tempt the writer to skip logical steps and provide weak analyses without support. If professors choose to teach e-memos, they should consider sharing multiple e-memo samples and emphasizing the pitfalls of writing e-memos without sufficient reasoning. Professors might also share with students that no single e-memo assignment encompasses the medium—no one assignment is the end-all-be-all. But substantive e-memos deserve our attention and perhaps a place—if not multiple places—in our curriculum. The data and samples here thus might serve as a new checkpoint in our ongoing discussion of how to best prepare students for practice as our pedagogy continues to evolve.

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[277] *See generally* Lee, *supra* note 4, at 656 ("[W]riting emails setting forth legal analysis can help students refine their legal analysis skills in a way that writing the traditional, long-form memorandum does not.").

Appendix 1: Sample Question x

To: Kristy Associate
From: Angie Partner
Date: 06/12/2018 11:34 AM
Re: Dent (File 2019-B59), Service Animal

I need some quick research. Our client, Mike Dent, is having trouble bringing his dog, Hopper, into public places. Specifically, Mike has been told he cannot bring Hopper into his local drugstore.

Mike is a veteran who has PTSD and needs Hopper to cope with anxiety attacks and flashbacks. Whenever Mike feels a panic attack about to come on, he pets and hugs Hopper. Simply sitting with Hopper greatly reduces Mike's anxiety and allows him to function in public. Without Hopper, Mike does not even want to leave his apartment.

I am unfamiliar with the law, but I want you to know that Hopper is a well-behaved three-year-old Labradoodle and even has obedience training.

To determine whether Mike can bring Hopper with him in public places, I need you to analyze whether Hopper is a service animal under the ADA. Do not analyze whether Mike is disabled under the ADA—he is.

Sincerely,
Angie

Appendix 2: Sample A-x

Associate, Kristy ✕ DELETE ← REPLY ← REPLY ALL → FORWARD ···

Associate, Kristy
Thu 6/14/2018 11:16 AM
To: Partner, Angie Renee

Dear Angie,

In response to your question about Mike Dent, my answer is below.

Issue:
Whether a dog qualifies as a service animal under the ADA when petting and holding the dog alleviates symptoms of a person with PTSD.

Answer:
Hopper does **not** qualify as a service animal, because Hopper has not been trained to specifically benefit Mike with his PTSD. Rather, Hopper only passively assists Mike to comfort him, making Hopper merely an emotional support animal.

Analysis:
A service animal is "any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability." 28 C.F.R. § 36.104 (2017). There is no standard training or certification process a dog must undergo. *Green v. Hous. Auth. of Clackamas Cnty.*, 994 F. Supp. 1253, 1256 (D. Ore. 1998). However, (1) basic obedience training is insufficient, *Davis v. Ma.*, 848 F. Supp. 2d 1105, 1115 (C.D. Cal. 2012), and (2) "tasks" do not include assisting with "emotional support, well-being, [and] comfort." 28 C.F.R. § 36.104.

In a factually similar case, a district court held a monkey was not a service animal, because the monkey merely provided comfort. *Rose v. Springfield-Greene Cnty. Health Dep't*, 668 F. Supp. 2d 1206, 1215 (W.D. Mo. 2009). There, the plaintiff claimed the monkey assisted with her agoraphobia and anxiety by, among other things, "blocking people from getting too close," holding her hand or touching her face, and sitting on her lap. *Id.* The court, however, found that the monkey's work made the animal nothing more than a household pet and did not qualify the monkey as a service animal under the ADA. *Id.* The court specifically noted that there was insufficient evidence that the monkey underwent any training to actually perform tasks to benefit the plaintiff's alleged disabilities. *Id.*

Conversely, another district court denied a motion for summary judgment against a plaintiff when the dog affirmatively completed tasks that alleviated the plaintiff's disability. *Cordoves v. Miami-Dade Cnty.*, 92 F. Supp. 3d 1221, 1231 (S.D. Fla. 2015). In *Cordoves*, the plaintiff brought an ADA claim against a mall for not allowing her to bring her toy poodle. *Id*. at 1228. The plaintiff provided evidence that her dog was trained to benefit her PTSD because the dog detected and alerted the plaintiff of oncoming panic attacks by jumping, pawing, nudging, and licking the plaintiff. *Id.* at 1231. While the defendants argued there was no evidence of training, the court noted that the plaintiff had trained the dog herself. *Id.* at 1231-32. Therefore, the court reasoned, a jury could find the dog minimized and alleviated the plaintiff's panic attacks and was more than an emotional support animal. *Id.* at 1231; *see also Alejandro v. Palm Beach State Coll.*, 843 F. Supp. 2d 1263, 1270 (S.D. Fla. 2011) (granting plaintiff with PTSD a temporary injunction to have her dog on a college campus because the dog was trained to detect and alert plaintiff by making eye contact, snorting, and nipping at plaintiff's fingers).

Application:
Hopper is not a service animal, because he is not specifically trained to perform tasks that benefit Mike's PTSD. Although Hopper has general obedience training,

such training is insufficient. And like the monkey in *Rose*, Hopper acts only to passively comfort Mike. By allowing Mike to pet and sit with him when Mike is about to have a panic attack, Hopper acts merely as a household pet. These actions are not "tasks" under the ADA, and, therefore, Hopper does not act for the benefit of Mike's PTSD.

Recommendation:
If Hopper can be trained to recognize and warn Mike before a panic attack, similar to the dog in *Cordoves*, Hopper would qualify as a service animal. Again, there are no specific requirements about how this training must be done. Regardless, it would be best to have the training done professionally to establish Hopper has been specifically trained to directly benefit Mike's disability.

I have attached the C.F.R. and relevant cases. Please let me know if you need any further research or would like me to look into service animal training.

Sincerely,
Kristy Associate

Appendix 3: Sample B-x

Associate, Kristy ✕ DELETE ← REPLY ↞ REPLY ALL → FORWARD ···

Associate, Kristy
Thu 6/14/2018 11:16 AM
To: Partner, Angie Renee

Dear Angie,

Issue:
You asked me to research whether Mike Dent's dog, Hopper, is a service animal under the ADA.

Answer:
Hopper does not qualify as a service animal, because Hopper has not been trained to specifically benefit Mike with his PTSD.

Analysis:
According to a federal regulation, 28 C.F.R. § 36.104, a service animal is "any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability." However, "tasks" do not include assisting with "emotional support, well-being, [and] comfort."

Therefore, a service animal must have more than basic obedience training and be more than an emotional support animal that passively calms an individual with a disability. *See, e.g., Rose v. Springfield-Greene Cnty. Health Dep't*, 668 F. Supp. 2d 1206 (W.D. Mo. 2009); *Davis v. Ma*, 848 F. Supp. 2d 1105 (C.D. Cal. 2012)

For a dog to qualify as a service animal, the dog must be specifically trained to perform tasks directly related to the individual's disability. For example, in *Cordoves v. Miami-Dade Cnty.*, a dog could alert the plaintiff of oncoming panic attacks by jumping, pawing, nudging, and licking the plaintiff. 92 F. Supp. 3d 1221 (S.D. Fla. 2015).

Conclusion and Recommendation:
Hopper is not a service animal, because he is not specifically trained to perform tasks that benefit Mike's PTSD. Although Hopper has general obedience training, Hopper only passively comforts Mike, thus making Hopper a mere emotional support animal.

If, however, Hopper can be trained to recognize and warn Mike before a panic attack, Hopper would qualify as a service animal. There are no specific requirements about how this training must be done. Regardless, it would be best to have the training done professionally to establish Hopper has been specifically trained to directly benefit Mike's disability.

I have attached the C.F.R. and relevant cases. Please let me know if you need any further research or would like me to look into service animal training.

Sincerely,
Kristy Associate

Appendix 4: Sample C-x

Associate, Kristy ✕ DELETE ← REPLY ↞ REPLY ALL → FORWARD ···

Associate, Kristy
Thu 6/14/2018 11:16 AM
To: Partner, Angie Renee

Angie,

You asked me to research whether Mike Dent's dog, Hopper, is a service animal under the ADA.

Hopper does not qualify as a service animal, because Hopper has not been trained to specifically benefit Mike with his PTSD.

Analysis:
A service animal is "any dog that is individually trained to do work or perform tasks *for the benefit of an individual with a disability*." 28 C.F.R. § 36.104 (2017) (emphasis added). However, "tasks" do not include assisting with "emotional support, well-being, [and] comfort." *Id.*

Therefore, a service animal must have more than basic obedience training and be more than an emotional support animal that passively calms an individual with a disability. *See, e.g., Rose v. Springfield-Greene Cnty. Health Dep't*, 668 F. Supp. 2d 1206, 1215 (W.D. Mo. 2009) (finding that a monkey that the plaintiff held to lessen the plaintiff's anxiety was not a service animal); *Davis v. Ma*, 848 F. Supp. 2d 1105, 1115 (C.D. Cal. 2012) (finding a puppy with basic obedience training that did not assist with a plaintiff's disability was not a service animal).

For a dog to qualify as a service animal, the dog must be specifically trained to perform tasks directly related to the individual's disability. *See, e.g., Cordoves v. Miami-Dade Cnty.*, 92 F. Supp. 3d 1221, 1231 (S.D. Fla. 2015) (denying summary judgment for the defendants because there was evidence a plaintiff's dog was a service animal that could detect and alert the plaintiff of oncoming panic attacks); *Alejandro v. Palm Beach State Coll.*, 843 F. Supp. 2d 1263, 1270 (S.D. Fla. 2011) (granting a plaintiff with PTSD a temporary injunction to have her dog on a college campus because the dog was trained to detect and alert the plaintiff by making eye contact, snorting, and nipping at the plaintiff's fingers).

Conclusion and Recommendation:
Hopper is not a service animal, because he is not specifically trained to perform tasks that benefit Mike's PTSD. Although Hopper has general obedience training, Hopper only passively comforts Mike, thus making Hopper a mere emotional support animal.

If, however, Hopper can be trained to recognize and warn Mike before a panic attack, Hopper would qualify as a service animal. There are no specific requirements about how this training must be done. Regardless, it would be best to have the training done professionally to establish Hopper has been specifically trained to directly benefit Mike's disability.

I have attached the C.F.R. and relevant cases. Please let me know if you need more research or would like me to look into service animal training.

Sincerely,
Kristy Associate

Appendix 5: Sample D-x

Associate, Kristy ✕ DELETE ← REPLY ← REPLY ALL → FORWARD ···

Associate, Kristy
Thu 6/14/2018 11:16 AM
To: Partner, Angie Renee

Angie,

According to 28 C.F.R. § 36.104, a service animal is "any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability." However, according to both the C.F.R. and a district court in Missouri in *Rose*, "tasks" do not include simply providing emotional support. Further, according to a California district court, a dog must have more than mere obedience training.

Therefore, for a dog to qualify as a service animal, the dog must be specifically trained to perform tasks directly related to the individual's disability. For example, in *Cordoves v. Miami-Dade County* (S.D. Fla. 2015), a dog could alert the plaintiff of oncoming panic attacks by jumping, pawing, nudging, and licking the plaintiff.

Here, Hopper is not a service animal, because he is not specifically trained to perform tasks that benefit Mike's PTSD. Although Hopper has general obedience training, Hopper only passively comforts Mike, thus making Hopper a mere emotional support animal.

If, however, Hopper can be trained to recognize and warn Mike before a panic attack, Hopper would qualify as a service animal.

I have attached the C.F.R. and relevant cases. Please let me know if you need any further research or would like me to look into service animal training.

Sincerely,
Kristy Associate

Citations:

- *Rose v. Springfield-Greene Cnty. Health Dep't*, 668 F. Supp. 2d 1206 (W.D. Mo. 2009)
- *Davis v. Ma*, 848 F. Supp. 2d 1105 (C.D. Cal. 2012)
- *Cordoves v. Miami-Dade Cnty.*, 92 F. Supp. 3d 1221 (S.D. Fla. 2015)

Appendix 6: Sample Question y

To: Kristy Associate
From: Angie Partner
Date: 06/12/2018 11:34 AM
Re: Bluth (File 2019-B59), Bulldoze Old Cemetery

I need some quick research. Our client, Dale Bluth, owns over 300 acres in Monroe City, Missouri. There is an old cemetery on his property that belonged to the family of the previous owners.

Based on what Mr. Bluth told us, he has owned the land and the cemetery in Fee Simple Absolute for 33 years. He did some digging (forgive the pun) and said the last time someone was buried in the cemetery was 1913.

He really hates having the cemetery and all of the tombstones on his property and wants to plant soybeans over the area. He also said the cemetery is surrounded by a nice wrought-iron fence (about 50ft x 100ft) that he wants to sell.

Let me know if statutory law allows Dale Bluth to bulldoze the tombstones in the cemetery located on his property and sell the wrought-iron fence surrounding the cemetery. Also let me know whether there is a penalty for such actions.

Sincerely,
Angie

Appendix 7: Sample A-y

Associate, Kristy ✕ DELETE ← REPLY ≪ REPLY ALL → FORWARD ···

Associate, Kristy
Thu 6/14/2018 11:16 AM
To: Partner, Angie Renee

Dear Angie,

In response to your question about Dale Bluth, my memo is below.

Issues:

(1) Whether Missouri statutory law allows Dale Bluth to bulldoze the tombstones in a cemetery located on his property and sell the wrought-iron fence surrounding the cemetery.
(2) Whether Missouri statutory law creates a penalty for such actions.

Answers:

(1) Mr. Bluth does not have the right to bulldoze the tombstones or sell the wrought-iron fence. The cemetery is protected as an "abandoned family cemetery" because it has not been deeded to the public and no body has been interred in the last 25 years.
(2) If Mr. Bluth proceeds, he will be guilty of a class A misdemeanor and could face up to 1 year in prison and a fine.

Analysis:

Under Missouri law:

> Every person who shall knowingly destroy, mutilate, disfigure, deface, injure or remove any tomb, monument or gravestone . . . placed in any *abandoned family cemetery* . . . or any fence, railing, or other work for the protection or ornamentation of any such cemetery . . . is *guilty of a class A misdemeanor*.

RSMo § 214.131 (WL 2018) (emphasis added).

1. No right to bulldoze or sell the fence

First, the cemetery qualifies for protection because the statute defines "abandoned family cemetery" to "include those cemeteries or burying grounds which have not been deeded to the public as provided in chapter 214, and in which no body has been interred for at least twenty-five years." *Id.* According to the Boone County Recorder of Deeds, the cemetery was never deeded to the public. In addition, no one has been interred in the cemetery for more than 25 years; the most recent interment was over 100 years ago, in 1913.

Second, bulldozing the tombstones would violate the statute because Mr. Bluth would "knowingly destroy" the tombstones. Selling the wrought-iron fence would violate the statute because he would "remove" the fence, which is "for the protection or ornamentation" of the cemetery.

2. Class A misdemeanor

If convicted of a class A misdemeanor, Mr. Bluth could be imprisoned for "a term not to exceed one year." § 558.011. In addition, he could be required to pay a fine of up to $1,000. § 560.016.1(1). Alternatively, if Mr. Bluth derived a "gain" from selling the fence, instead of paying a $1,000 fine, he could "be sentenced

to a fine which does not exceed double the amount of gain from the commission of the offense." § 560.016.2. The statute caps the fine at $20,000. *Id.*

Therefore, Mr. Bluth should not bulldoze the tombstones or sell the wrought-iron fence.

I have attached the relevant statutes. If you have questions or need anything further on this, please let me know.

Sincerely,
Kristy Associate

Appendix 8: Sample B-y

Associate, Kristy

DELETE REPLY REPLY ALL FORWARD ...

Associate, Kristy
Thu 6/14/2018 11:16 AM

To: Partner, Angie Renee

Angie,

You have asked me to research Missouri statutes to answer: (1) whether Dale Bluth has a right to bulldoze the tombstones in a cemetery located on his property and sell the wrought-iron fence surrounding the cemetery and (2) whether there is a penalty for such actions.

Based on the facts in your email, (1) Mr. Bluth does not have the right to bulldoze the tombstones or sell the wrought-iron fence, and (2) if he does, he will be guilty of a class A misdemeanor.

Under RSMo § 214.131, a person is guilty of a class A misdemeanor if he or she "knowingly" destroys or removes a tomb in an "abandoned family cemetery."

The cemetery qualifies for protection because the statute defines "abandoned family cemetery" as one that has not been deeded to the public and where "no body has been interred for at least twenty-five years."

If convicted of a class A misdemeanor, Mr. Bluth could be imprisoned for up to one year. § 558.011. In addition, he could be required to pay a fine of up to $1,000. § 560.016. Alternatively, if Mr. Bluth derived a "gain" from selling the fence, instead of paying a $1,000 fine, he could have to pay up to double what he gains from the sale. The statute caps the fine at $20,000.

Therefore, Mr. Bluth should not bulldoze the tombstones or sell the wrought-iron fence.

I have attached the relevant statutes. If you have questions or need anything further on this, please let me know.

Sincerely,
Kristy Associate

Appendix 9: Sample C-y

Associate, Kristy ✕ DELETE ← REPLY ≪ REPLY ALL → FORWARD ···

Associate, Kristy
Thu 6/14/2018 11:16 AM
To: Partner, Angie Renee

Angie,

You have asked me to research Missouri statutes to answer: (1) whether Dale Bluth has a right to bulldoze the tombstones in a cemetery located on his property and sell the wrought-iron fence surrounding the cemetery and (2) whether there is a penalty for such actions.

Based on the facts in your email, (1) Mr. Bluth does not have the right to bulldoze the tombstones or sell the wrought-iron fence; (2) if he does, he will be guilty of a class A misdemeanor.

Under RSMo § 214.131, a person is guilty of a class A misdemeanor if he or she "knowingly" destroys or removes a tomb in an "abandoned family cemetery."

1. **No right to bulldoze or sell the fence**

First, the cemetery qualifies for protection because the statute defines "abandoned family cemetery" to "include those cemeteries or burying grounds which have not been deeded to the public as provided in chapter 214, and in which no body has been interred for at least twenty-five years." *Id.* According to the Boone County Recorder of Deeds, the cemetery was never deeded to the public. In addition, no one has been interred in the cemetery for more than 25 years; the most recent interment was over 100 years ago, in 1913.

Second, bulldozing the tombstones would violate the statute because Mr. Bluth would "knowingly destroy" the tombstones. Selling the wrought-iron fence would violate the statute because he would "remove" the fence, which is "for the protection or ornamentation" of the cemetery.

2. Class A misdemeanor

If convicted of a class A misdemeanor, Mr. Bluth could be imprisoned for "a term not to exceed one year." § 558.011. In addition, he could be required to pay a fine of up to $1,000. § 560.016.1(1). Alternatively, if Mr. Bluth derived a "gain" from selling the fence, instead of paying a $1,000 fine, he could have to pay up to double what he gains from the sale. § 560.016.2. The statute caps the fine at $20,000.

Therefore, Mr. Bluth should not bulldoze the tombstones or sell the wrought-iron fence.

I have attached the relevant statutes. If you have questions or need anything further on this, please let me know.

Sincerely,
Kristy Associate

Appendix 10: Sample D-y

Associate, Kristy ✕ DELETE ← REPLY ← REPLY ALL → FORWARD ···

Associate, Kristy
Thu 6/14/2018 11:16 AM

To: Partner, Angie Renee

Angie,

Under RSMo § 214.131, a person is guilty of a class A misdemeanor if he or she "knowingly" destroys or removes a tomb in an "abandoned family cemetery."

The cemetery qualifies for protection because the statute defines "abandoned family cemetery" as one that has not been deeded to the public and where "no body has been interred for at least twenty-five years."

If convicted of a class A misdemeanor, Mr. Bluth could be imprisoned for up to one year. § 558.011. In addition, he could be required to pay a fine of up to $1,000. § 560.016.1. Alternatively, if Mr. Bluth derived a "gain" from selling the

fence, instead of paying a $1,000 fine, he could have to pay up to double what he gains from the sale. The statute caps the fine at $20,000.

Therefore, Mr. Bluth should not bulldoze the tombstones or sell the wrought-iron fence.

I have attached the relevant statutes. If you have questions or need anything further on this, please let me know.

Sincerely,
Kristy Associate

Appendix 11: x-issue conclusion options

Conclusion A
Hopper does **not** qualify as a service animal, because Hopper has not been trained to specifically benefit Mike with his PTSD. Rather, Hopper only passively assists Mike to comfort him, making Hopper merely an emotional support animal.

Conclusion B
Hopper does not qualify as a service animal, because Hopper has not been trained to specifically benefit Mike with his PTSD.

A separate conclusion is unnecessary.

Appendix 12: y-issue conclusion options

Conclusion A
(1) Mr. Bluth does not have the right to bulldoze the tombstone or sell the wrought-iron fence. The cemetery is protected as an "abandoned family cemetery" because it has been deeded to the public and no body has been interred in the last 25 years.
(2) If Mr. Bluth proceeds, he will be guilty of a class A misdemeanor and could face up to 1 year in prison and a fine.

Conclusion B
(1) Mr. Bluth does not have the right to bulldoze the tombstones or sell the wrought-iron fence; (2) if he does, he will be guilty of a class A misdemeanor.

Conclusion C
Mr. Bluth should not bulldoze the tombstones or sell the wrought-iron fence.