

## Legal Memorandum Format Sample

On the following pages is a legal memorandum formatted the way your memos in this class should be formatted. The substance of this memo comes from Appendix A of the Wellford text. The formatting follows the “Visual Rhetoric” instructions on pages 57-59 of this Supplement. We will refer to this memo frequently throughout the semester as an example of the various components of legal analysis.

The purpose of including the memo in this supplement is only to demonstrate how your memos should be formatted. Pay particular attention to the following features of this memo:

- \* the spacing and content of the heading (in particular, notice that the information in each field – to, from, re, date – is tabbed so that each piece of information lines up vertically with the other pieces)
- \* the Arial, bold typeface of the document heading as well as the headings of all sections of the memo
- \* the page numbering at the bottom of each page after the first
- \* the single-spacing of the Question Presented and Short Answer and the double-spacing of the rest of the memo (your open memos will have more than one Question Presented and Short Answer – in that case, single space *within* each Question and Answer, but double-space *between* each Question and Answer)
- \* the left justification rather than full justification (full justification alters the spacing of citations)

If you are not familiar with formatting documents in WordPerfect or Word, you should consult the formatting instructions at the back of this supplement. All formatting is designed to maximize reader understanding of your work as described in “Visual Rhetoric: Enhancing Reader Comprehension with Graphic Design.” As the issues and, therefore, the formatting of your documents becomes more complex toward the end of the semester, we will return to this issue of reader comprehension and graphic design again.

## **M e m o r a n d u m**

**TO: Chief of Felony Prosecutions**

**FROM: Assistant Prosecutor**

**RE: Gerry Arnold case – Residential Burglary Prosecution**

**DATE: August 28, 2005**

### **Question Presented**

Is a detached garage a “living quarters” in which the owners actually reside under Illinois’ Residential Burglary Statute, when it has been converted into a retreat for the owners’ college-age son, who uses it on a weekly basis as a get-a-way and sleeps there half the year, although the retreat does not have plumbing facilities?

### **Short Answer**

Yes. A detached garage used as a retreat and seasonal sleeping place is a “living quarters” under the statute. The owner frequently and regularly uses the garage for residential activities associated with a living quarters. The garage is furnished to reflect that use.

### **Statement of Facts**

On August 20, 2005, Defendant, Gerry Arnold, broke into Carl and Rita Stripe’s two-car detached garage and removed some of their personal property. The State has charged Arnold under the Residential Burglary Statute. Arnold’s attorney has moved to dismiss the charge, contending that the Stripe’s garage is not a “dwelling” within which the Stripes “reside,” as required by the statute.

The garage is located approximately thirty feet behind the Stripe home. The Stripes have converted two-thirds of the garage into quarters for the couple’s college-age son, Michael Stripe, to use as a get-a-way. They have walled-off that section of the garage from the section that stores

the family car. The converted section of the garage has a window and a locked door.

Michael spends two to three evenings a week and his free time on weekends in the get-away, writing and listening to music and watching television. In addition, Michael is the lead singer of a band, R.E.N., that plays once a month in clubs around town. The band practices in the garage on Sunday mornings and stores some of their equipment there. During the summer and fall when his parents are in town, Michael sleeps in the garage on a futon in a loft area. When his parents travel to Florida during the winter and spring, Michael sleeps in the house.

The garage is equipped to accommodate Michael's interests. In addition to the futon, the garage contains an expensive sound system, a portable five-inch television, and a mini-refrigerator. The garage has electricity and a space heater, but no running water or heat.

## **Discussion**

The Stripe garage is a dwelling under Illinois' Residential Burglary Statute (the "Statute"). To prosecute Arnold successfully under the State, the State must prove that Arnold "knowingly and without authority enter[ed] the *dwelling place* of another." 720 Ill. Comp. Stat. § 5/19-3 (2000) (emphasis added). There is no real dispute that Arnold "knowingly" entered the Stripe's garage or that his entry was "without authority." Whether the garage is a "dwelling place" is more problematic. The Statute defines a dwelling as "a house, apartment, mobile home, trailer or *other living quarters* in which . . . the owners or occupants *actually reside*. . . ." 720 Ill. Comp. Stat. § 5/2-6(b) (2000) (emphasis added). This memorandum addresses whether the Stripe garage is a "living quarters" in which Michael Stripe "actually resides."

The Stripe's garage is a "living quarters" in which Michael Stripe "actually resides." When determining whether a structure is a living quarters, courts evaluate the type of activities

for which the owners use the structure, as well as the frequency of those activities and physical evidence of those activities. A structure is considered a dwelling when the owners frequently use the structure for activities that occur in a living quarters, and the furnishings reflect that use.

*People v. McIntyre*, 578 N.E.2d 314 (Ill. App. Ct. 1991). Although a structure's attachment to the main residence is also relevant, physical attachment to the primary residence is not necessary. *See People v. Thomas*, 561 N.E.2d 57 (Ill. 1990). Therefore, a structure used as an extension of the home's living quarters may be a dwelling even though it is not physically connected to the primary residence. Because Michael Stripe frequently and regularly uses the Stripe garage as a living quarters, it satisfies the statutory definition of "dwelling."

An enclosed, attached porch frequently used as part of the home's living quarters is a dwelling under the residential burglary statute. In *People v. McIntyre*, the owners used an attached, screened porch for "sitting, eating and cooking." 578 N.E.2d at 315. They ate most of their meals on the porch in the summer and cooked meals there four or five times a week in the winter. The owners furnished the porch with wrought-iron furniture and a barbecue grill that reflected its use. The porch was enclosed, locked, and attached to the home. The court held that, under these facts, the porch was a "living quarters" under the Statute. *Id.*

The court reasoned that the owners used the porch as part of their living quarters by engaging in such activities as "sitting, eating, and cooking." *Id.* In addition, the owners regularly used the porch in this manner and furnished the porch with furniture and a grill that reflected such use. The court also observed that the porch was enclosed and attached to the house, indicating that the porch's physical attachment to the house was a relevant factor. However, the court emphasized that it was the activities of "sitting, eating, and cooking" that "make the porch

part of the living quarters of the house.” *Id.*

On the other hand, where a structure is attached, but used only for commercial, rather than residential activities, it is not a living quarters. *People v. Thomas*, 561 N.E.2d 57 (Ill. 1990). In *Thomas*, a garage was attached to a multi-unit apartment building. All of the garages and apartment units shared the same roof. The owner used the garage to park her car and to store large quantities of perfume for a commercial business. The court held that the attached garage, “at least in this instance,” was not a living quarters. *Id.* at 58.

The court implicitly reasoned that a garage used only to store products for sale in a commercial business is not a living quarters, even when attached to the owner’s apartment building. However, the court left open the possibility that a garage could, given the appropriate use as a living quarters, constitute a dwelling under the Statute. The court reasoned that “an attached garage is not *necessarily* a ‘dwelling’ within the meaning of the residential burglary statute.” *Id.* (emphasis added). That language implies that a garage, appropriately used as a residence or living quarters, could be a dwelling under the statute. *See also People v. Silva*, 628 N.E.2d 948, 953 (Ill. App. Ct. 1993) (noting that *Thomas* left open the possibility for a garage to be a dwelling under the statute).

Like the porch in *McIntyre*, Michael Stripe used the Stripe’s garage for activities commonly associated with a living quarters. Like the activities of “sitting, eating and cooking” in *McIntyre*, Michael Stripe’s use of the garage for playing and listening to music, watching television, and eating snacks are uses commonly associated with a living quarters. In addition, Michael Stripe’s use of the garage as a sleeping quarters during the summer and fall only strengthens the argument that the garage is a dwelling under the Statute. Unlike the *McIntyre*

activities of barbecuing, eating, and sitting, which can occur outside of a dwelling, sleeping is an activity uniquely associated with a living quarters. Moreover, Michael Stripe's use of the garage is clearly distinguishable from *Thomas*, where the owner used the garage only for storage purposes.

In addition, like the owners in *McIntyre*, Michael Stripe furnished the garage in a manner that reflects its use as a living quarters. Like the grill and wrought-iron furniture in *McIntyre*, Michael Stripe's sound system, small t.v., mini-refrigerator, and futon reflect that he uses the garage for activities typically associated with a living quarters. Again, the furnishings are a far cry from the garage in *Thomas*, which housed only the owner's car and boxes of commercial products for sale.

Finally, the frequency of Michael's use of the garage as a living quarters is also similar to the use of the porch in *McIntyre*. Michael spends at least two to three evenings a week and his spare time on weekends in his get-a-way. During the summer and fall, he sleeps there seven nights a week. Michael's regular and frequent use far exceeds the owner's limited, occasional use of the garage in *Thomas* to retrieve her car or perfume products from storage. In fact, in August when the garage was burglarized, Michael's frequency of use even exceeded that of the owners in *McIntyre*, who used the porch only four to five times a week.

Defendant may argue that, despite Michael Stripe's frequent use of the garage for activities associated with a living quarters, the garage's physical detachment from the Stripe's home prevents it from being a "living quarters" in which the owners "reside." Under this theory, the defendant would argue that the garage, standing alone, is not a living quarters in which anyone resides. The garage has no running water, bathroom facilities or heat. Thus, the garage's

status as a dwelling is dependent upon whether it can reasonably be viewed as an extension of the Stripe family's living quarters within the home itself. The defendant would argue that the fact that the *McIntyre* porch was physically attached to the family's home was essential to the court's holding. Only because it was physically attached to the home could the porch reasonably be viewed as an extension of the family's living quarters. In contrast, the Stripe's garage stands thirty feet away from their residence.

While having some merit, this argument should fail. Although the *McIntyre* court did note that the porch was physically "attached and enclosed," it concluded that it was the owners' "activities" and use of the porch that made the porch "part of the living quarters of the house." 578 N.E.2d at 314. Thus, the court implied that the activities for which the porch was used were more important than the porch's attachment to the home. Moreover, the fact that the porch was separated from the utility room of the owners' home by a door with "three locks" lends less significance to the attached/detached distinction. The presence of three locks implies that the porch area was not an open part of the main residence. Like the physically separate porch in *McIntyre*, the Stripe garage is used as an extension of the Stripe family's living quarters.

*People v. Thomas* lends further support to this conclusion. In *Thomas*, the court minimized the importance of the garage's physical attachment to the main residence while emphasizing the garage's use. The court reasoned that "[a] garage, at least in this instance, whether attached to the various living units or not, cannot be deemed a residence or living quarters." 561 N.E.2d at 58 (emphasis added). By that statement, the court implied that the garage's physical attachment to the owner's home was not important. That statement, together with the court's earlier definition of a dwelling as a structure used as a "living quarters," implies

that a detached garage used as a living quarters would be a dwelling under the statute. Therefore, the fact that the Stripe's garage is physically detached from their residence does not deprive it of its status as a "living quarters" in which the owners "actually reside."

Defendant might also argue that the legislative history suggests that the legislators did not intend for the statute to cover structures such as garages. As the court noted in *People v. Silva*, 629 N.E.2d 948 (Ill. App. Ct. 1993), the legislature amended the statute in 1986 to clarify and narrow the meaning of the term "dwelling." The court quoted the following statement of Senator Sangmeister made during legislative hearings: "It was even brought to our attention by the Illinois Supreme Court in a number of cases that . . . there should be a better definition to the dwelling house. We are having people prosecuted for residential burglary for breaking into . . . unoccupied buildings *such as garages*." *Id.* at 951 (emphasis added).

This argument lacks merits. The *Silva* court noted that "[t]he residential burglary statute is designed to protect the 'privacy and sanctity of the home,' with a view toward the 'greater danger and potential for serious harm from burglary of a home as opposed to burglary of a business.'" 629 N.E.2d at 951 (quoting *People v. Edgesto*, 611 N.E.2d 49 (Ill. App. Ct. 1993)). Senator Sangmeister's concern that people are being prosecuted for breaking into "unoccupied buildings" is consistent with the general legislative purpose to deter residential burglary because of its potential for serious harm. An occupied garage used as a living quarters invokes the same legislative concerns for the sanctity of the home and the increased risk of harm that results from an invasion of that home. Moreover, the Illinois Supreme Court decided the *Thomas* case only a few years after the amendment. In *Thomas*, the court suggested that a garage used as a living quarters would be a dwelling under the statute.



## **Conclusion**

The Stripe's garage is a living quarters in which Michael Stripe resides for purposes of prosecuting Arnold under the Statute. Not only does Michael Stripe use the garage for residential activities, he uses it frequently and regularly.

