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Border-Crossing: Genre Discovery and the Portability of Legal Writing Instruction

by Alexa Z. Chew and Craig T. Smith

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Professors who teach legal writing in the United States seek to prepare students to write effectively within the legal profession. It's a simply stated goal. Attaining that goal, however, is tremendously challenging. *Understanding* law is a dauntingly complex endeavor. *Writing* legal analysis is likewise a daunting endeavor for students. Teaching law students to write well is thus no simple task.

The task's complexity grows with globalization. Some J.D. and LL.M. students in the United States have already crossed borders. They may have received education outside the United States, be fluent in non-English languages, have dual citizenship, or have personal or professional ties to other countries. Some of these students will cross borders again and take lessons from our legal writing classrooms to law practice outside the United States.

Law professors in the United States likewise increasingly cross borders as we teach, coach, present, and consult abroad. We should expect invitations to teach legal writing in English abroad to increase because of the importance of legal English globally and the strong reputation of U.S. legal writing instruction. Also relevant are the international outreach efforts of U.S. law schools and organizations such as the American Bar Association, plus border-crossing conferences like Global Legal Skills.

Thus professors should ask how to teach optimally in a world of border-crossing by students, lawyers, and writing professors. Ideally, instruction should cross borders well, meaning that it should empower students to adapt their English-language legal writing skills to the countries and cultures in which they practice.

Unfortunately, much traditional legal writing instruction does not cross borders very well. It teaches document types (or "genres") that are standard in U.S. law practice and serve what we deem to be standard reader expectations. While experts can perhaps see how such lessons transfer across borders to novel situations, nonexperts probably cannot. Transference of learning is a notoriously thorny problem, even in familiar domestic contexts. Transference is even harder when the learners are taking lessons across national borders and into different legal systems and cultures.

Fortunately, legal writing professors can increase the cross-border portability of their English-language instruction. We argue that a "genre discovery" approach does just that. To support that claim, we will very briefly describe traditional legal writing instruction, then define genre discovery as an alternative, and finally explain how genre discovery can help teach students and lawyers to write well in English, even in foreign jurisdictions, where the legal writing professor is not an expert in local law.

A. Traditional Legal Writing Instruction

Traditional legal writing instruction relies largely on genre-based prescriptions. Genres are recurring document types with predictable conventions; examples are predictive memos, client letters, and appellate briefs. Prescriptions are the rules or advice that professors, often aided by textbooks, give students regarding how to write within a genre. Here is the basic process: the professor names a genre's parts and then tells students how to write those parts. The professor might also show students

a sample or two. Samples, however, are largely peripheral; the prescriptions retain center stage.

For example, when teaching a predictive memo using the traditional approach, the professor first explains the document's structure and parts: caption, question presented, brief answer, discussion, and conclusion. Then the professor explains how to write those parts by describing what readers expect to see in each one. The professor might describe a question presented as requiring "a succinct description of the legal question, phrased as a question and referencing key law and fact." Skilled professors thereby emphasize how their prescriptions help writers satisfy reader expectations. Those expectations, however, result from the professor's own professional life experiences. Students do not generate their own understandings of what readers commonly expect and of ways that writers try to satisfy those expectations.

That traditional approach works well for teaching students to write a specific type of document in a specific way—for example, to write a predictive memo. But the approach isn't particularly portable to serve readers with different preferences or to new situations. The lessons students learn about the genre are limited by the explicit instructions students receive, and those instructions are in turn limited by the professor's experience or textbook's knowledge.

B. Genre Discovery: Teaching Novice Legal Writers How to Learn

By contrast, what we call a genre-discovery approach to teaching legal writing inverts the traditional method of instruction. It prioritizes student-generated *de*scription over professor-dictated *pre*scription. The professor asks students to describe a new document type's conventions *before* telling them what those conventions are. For example, instead of the professor first prescribing the characteristics of a predictive memo, the *students* describe the characteristics that would make such a memo effective for a supervisor.

Asking students to describe a new genre's conventions before receiving instruction about those conventions replicates what happens when a lawyer must write an unfamiliar genre without any outside guidance. In that scenario, the writer's first step

(perhaps after an initial half-step of panic, which is optional) is to gather samples of the genre and study them. Skilled writers synthesize those samples and look for commonalities: what invisible rules do all of the samples seem to follow? Skilled writers also hypothesize about differences: are variations among the samples tied to varying audiences, differing document purposes, or other considerations?

Novice legal writers, on the other hand, won't use the samples so effectively. Instead they might simply mimic one sample, rendering the final product a poor match for the document's audience and particulars. Or they might focus only on superficial commonalities—fonts, margins, and spacing— without recognizing the deeper conventions that define the genre. Those conventions developed to respond to recurring rhetorical needs in the legal community. Learning how the needs prompted those conventions, and how the conventions benefit readers, helps novices write useful documents.

Professors who offer traditional, prescriptive teaching of new genres can helpfully clarify the relationships between conventions and readers' needs. Another benefit to such instruction is curbing the novice's tendency to mechanically mimic samples.

However, prescription is not necessary. With guidance, students can learn to intuit these important relationships between conventions and readers' needs. Professors can give students a thoughtful, thorough process for analyzing samples before the students write a document in a genre that is new to them. With such a process, writers can figure out for themselves what the conventions are, which are fixed, and which are flexible—as well as *when* flexing a convention might help the reader versus when such flexing might vex the reader.

This thoughtful sample-analysis process is the essence of genre discovery. Once students master it, they can apply it over and over again to any new writing challenges. Even if they must write entirely unfamiliar genres, they can return to their familiar genre-discovery system. It is flexible and adaptable. And because it's a system, it can be taught.

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At the University of North Carolina School of Law, we've successfully taught genre discovery for several years. We've developed three fundamental tools that make the approach manageable even in an already packed curriculum. First, we prime students for genre discovery. The approach initially avoids giving students direct instructions for writing documents. Doing that without explanation might seem like we're "hiding the ball." Thus, we tell students why we use the approach and how it will benefit them both in and beyond their first-year legal writing classes. We thereby explicitly promise that they are investing valuable time in learning a skill that will serve them well throughout their legal career.

Second, we use materials tailored for the approach. With our former colleague Katie Rose Guest Pryal, we developed handouts explaining genre discovery and short, accessible, high-quality sample documents for students to compare. Eventually, those handouts grew (by a lot) into a textbook, *The Complete Legal Writer*,[1] which explicitly teaches the genre discovery approach and includes three short samples of numerous genres (nine written genres and two oral genres). The brevity of the samples gives students enough time to read all three and engage in comparisons, synthesis, and judgment. Professors can annotate these samples to guide students as they read or add samples that are specific to different jurisdictions, issues, etc.

Third, we ask students to manifest their genre discovery process by creating "document maps." These document maps serve much the same purposes as case synthesis charts, which legal writing professors often use to assess the initial phases of students' legal analyses: the maps guide students to observe and to make their thinking visible by writing out their observations and articulating lessons learned. Professors then can see each student's thought process. We can thus affirm what's working and offer corrections for what's not.

Here's how document maps work: As students study the samples, they fill in three columns.

- In the first column, students note common structures shared by the samples. The students might label these structural document parts using the samples' headings ("Discussion") or not (salutations, introductions).

- In the second column, students describe how these different parts are executed—internal structures, content, word choices. If there seem to be meaningful differences between samples, students can speculate as to why ("the analysis of this memo is much longer than the others—maybe the issue is more complex or the reader is less familiar with the topic").

- In the last column, students synthesize their observations and make judgment calls about how they should write each part of the genre. In essence, students write their own checklists, their own directions to themselves about how to write within the genre. They have to decide not only what the conventions are, but also how much leeway they have when executing each convention and which mode of execution best meets the needs of the situation.

Finally, we repeat the process for each new genre we teach in our courses. Thus genre discovery fits the same active-learning cycle that we use for the other skills we teach: students prepare, then practice, then receive feedback on their writing, followed by additional practice and feedback. As with other skills, each time we ask students to practice genre discovery, we increase the difficulty. For example, in early days we give students annotated samples and a partially filled-in document map. Later, we challenge the students to complete the document map using unannotated samples.

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[1]   Alexa Z. Chew & Katie Rose Guest Pryal, The Complete Legal Writer (2016); see also Katie Rose Guest Pryal, *The Genre Discovery Approach: Teaching Students to Write Any Legal Document*, 49 Wayne L. Rev. 351 (2013).

C. Portability: Using Genre Discovery to Teach Across Borders

Genre discovery has relevance for professors who face border-crossing challenges. We can best serve students who will write in English outside the familiar American legal system if our instruction has obvious value beyond American genres. Yet we cannot know genres and audiences around the world. To the contrary, we may have little understanding of the situations and cultures in which our students eventually will write. Thus a traditional, prescriptive approach has limited utility.

By contrast, genre discovery offers students lessons that more easily transcend borders. In two ways, it empowers students to adapt what they have learned about legal writing to the countries and cultures in which they will practice.

First, genre discovery teaches self-reliance. It ends dependence on having an expert prescribe how to write an unfamiliar genre. Genre discovery gives students more than just information about a few genres. It gives them a reusable, adaptable system. Once students learn the system, they can use it to teach themselves. Indeed, the system may help them grasp the importance of self-directed learning in professional life.

Second, genre discovery gives students an adaptable tool to implement in challenging new situations and a crucial rhetorical lesson: serve readers well by understanding and meeting their expectations. Using genre discovery, our students can learn unfamiliar genres abroad—with new readers, new situations, and new legal cultures. The students can strategically gather samples of a new genre and then analyze them using document maps. Because they have a system for educating themselves, the students can avoid being helpless newbies, dependent on the kindness (if any) of mentors. They can then burden mentors minimally, asking not "how do I write that?" but "might you point me to samples I could study?" After analyzing the samples, the students can approach the mentor knowledgeably, seeking advice only on finer points and difficult judgment calls.

For these reasons, a genre-discovery approach benefits our border-crossing students. That is particularly true for those LL.M. students who are likely either to practice outside the United States or to have a global practice, in which they will write in English for readers in various parts of the world.

Genre discovery also may help American professors accept or initiate additional opportunities to teach legal writing in English abroad.[2] We are well-equipped to teach some lessons abroad. For example, we can teach how to write for U.S. lawyers generally and how to structure sentences and paragraphs effectively. However, we are unlikely to have much expertise with all the choices open to these writers. We may face unfamiliar genres, different styles of advocating or reasoning, and uncertainty regarding what typical readers expect. If so, we thus face an imposing relevance hurdle.

Genre discovery helps us clear that hurdle. We can rely more on our expertise as structurers of learning environments, and as genre analyzers, than on our ability to explain in detail how to write familiar genres. If we can gain access to relevant, fitting, location-specific samples, then we can use document maps with students abroad, working *with* them to construct knowledge—rather than *for* them in a traditional, prescriptive approach.

To use genre discovery abroad, we should enlist local help. If a law school has invited us to teach, we can accompany our acceptance with a request for help gathering samples. The host school could direct us to professors, alumni, employers, and other friends of the school.

A second sample-gathering option arises from the students we will teach abroad. Outside the United States, legal writing instruction is rarely, if ever, limited to first-year students. Thus, our students may have completed internships, externships, or paid legal work. If so, we can ask them to gather samples. Such a request of course requires advance

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[2]   The authors have taught legal writing to international students and lawyers in the U.S. and elsewhere. We have tested genre discovery with students domestically, and for the Global Legal Skills Conference in Verona, Italy, in May 2016, we outlined how we also could use genre discovery abroad.

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preparation and student cooperation. It also signals to students our readiness to engage them using documents that they deem relevant and interesting.

A related challenge concerns quality of samples. Though weak samples have teaching value, they function best alongside strong samples. In requesting samples, therefore, we should seek documents that someone knowledgeable—preferably an experienced reader of such documents—has evaluated positively.

As opportunities increase to teach legal writing outside the United States, so does the call for truly portable legal writing instruction. Teaching students genre discovery equips them with lessons that transcend their classrooms. Genre discovery also can help legal writing professors transcend the borders of legal systems and cultures.

Sample Document Map: Pinpoint Research Email

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A document map is a tool for noting observations about samples and synthesizing those observations to identify a genre's conventions. Further explanation, sample document maps, and blank document maps are available in *The Complete Legal Writer* and its teacher's manual and website.

A pinpoint research email is a short email written by a lawyer responding to a fellow lawyer's query contained in an email. The exchange of emails is part of an ongoing conversation between the two. The query email asks a very specific, straightforward research question. The other lawyer's reply pinpoints a specific legal rule that fills a gap in the questioner's understanding or argument. The legal analysis—both the gap-filling rule and its application to the client's situation—is very concise because the fit between law and facts is good, yielding a definitive answer.

Genre Structure: What document *parts* do you see?	Genre Execution: In what *ways* do you see the parts structured or worded?	Your judgment: What will you do?
Query Email	Each sample email includes at its end the query email to which the memo writer is replying. Each writer is replying to that query email rather than beginning a new email thread.	Be sure to include the query email; don't delete it or begin a new email thread.
Email Subject	The subject lines keep the same subjects as the query emails—although one adds, in parentheses, a bit of clarifying information to the end of the original subject line. All three emails include the client's name in the subject line. Two subject lines use specific case file numbers.	Use the same subject line that was in the query email, so the reader will recognize it. If necessary I could add a bit to clarify it, such as the case number, but don't change the subject.
Greeting or salutation	The email's greetings are professional though not very formal. Two emails address the receiver by first name. One email has no name; it looks like the sender sends this receiver emails very often.	Base formality on my relationship with the query email's sender. Stay professional; show respect by using a greeting even if the sender did not.

Body of the email	**Opening**: Each email starts with a full sentence that descriptively answers the sender's legal question, like: "the filing deadline is July 30" or "yes, our client meets the hours requirement." The opening doesn't repeat the research question, presumably because the query email is included.	**Opening:** Answer in the very first sentence. If necessary, I can qualify the answer, for example with "probably."
	Rule: Next, each email states a legal rule. Two emails quote the rule. A full citation follows each rule. Some of the rules require more than one sentence. Even so, they're concise and focused; the writer omitted presumably irrelevant language using brackets and ellipses. None of the emails explains the rule using examples.	**Rule**: Give the precise rule. Write it as concisely as possible, quoting the key phrases or words.
	Application of the Rule: Each email very succinctly explains why the rule applied to the facts yields the answer (two sentences at most). One email briefly mentions a related legal issue could arise and offers to address it if the supervisor wants.	**Application of the Rule:** Answer the receiver's question or request and then stop. If a related issue seems very likely to arise, I could succinctly note and offer to research it if my supervisor wants.
	Attachments: The first email attached a PDF containing official version of the relevant legal rule.	**Attachments**: If including a PDF of the rule seems appropriate, do so. Reference the attachment in the text.
Closing	Two emails close with only the writer's name (one after a polite offer to talk about the matter further by phone). The other closes with "Best." The closing seems to depend on the relationship between the writer and lawyer who sent the original query.	Base formality on my relationship with the person I am sending the email to. Just typing my name is less formal than using a closing like "Best" or "Sincerely."
Signature	Only one uses a signature block (most formal email with the "Best" closing).	Include a signature block if relationship is more formal.
Style	**Citations**: All of the emails used formal citations in the body of the email. Two concerned federal law and used Bluebook style. The third, concerning state law, used a common state-specific citation style.	**Citations**: Provide formal citations for the authorities that support my answer.
	Tone: The tone of all the emails appears respectful, formal, and all business—I mean very focused on answering the query, without any fluff or tangents.	**Tone**: Use a respectful and formal tone. Stay tightly focused.
	Length: All of the emails are short: one or two paragraphs of five lines or fewer.	**Length**: Keep the email as short as possible while still answering, stating a rule, citing, and very concisely applying the rule.
Formatting	All three sample emails use single-spacing with spaces between paragraphs. The paragraphs are not indented. All three emails use 12-point non-serif font.	Reply to query email and type reply as text in the body of the reply email. Use single-spacing with spaces between paragraphs. Do not indent.

Micro Essay: Digital Natives

It's no myth that law students and lawyers are in different places when it comes to learning. I work where digital natives and digital newcomers come together. Law students are here: firm in their belief that they will find "answers" to research questions online, because everything is online.

When law students enter my law firm as summer associates, they meet lawyers who are here: aware that the availability of more information online may actually make the analytical process harder. The result: lawyers benefit from law students' facility at finding information, and law students benefit from lessons in hard thinking.

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