

Just Memos

*Laurel Currie Oates
Anne Enquist*

ASPEN
PUBLISHERS

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Laurel Currie Oates
Director, Legal Writing Program
Seattle University School of Law

Anne Enquist
Writing Advisor
Seattle University School of Law

ASPEN
PUBLISHERS

1185 Avenue of the Americas, New York, NY 10036
www.aspenpublishers.com

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Aspen Publishers
1185 Avenue of the Americas
New York, NY 10036

Printed in the United States of America

1 2 3 4 5 6 7 8 9 0

ISBN 0-7355-3707-0

Library of Congress Cataloging-in-Publication Data

Oates, Laurel Currie

Just memos / Laurel Currie Oates, Anne Enquist.
p. cm.

Includes index.

ISBN 0-7355-3707-0 (alk. paper)

1. Legal composition. I. Enquist, Anne II. Title.

KF250 .018 2003

808'.06634—dc21

2002038330

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To my parents, Bill and Lucille Currie,
my husband, Terry, and my children, Julia and Michael.
Thank you.

To my family, Steve, Matt, and Jeff Enquist,
for their love, support, and patience.

Preface

After the success of our first derivative work, *Just Writing*, we decided to publish two additional derivative works: *Just Memos* and *Just Briefs*. This book, *Just Memos*, sets out the materials first published in Parts I and II of the third edition of *The Legal Writing Handbook*. In particular, it contains the chapters on the American legal system, on legal reading, and on researching, analyzing, and writing objective memoranda and client letters.

As you work through the materials in this book, keep in mind that writing a memo is a complex task. To do a good job, you must understand our legal system; you must know how to locate, select, and read the applicable statutes and cases; and you must be able to construct and evaluate each side's arguments. In addition, you must be a good writer. You must be able to use conventional organizational schemes to present the law, the arguments, and your predictions clearly, precisely, and concisely. Finally, writing a good memo requires the exercise of judgment. You must exercise judgment in deciding when to stop researching, in deciding which information the attorney needs, and in evaluating each side's arguments.

Instead of presenting each of these skills in isolation, *Just Memos* presents them in context. In Chapter 5, we walk you, step by step, through the process of researching, analyzing, and writing a relatively simple memo. In Chapter 6, we walk you through the process of researching and analyzing a more complex memo. In Chapter 7, we walk you through the process of writing a client letter.

As you read through these chapters, keep your goal in mind. Instead of working to get an "A" on a particular assignment, use your assignments to learn how attorneys think and write about legal issues. By learning how to think and write as a lawyer, you will not only be a good student. You will also develop the skills that you need to be a good attorney.

Acknowledgments

One of the pleasures of writing a derivative work is that it allows the authors to think about all of the people who have helped them along the way. In our case, the preparation of this work has reminded us of all of the people who helped us as we wrote the first, second, and third editions of *The Legal Writing Handbook* and the first edition of *Just Writing*.

We would like to begin by thanking our students and colleagues who, in the eighties, provided the inspiration and insights that lead to the writing of *The Legal Writing Handbook*. We would, however, also like to thank our more recent students and colleagues whose suggestions and corrections made each edition better than the earlier one. In particular, we would like to thank the following individuals: Susan McClellan, Connie Krontz, Lori Bannai, Mimi Samuel, Ramona Witt, Janet Dickson, Mary Bowman, Jessica Eaves Matthews, Bill Galloway, Judi Maier, Tom Falkner, Pat Brown, Andrew Carter, Janet Chung, Nancy Wanderer, and Jessie Grearson.

Finally, we would like to thank the editors at Aspen for their support and advice and our administrative assistant, Lori Lamb, for her assistance in preparing the manuscript.

Laurel Oates
Anne Enquist

November 2002

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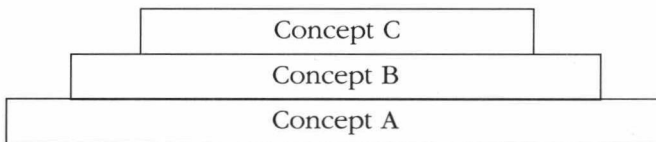
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Part I

A Foundation for Legal Writing

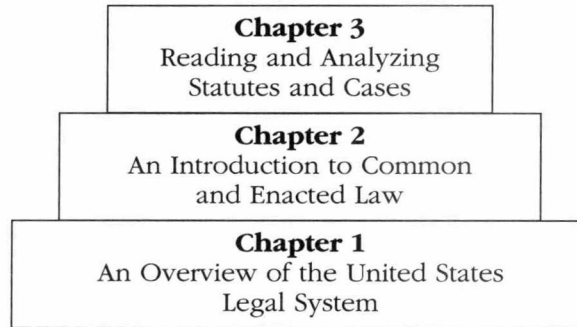
All knowledge builds on prior knowledge. The ability to understand concept B depends on prior knowledge of concept A; the ability to understand concept C depends on prior knowledge of both A and B.



This is particularly true in legal writing. Before you can do legal research, you must know what resources are available and the weight given to each; before you can write, you must possess not only basic writing skills but also an understanding of your audience, your purpose, and the conventional formats.¹

1. Throughout this book, the authors have deliberately used a somewhat more informal writer's style than that which is recommended for legal writing itself. Writing a textbook, like writing anything else, is governed by who the reader is, what the writer's purpose is, what the conventions are for that type of writing, and what relationship the writer wants to have with the reader. Thus, a slightly more informal style seemed appropriate for this textbook. Notice, for example, that the authors use both first and second person, some contractions, some colloquial phraseology, and more dashes than they recommend for legal writing.

Underlying this knowledge, though, must be an understanding of the system in which you are operating. You must understand the United States system of government and, within that larger system, the United States system of law. In addition, you must begin developing the ability to read like a lawyer. The three chapters in Part I lay the foundation for legal writing.



An Overview of the United States Legal System

The United States system of government. For some, it is the secret to democracy, the power to elect one's leaders and the right to speak freely. For others, it is a horrendous bureaucracy, a maze through which one must struggle to obtain a benefit, to change a law, or to get a day in court. For still others, it is more abstract, a chart in a ninth-grade civics book describing the three branches of government and explaining the system of checks and balances.

For lawyers, the United States system of government is all of these things and more. It is the foundation for their knowledge of the law, the stage on which they play out their professional roles, the arena for the very serious game of law.

No matter which metaphor you prefer—foundation, stage, arena—the point is the same. To be successful as a law student and a lawyer, you must understand the system. You must know the framework before you can work well within it.

Like most complex systems, the United States system of government can be analyzed in a number of different ways. You can focus on its three branches—the executive branch, the legislative branch, and the judicial branch—or you can focus on its two parts, the federal government and the state governments.

In this chapter, we do both. We look first at the three branches, examining both their individual functions and their interrelationships. We then examine the relationship between state and federal government, again with an eye toward their individual functions and powers.