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Genre Discovery 2.0

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GENRE DISCOVERY 2.0

Katie Rose Guest Pryal[*]

Abstract

Ten years ago, I proposed the "genre discovery approach" for teaching new legal writers how to write any legal document, even ones they had never encountered before. Using the genre discovery approach, a writer studies samples of a genre to identify the genre's conventions so that they can write the genre. From the seed of Genre Discovery 1.0, the approach's potential has blossomed into a robust pedagogical system: Genre Discovery 2.0. Genre Discovery 2.0 is more effective than Genre Discovery 1.0 because it more explicitly integrates metacognition into its pedagogy.

Metacognition, "the concept that individuals can monitor and regulate their own cognitive processes and thereby improve the quality and effectiveness of their thinking," is not innate—it must be taught. The legal writing professoriate has embraced metacognition to teach our students to be conscious of their learning. Some legal writing professors have contributed strategies for teaching metacognition to law students. Most current metacognitive teaching strategies include overlays atop an underlying assignment. In other words, these strategies require two steps to teach metacognition: the underlying task itself and then the separate metacognitive task that overlays the main task. This learning process is inefficient because it requires multiple steps. It is also less effective because the metacognitive activity is divorced from the underlying assignment, requiring students to make a cognitive leap from one assignment to the other. The push for metacognition in legal education has come from the upper levels of legal education reform. This article shows that metacognition is the best way to prepare our students to be practice ready.

This article argues that Genre Discovery 2.0 is the ideal way to teach legal research and writing to new legal writers because it integrates metacognition into its pedagogy rather than teaching metacognition as a separate overlay. By integrating metacognition, Genre Discovery 2.0 fulfills the promise of its predecessor by giving new legal writers the skills they need to not only learn how to write in law school but to learn how they learn and how to be lifelong learners.

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I. INTRODUCTION

The purpose of this article is to show that Genre Discovery 2.0 is the ideal way to teach legal research and writing to new legal writers because it integrates metacognition into its pedagogy.

Metacognition, "the concept that individuals can monitor and regulate their own cognitive processes and thereby improve the quality and effectiveness of their thinking,"[1] is not innate—it must be taught.[2] Why bother teaching metacognition? The alternative is to let law students cram for their assessments, perform them, forget everything they learned after their assessments, and then start all over again. Or, in the case of legal research and writing (LRW) assignments, let them learn to write an office memo, then learn to write a client letter as though it were an entirely different type of activity, and then learn to write a trial brief as though it, too, were completely unrelated to the prior two types of documents.

Without metacognition, students learn each document anew from scratch.[3] Soon after each assignment is turned in, professors face a *tabula rasa* because our students carry forward little knowledge from the prior assignments to the new ones.[4] Everything is new again.[5] LRW professors[6] want our students to be able to transfer[7] the knowledge they learned when writing their memos to their client letters (the documents do, after all, have a lot in common) and then to continue the process and transfer all of that knowledge to the trial brief, and so on.[8]

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[1] Cheryl B. Preston et al., *Teaching "Thinking Like a Lawyer": Metacognition and Law Students*, 2014 BYU L. REV. 1053, 1057 (2014). The authors of this article, which I rely on heavily in my own article, are a team composed of a law professor, Cheryl B. Preston, and two professors of teacher education, Peneé Wood Stewart (research emphasis in educational psychology) and Louise R. Moulding (research emphasis in research methodology).

[2] *Id.* at 1091.

[3] Laurel Currie Oates, *I Know That I Taught Them How to Do That*, 7 LEGAL WRITING: J. LEGAL WRITING INST. 1, 1 (2001).

[4] *See id.* ("For example, even though we have taught our students how to research a problem that required them to locate and apply a state statute, they seem lost when we ask them to research a problem that requires them to locate and apply a federal statute.").

[5] *Id.*

[6] When I use the terms "professor" or "faculty" in this article, I'm referring to *all* higher education workers who educate law students, be they librarians, clinicians, academic support professionals, or classroom teachers. I have opted *not* to use the arcane terminology that sends the "message is that 'Professors of Law' are the ones who really teach the law, while those with the other titles teach something else less important." Rachel López, *Unentitled: The Power of Designation in the Legal Academy*, 73 RUTGERS U. L. REV. 923, 925 (2021).

[7] Oates, *supra* note 3, at 1 ("Transfer" is "the use of knowledge or a skill acquired in one situation to perform a different task."); *See, e.g.*, Jaime Alison Lee, *From Socrates to Selfies: Legal Education and The Metacognitive Revolution*, 12 DREXEL L. REV. 227, 266 (2020) [hereinafter J. Lee] (quoting Tonya Kowalski, *True North: Navigating for the Transfer of Learning in Legal Education*, 34 SEATTLE U. L. REV. 51, 101 (2010)) (Experts agree that metacognition is "the gold standard of transfer tools.").

[8] Oates, *supra* note 3, at 16.

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The push for metacognition has come from the upper levels of legal education reform.[9] The most recent ABA Standards require assessment methods to teach metacognition, which law schools are still wrestling with.[10] Leaders in the field of legal education agree that metacognition is the way to prepare our students to be practice ready.[11]

The legal writing professoriate has always been nimble.[12] We have embraced metacognition as a way to teach our students to be conscious of their learning.[13] Some have made contributions to strategies for teaching metacognition to law students.[14] I review many of those strategies here. But what most of these strategies have in common is that they are overlays atop an underlying assignment.[15] In other words, these strategies require two steps to teach metacognition: the underlying task itself and then the separate metacognitive task that overlays the main task.[16]

The gap I'm filling is this: to provide an approach to teaching metacognition to law students that integrates metacognition into the pedagogy itself. Most metacognition teaching strategies require students to complete a separate metacognition task in addition to the underlying pedagogical task.[17] Genre Discovery 2.0 instead uses "integrated metacognition tasks," in which the underlying task and the metacognition task are one and the same. Because the underlying and metacognitive tasks are unified, integrated tasks are more efficient for professors to teach and for students to complete.[18] Integrated tasks are also more effective because students do not have to make cognitive leaps from the underlying tasks to the metacognitive tasks.[19]

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[9] *See, e.g.*, WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 173 (2007) (insisting that law students must be able to "cross the bridge from legal theory to professional practice," and that "the essential goal of professional schools must be to form practitioners who are aware of what it takes to become competent in their chosen domain and to equip them with the reflective capacity and motivation to pursue genuine expertise. They must become 'metacognitive' about their own learning.").

[10] A.B.A., ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2015–2016 at 23 (2015) [hereinafter ABA] (The ABA's requirements for formative assessments are motivated by a desire to teach law students how to learn, that is to teach them metacognition). For more on the ABA Standards and metacognition, *see infra* Part II.B. For more on formative assessments and metacognition, *see infra* Part II.B.2.

[11] Anthony Niedwiecki, long-time law school dean and current President and Dean of Mitchell Hamline School of Law, and proponent of and expert on metacognition and legal education. *See, e.g.*, Anthony Niedwiecki, *Teaching for Lifelong Learning: Improving the Metacognitive Skills of Law Students Through More Effective Formative Assessment Techniques*, 40 CAP. U. L. REV. 149, 155 (2012) [hereinafter Niedwiecki, *Lifelong Learning*] ("The most important skills law schools can teach students to make them better lifelong learners are metacognitive strategies.").

[12] Preston et al., *supra* note 1, at 1077.

[13] *Id.* at 1059.

[14] *Id.* at 1059, 1076.

[15] *Id.* at 1067, 1072.

[16] *Id.*

[17] *Id.* at 1072.

[18] Katie Rose Guest Pryal, *The Genre Discovery Approach: Preparing Law Students to Write Any Legal Document*, 59 WAYNE L. REV. 351, 368 (2013) [hereinafter Pryal, *Genre Discovery*].

[19] ALEXA Z. CHEW & KATIE ROSE GUEST PRYAL, THE COMPLETE LEGAL WRITER 368 (2d ed. 2020) [hereinafter CHEW & PRYAL, LEGAL WRITER].

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Ten years ago, I introduced the seed of the "genre discovery approach" when I wrote *The Genre Discovery Approach: Preparing Law Students to Write Any Legal Document*[20] ("Genre Discovery 1.0"). With Genre Discovery 1.0, my goal was to create an approach for teaching new legal writers how to write any legal document, even ones they had never encountered before. Using genre discovery, "a writer studies samples of a genre to identify the genre's conventions so that she can write the genre."[21] From the seed of Genre Discovery 1.0, the approach's potential has blossomed into a robust pedagogical system.

Genre discovery works because it integrates metacognition.[22] Some legal writing pedagogy gives students a template (either in a diagram form or in a list) with the document parts for a legal document type.[23] Then, using the template, students write the document. In contrast, genre discovery teaches students to teach themselves how to figure out what those document parts are so that they can create their own template, one that is flexible for different situations.[24] Through the genre discovery process, students learn to see the bigger picture of both the task of legal writing and the legal profession itself.[25] They learn that legal writing requires making decisions about what to include in a document and what to leave out.[26] And they learn that in the legal profession, lawyers encounter endless document types, including ones that change and evolve long after they have left law school.[27] Learning *how to learn* about document types—the heart of genre discovery—is metacognitive legal writing.[28]

In Part II of this article, "Genre Discovery 1.0 Was Nice in Theory," I give both the official and unofficial (real) stories of the nascence of Genre Discovery 1.0 and then address the flaws of the original approach, including the literature on legal writing genre theory that I simply overlooked the first time around. Then I recount the evolution of a legal genre—the email memo—to show the importance of teaching genre discovery. In Part III, "Metacognition Was the Missing Element from Genre Discovery 1.0," I use metacognitive theory and develop six metacognitive learning outcomes (the "metacognitive wheel"). I then review common strategies for teaching metacognition, test them against these learning outcomes, and suggest how to improve them. In Part IV, "Using Genre Discovery 2.0 to Teach Metacognition," I show how Genre Discovery 2.0 is an improvement on Genre Discovery 1.0, first presenting the improvements in a comparison chart.[29] Then I dive into how Genre Discovery 2.0 integrates metacognition into its pedagogy and provide detailed guidance for teaching with the approach.

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[20] *See generally* Pryal, *Genre Discovery*, *supra* note 18.

[21] ALEXA Z. CHEW & KATIE ROSE GUEST PRYAL, THE COMPLETE BAR WRITER xvi (2020) [hereinafter CHEW & PRYAL, BAR WRITER].

[22] Pryal, *Genre Discovery*, *supra* note 18, at 380.

[23] RICHARD K. NEUMANN, JR. & KRISTEN KONRAD TISCIONE, LEGAL REASONING AND LEGAL WRITING 60 (Vicki Been et al. eds., 7th ed. 2013).

[24] Pryal, *Genre Discovery*, *supra* note 18, at 380.

[25] *Id.* at 372.

[26] *Id.* at 378.

[27] *Id.* at 362.

[28] Preston et al., *supra* note 1, at 1076.

[29] If you are in a hurry, skip to this chart right now. *See infra* p. 41.

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Preparing law students for law practice has always been the mission of LRW professors.[30] Genre Discovery 2.0 gives new legal writers the skills they need not only to learn how to write in law school but to learn how they learn and to learn how to be lifelong learners.[31]

II. GENRE DISCOVERY 1.0 WAS NICE IN THEORY

Fortunately, when we write scholarships and put our ideas out into the world, we also have the opportunity to write future scholarships and revise our ideas. This opportunity to refine our original ideas may not be popular (because it can sometimes require brutal self-critique), but it is vital.

Back in 2012, when I wrote my first article on genre discovery, Genre Discovery 1.0, I did the best I could at the time. But now is the time to reflect on that work and make it better.

My main claim in Genre Discovery 1.0 was that the teaching approach I outlined in the article was the best way to teach legal writing skills that transfer.[32] At that time, "transfer" was not a new concept in legal education.[33] But, my approach to teaching transfer was new, and I was excited to share it with my colleagues. In the article and in a talk at the Legal Writing Institute (LWI) conference, I presented a new pedagogy with a strong theoretical foundation.

In Genre Discovery 1.0, I did many things well with the information I had then. But now, I've had ten years to refine Genre Discovery 1.0. I have access to ten years of teaching by me and, more importantly, by many others, and to scholarship on rhetorical genre theory by my colleagues. Ten years later, I can see that Genre Discovery 1.0 was a seed, one that needed to germinate. And it has.

Genre Discovery 1.0 did not arise in a vacuum. It arose from a strong situational need, as most good ideas do. This Part describes that need and gives a brief review of the theory of Genre Discovery 1.0, along with a critique of its weaknesses. It also presents a review of the foundational literature on rhetorical genre theory in legal education that predated Genre Discovery 1.0, paired with a review of more recent legal writing scholarship on the same. The scholarship I review surrounds the debate over the evolution of a classic legal genre, the office memo; the debate shows not only how genres evolve but also how well our pedagogy evolves with them.

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[30] Preston et al., *supra* note 1, at 1072.

[31] *See, e.g.*, Niedwiecki, *Lifelong Learning*, *supra* note 11, at 153 ("The discussion about how to teach law students often omits one of the biggest components of legal education: the best way to train students to be *lifelong learners*. Because law schools cannot teach students every area of the law or every skill they will use as lawyers, the focus should be on teaching them *how to transfer* their learning in law school to the novel situations they will face in the legal profession. Furthermore, law schools need to teach them how to continue to draw upon their learning experiences during the practice of law to new situations they will certainly encounter. This requires that law schools move the students from novice learners to expert learners.") (emphasis added).

[32] Pryal, *Genre Discovery*, *supra* note 18, at 363.

[33] *See, e.g.*, Kowalski, *supra* note 7, at 54 ("Transfer theory, which comes to us under many names and from numerous disciplines, shows that students tend to acquire knowledge by storing and encoding it in schematics—also called cognitive maps or mental models—that are tied to the subject and the learning environment. These, in turn, act as original examples with which to evaluate future learning environments and to reason by similarity.").

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A. Genre Discovery Arose from Desperation

I began working on what would become Genre Discovery 1.0 back in 2011. There is an official story about its genesis, one that is in the public record if you care to look into it, and then there is an unofficial story that I'm sharing here for the first time, one that shows how its genesis was actually driven by desperation, specifically my own.

What appears, at first glance, to be a hifalutin pedagogical theory arose from the late-night desperation of a rising 3L summer associate (me). Knowing this fact might help some see that the genre discovery approach isn't so hifalutin after all.

1. The Official Story

In 2013, I co-chaired a workshop panel at the Conference on College Composition and Communication (CCCC), the leading conference on undergraduate writing and rhetoric,[34] called "Genres in Action."[35] My co-chair was my colleague Jordynn Jack,[36] and my co-panelists included Amy Devitt,[37] Carolyn Miller,[38] Charles Bazerman,[39] and other leaders in the field of rhetorical genre studies. The panel was, for the most part, practical rather than wonkish. With the panel, Professor Jack and I wanted to make writing pedagogy using genres accessible to all professors.

At the time, I was teaching legal writing in both the undergraduate college and the law school at my institution. This cross-pollination, as it often does, proved fruitful. Thus, at the CCCC workshop, I presented an idea for teaching legal genres (to undergraduates and law students) that consisted of four learning goals: (1) identify the legal genre, (2) find samples of it, (3) study those samples to discover the genre's conventions, and (4) write one's own document using those discoveries. The presentation intervened in a moment of composition pedagogy that

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[34] *See User's Guide to CCCC*, CONF. ON COLL. COMPOSITION & COMMC'N, https://cccc.ncte.org/cccc/users-guide (last visited Mar. 28, 2023) ("The Conference on College Composition and Communication (CCCC) supports and promotes the teaching and study of college composition and communication. CCCC is one of four conferences of the National Council of Teachers of English.").

[35] Katie Rose Guest Pryal, Chair, Workshop/Panel at Conference on College Composition and Communication Annual Convention: Genres in Action (Mar. 13, 2013). Speakers on the panel were Pryal, Dylan Dryer, Jason Swarts, Amy Devitt, Jane Danielewicz, Jordynn Jack, Rebecca S. Nowacek, Carolyn Miller, Risa Applegarth, Janet Giltrow, Anis Bawarshi, Elizabeth Wardle, Mary Jo Reiff, and Charles Bazerman.

[36] Jordynn Jack is an expert in rhetorical genre theory and the author of many books, including the flagship composition textbook from Oxford University Press, whose central pedagogy is based on rhetorical genre theory. *See* JORDYNN JACK & KATIE ROSE GUEST PRYAL, HOW WRITING WORKS: A GUIDE TO COMPOSING GENRES 1 (2d ed. 2022).

[37] Amy Devitt is an expert in rhetorical genre theory and the author of the foundational text in rhetorical genre theory, which I rely on in Genre Discovery 1.0. *See generally* AMY J. DEVITT, WRITING GENRES 1 (2008).

[38] Miller first observed that genres "represent typified rhetorical action." Carolyn R. Miller, *Genre as Social Action*, 70 Q. J. SPEECH 151, 163 (1984); *see also* Pryal, *Genre Discovery*, *supra* note 18, at 361 ("[Miller's] groundbreaking definition of genre changed the course of rhetorical genre studies.").

[39] Charles Bazerman, 2009 Chair of CCCC, is one of the founders of rhetorical genre studies. *See* CHARLES BAZERMAN, SHAPING WRITTEN KNOWLEDGE: THE GENRE AND ACTIVITY OF THE EXPERIMENTAL ARTICLE IN SCIENCE (1988).

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focused on genres but taught them in a top-down fashion rather than inductively. That is, composition textbooks at the time tended toward teaching genres, but they would do so by providing a single model sample that students were to refer to when writing a "book review," "lab report," or whatever genre assigned.[40] I argued that teaching the skill of "discovery" would teach transfer because students would be able to teach themselves unfamiliar genres in the future. Their knowledge wouldn't be limited to the genres that appear in whatever textbook they happen to be using.

The content of my talk at CCCC 2013 became the core theory of Genre Discovery 1.0. The following year, with my ideas more formalized and Genre Discovery 1.0 already forthcoming in a law journal, I presented the genre discovery approach at the 2014 Legal Writing Institute Conference in Philadelphia.[41] From there, the seed was planted.

What a tidy story that is.

2. The Unofficial (Real) Story

The unofficial story is far less tidy, and its main character is a scared law student named Katie Rose.

In February 2011, I gave a job talk for a full-time law professor position at the University of North Carolina (UNC) School of Law.[42] In the talk, I included three legal writing student case studies that I claimed were based on real teaching scenarios. The first two were based on students I'd taught in the past. The final student, named "Steph," was not. Steph's particular story was this: In her internship, she had to write a bankruptcy brief, an unfamiliar document type, with little guidance. She did so by studying samples and teaching herself the unfamiliar genre.

This fictional student, "Steph," was me. Back in the early 2000s, I worked as a summer associate at a mid-sized firm with multiple practice groups. During the summer, I rotated through each group, completing an assignment for each—including the bankruptcy group. The bankruptcy partner asked me to write a brief to the bankruptcy court.

I hadn't taken a bankruptcy law course, so I knew nothing about the area of law. I didn't learn how to write trial briefs in my LRW course, so I knew nothing about the type of document. At a loss, I went to the paralegal for the practice group and asked for sample trial briefs for the

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[40] The most popular genre-based composition textbook at the time used just this model. *See generally* RICHARD BULLOCK & DEBORAH BERTSCH, THE NORTON FIELD GUIDE TO WRITING 8-10 (Sarah Touborg et al. eds., 5th ed. 2019).

[41] Katie Rose Guest Pryal & Chris Rideout, Panelists, Deboarah Gordon, Facilitator, Scholarly Paper Panel—Genre Theory at the 16th Biennial Conference of the Legal Writing Institute (June 30, 2014).

[42] Katie Rose Guest Pryal, The Many Faces of Legal Writing at the University of North Carolina School of Law (Feb. 2011) (on file with author).

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bankruptcy court to look at. I didn't need a go-by,[43] I thought. I needed a *thousand* go-bys. She pointed to where I could find them, and I pulled every single brief our firm had written in that kind of situation. Then, I narrowed them down to those written for the particular judge and, even further, to those that had won. I found twelve briefs that met my criteria. I spread all twelve documents on a table in the conference room.

I read each one, annotating what I saw. I didn't have much of a plan except to look for similarities. The process was very slow. I read and read until, finally, I had a sense of who the audience was and what she wanted to see. I made a list of these similarities, creating my own highly customized go-by.

Using the facts of my case and my custom go-by, I wrote the brief. Despite all of the time I spent on the brief, I turned it in to the partner with great trepidation. A few hours later, he showed up at my office door holding it in his hand. He was, to put it mildly, shocked by its strength.

I'm not telling this story as some kind of humblebrag. I'm telling you that I was lucky. I stumbled into a process that happened to work, and I muddled through.

And then, for years, I forgot all about it.

After law school and my clerkship, I attended graduate school for my doctorate in rhetoric (and worked part-time in a law firm to pay the bills). In my doctoral program, I learned about genre theory, and it became a subject of my research. Only then, years later, did I think back to that day when I locked myself in a conference room with twelve sample briefs and a legal pad.

That process worked, but it wasn't easy. So, I asked myself, How can I make the process easier? How can I make it teachable? How can I make it transferable?

Nothing about "Steph" has ever made it into the official story, in part because I lacked the confidence to talk about it. I believed my muddling detracted from the legitimacy of the idea. Ideas are supposed to spring from your mind like Athena. They're not supposed to be happy accidents.

But for professors who are searching for a way to help their students, imagining 2L-me sitting in that conference room struggling with a bankruptcy brief might explain why genre discovery is such a good idea. I was not navel-gazing with my doctorate in rhetoric until I came up with some abstract theory. No: I examined my own practical experience from a desperate time

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[43] A go-by is a sample of a legal document. *See* Christine N. Coughlin et al., *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, 387 (2010) ("In practice, experienced lawyers know to begin with samples. Like doctors who usually 'see one' before doing, the first thing most seasoned lawyers do when they are asked to draft a document with which they are not familiar (perhaps a complaint, a contract, or a motion) is to get a 'go-by,' or sample of the document that another lawyer has done in another case.").

when I was completely out of my depth, and then I made sense of that experience using the knowledge I gained through my studies. Genre discovery pedagogy came from practice.

I wrote down my idea, delivered the idea in presentations at the CCCC and LWI conferences, and wrote the Genre Discovery 1.0 law journal article. I did all of that work for the young Katie Rose, who needed genre discovery skills so desperately. If I'd had the approach back then, I would have been less desperate and afraid while I taught myself, alone, how to write a very particular document. Years later, I extrapolated, from my difficult experience, a pedagogy that would ensure no one would ever be in my shoes again.

B. Genre Discovery 1.0 Had Some Problems

I wrote Genre Discovery 1.0 after teaching legal writing for some years. At its core was a five-step process; these were the skills that, I argued, we should teach our students to prepare them to write any legal document.

To excel at genre discovery, when first-year law students leave their legal writing course, they need to possess the following skills:

(1) How to identify a legal document as a genre.
(2) How to identify the discourse community (or sub-community) of a legal genre and locate themselves within that community.
(3) How to locate examples of the new genre and figure out which examples are strong and which examples are weak.
(4) How to study examples of the new genre to identify conventions, including form, style, and tone.
(5) How to put these "discoveries" together and write the new genre.[44]

Here, I will look at these steps more closely, pointing out their strengths and, more importantly, their weaknesses.

1. Genres Are Recurring Document Types with Predictable Conventions

When I now teach the genre discovery approach (Genre Discovery 2.0), I first teach students what genres are—and that they're everywhere.[45] A genre is a set of communications—document types—that share certain, predictable conventions.[46] Genres include every document that lawyers write: office memos, complaints, wills, contracts, and trial briefs.[47] They are all genres.[48]

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[44] Pryal, *Genre Discovery*, *supra* note 18, at 375–76.
[45] *See* an in-depth teaching strategy for Genre Discovery 2.0 *infra* Part III.
[46] Pryal, *Genre Discovery*, *supra* note 18, at 354 ("Simply put, a genre is a set of communications that share certain, predictable conventions.").
[47] *Id.* at 355.
[48] *Id.*

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Once students realize what genres *are*, I teach them a little bit more about why they exist. (I do not, however, use the complicated vocabulary that I am about to use in this paragraph.) Genres exist—they come into being—because certain situations call for them.[49] The situations that call for certain genres are "rhetorical situations," a term coined by foundational rhetoric scholar Lloyd Bitzer.[50] In the context of law, the filing of a complaint calls for an answer by a defendant.[51] An appeal calls for an appellate brief, which then calls for a reply brief.[52] In the context of everyday life, a need to grocery shop calls for a grocery list; the receipt of a gift calls for a thank-you note.

Bitzer subdivides a rhetorical situation into three parts: "exigence," "audience," and "constraints."[53] The three parts work together.[54] The first, exigence, is "an imperfection marked by urgency; it is a defect, an obstacle, something waiting to be done, a thing which is other than it should be."[55] Bitzer's exigence is what I referred to as "the call." Constraints in legal writing include things like time limitations, page limitations, the limited facts of your client's case, the limited case law on your side, and so forth.[56] And then there's the audience, whom you intend to influence with the genre that you are writing.[57]

Another important takeaway from Bitzer is that particular rhetorical situations happen over and over again: "From day to day, year to year, comparable situations occur, prompting comparable responses."[58] These "comparable responses," what Bitzer calls "rhetorical forms," are genres.[59] (Bitzer doesn't actually use the word "genre" in his article.[60] He just does a good job explaining why they exist.)

Once my students understand what genres are and why they exist, they can learn, in a big-picture fashion, that, as students, they are only learning very few of an enormous body of genres. As professors, we have to be very choosey about what documents to teach in a legal writing course, and we make our choices for good reasons. I share this information with my students.

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[49] Lloyd F. Bitzer, *The Rhetorical Situation*, 1 PHIL. & RHETORIC 1, 5 (1968) ("Let us regard the rhetorical situation as a natural context of persons, events, objects, relations, and an exigence which strongly invites utterance.").

[50] *Id.*

[51] *How Courts Work: Steps in a Trial, Pre-trial Procedures in Civil Cases*, A.B.A. (Nov. 28, 2021), https://www.americanbar.org/groups/public_education/resources/law_related_education_network/how_courts_work/cases_pretrial/.

[52] *How Courts Work: Steps in a Trial, Appeals*, A.B.A. (Nov. 28, 2021), https://www.americanbar.org/groups/public_education/resources/law_related_education_network/how_courts_work/appeals/.

[53] Bitzer, *supra* note 49, at 6.

[54] *Id.* at 8.

[55] *Id.* at 6.

[56] *Id.* at 8.

[57] *Id.*

[58] *Id.* at 13.

[59] Bitzer, *supra* note 49, at 13.

[60] *See id.* at 1–14.

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Lawyers write a multitude of genres, and LRW courses reflect this.[61] I wrote as much in Genre Discovery 1.0: "[We] already teach legal genres, just as lawyers already write them."[62] While writing Genre Discovery 1.0, I conducted an empirical study of the genres taught in all "non-specialized" LRW textbooks on the market at the time.[63] My study showed that 100% taught office memos, 88% taught appellate briefs, 69% taught motion memos, and 62% taught client letters.[64] In Genre Discovery 1.0, I called these genres the "canon" of LRW courses.[65] But my research also showed that although the canonical genres remained relatively fixed, the variety of genres taught was expanding.[66]

2. Genres Evolve

With Genre Discovery 1.0, I hoped to alleviate the worry that new legal writers might, once they are in practice, encounter genres that may have changed since they left our classrooms. Foundational genre scholar Carolyn R. Miller observed how genres change: "[T]he set of genres is an open class, with new members evolving, old ones decaying."[67] Indeed, genres *must* change over time because situations and authors inevitably also change.[68] Genres change with changes in technology, political climate, organizational structures, and so on.[69]

LRW professors have paid close attention to how genres change and evolve.[70] For example, as LRW professor Christopher Rideout noted in 2009, one way genres change is by the changing of the writers who write them. [71] Every time a genre is written, that genre is changed, *reconstituted* by the writer, even if only slightly.[72] For example, the writing of an appellate brief "is also a situated occasion that generates, along with all the other instances of writing of appellate briefs, the genre of the appellate brief."[73] Rideout then suggests that we intentionally teach students to write legal genres but that writing a legal genre isn't a simple one-way exchange.[74]

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[61] Pryal, *Genre Discovery*, *supra* note 18, at 368.

[62] *Id.* at 367.

[63] *Id.* at 368–69.

[64] *Id.* (citing Katie Rose Guest Pryal, *Genres in Law School*, THE GENRE PROJECT, UNIV. OF N.C. AT CHAPEL HILL, https://web.archive.org/web/20140223032144/http://genre.web.unc.edu/genres-in-law-school/) [hereinafter Pryal, GENRE PROJECT] (In the "Genres in Law School" portion of the study, I surveyed fifty-two syllabi and thirty-two textbooks for LRW courses); *see also* Katie Rose Guest Pryal, *About*, THE GENRE PROJECT, UNIV. OF N.C. AT CHAPEL HILL, https://web.archive.org/web/20140223032123/http://genre.web.unc.edu/ ("The Genre Project is a research endeavor from the University of North Carolina Writing Program. Our goal is to study the genres students read and write across the disciplines, both at UNC and beyond.") (Data available upon request).

[65] Pryal, *Genre Discovery*, *supra* note 18, at 369.

[66] *See* Pryal, GENRE PROJECT, *supra* note 64.

[67] Miller, *supra* note 38, at 153.

[68] *Id.* at 163.

[69] *Id.*

[70] Jan M. Levine, *Legal Writing as a Discipline: Past, Present, and Future*, in LEGAL WRITING SOURCEBOOK 16, 22 (J. Lyn Entrikin & Mary B. Trevor eds., 3d ed. 2020).

[71] *See* J. Christopher Rideout, *Voice, Self, and Persona in Legal Writing*, 15 J. LEGAL WRITING INST. 67, 89 (2009).

[72] *Id.* at 89–90.

[73] *Id.* at 90.

[74] *See id.* at 89.

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A genre also changes when its medium (resources and constraints) changes.[75] In 2011, LRW professor Ellie Margolis described teaching the conveying of legal analysis via email (an early version of what LRW professors now call the "email memo").[76] She observed, regarding teaching her students to move their legal analyses from the printed page to email, "It is not as simple as taking traditional written forms and sending them electronically. Like electronic legal research, the change in the medium necessitates changes in the form of the communication."[77] Although she did not use the term "genre" in this early article on the subject, Margolis made an astute observation about how genres change.[78] Here, when the technological constraints on the office memo changed—in this instance, the technology of email—then the genre itself—"the form of communication"—also had to change.[79]

Given how genres evolve over time (and some decay entirely), the list of legal genres that lawyers must know is ever-changing and impossible to pin down.[80] I'm reminded of the (very) short story by Jorge Luis Borges, *On Exactitude in Science*, in which the mapmakers of an empire keep drawing a larger and larger map—in an effort to be exact—until the map is as large as the empire itself, rendering the map "useless."[81] One moral of the story is that a map that exactly matches reality is a folly.[82]

When I was formulating Genre Discovery 1.0, I realized that, as LRW professors, we cannot solve the problem of addressing the myriad genres our students will face by teaching as many genres as we can—the task, like the empire's perfect map, is a folly. Instead, we needed a method to teach new legal writers how to *teach themselves* any genre they might encounter. Indeed, my goal is in the subtitle of Genre Discover 1.0: "Preparing Law Students to Write Any Legal Document."[83] The purpose of Genre Discovery 1.0, then, was to answer this question: "Because no legal writing course can hope to teach law students how to write every genre that lawyers encounter in practice, we must ask ourselves this question: how do we prepare students to write legal documents that we never teach them to write?"[84]

3. Genre 1.0 Needed Scaffolding

Now, after my students understand what genres are and where they come from, they are ready to learn the genre discovery approach. As I learned soon after publishing Genre Discovery 1.0, the theory of the approach required a lot of pedagogy, pedagogy that was missing from the article.

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[75] Ellie Margolis, *Incorporating Electronic Communication in the LRW Classroom*, 19 PERSPS.: TEACHING LEGAL RSCH. & WRITING 121, 125 (2011) [hereinafter Margolis, *Incorporating*].
[76] *Id.* at 121.
[77] *Id.* at 125.
[78] *Id.*
[79] *Id.*
[80] Pryal, *Genre Discovery*, *supra* note 18, at 362.
[81] JORGE LUIS BORGES, ON EXACTITUDE IN SCIENCE 325 (Andrew Hurley trans., 1946).
[82] *Id.*
[83] Pryal, *Genre Discovery*, *supra* note 18, at 351.
[84] *Id.* at 353.

For example, Step One, to identify the genre of the legal document you've been asked to write, is next to impossible for a new legal writer.[85] They need *some* familiarity with the legal profession to know how to discover legal genres.[86] In a first-year LRW classroom, some scaffolding[87] for this task was needed.

Step Two, to identify the discourse community of the genre and locate yourself within that community,[88] required a complete overhaul. Indeed, entering the discourse community of "lawyers" is one of the hardest things that our students must do at the beginning of their law school careers.[89] Jill J. Ramsfield defines "a discourse community" as "a community within a larger culture that has created its own language, forms, and traditions for communicating with each other."[90] Ramsfield suggests *explicitly* teaching students that they are entering a new discourse community (*nota bene*: they *are* entering a new discourse community).[91] Ramsfield notes that even U.S. law students might find themselves baffled by legal discourse: "For any writer, international or not, the initiation into the U.S. legal discourse community is complex and challenging."[92]

Although the theory of discourse communities is helpful for professors, it isn't very helpful for students.[93] The term is complex and not very useful as an analytical tool.[94] To make matters even more difficult, Step Two of Genre Discovery 1.0 also asks students to "locate themselves" within the discourse community of the genre.[95] What does that even mean? More scaffolding is required.

For example, if they've been asked to write an office memo for a supervisor, then their location in the community is as a junior attorney in a litigation practice of some sort.[96] Depending on the genre they've been asked to write (which they identified in Step One), they must also figure out their own position in the discourse community so that they know (1) whom they are writing for (their audience), (2) what position they're writing from (their persona), and (3) why (their purpose).[97]

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[85] *Id.* at 378.

[86] *Id.* at 373.

[87] E. Scott Fruehwald, *How to Help Students from Disadvantaged Backgrounds Succeed in Law School*, 1 TEX. A&M L. REV. 83, 112 (2013) (Scaffolding is "'providing hints and cues when students first try to perform [a new] skill.' Scaffolding helps students focus on what is key to the task and not get bogged down in extraneous load.").

[88] Pryal, *Genre Discovery*, *supra* note 18, at 378.

[89] *Id.*

[90] Jill. J. Ramsfield, *Is "Logic" Culturally Based? A Constrastive, International Approach to the U.S. Law Classroom*, 47 J. LEGAL EDUC. 157, 164 (1997).

[91] *Id.*

[92] *Id.*

[93] Pryal, *Genre Discovery*, *supra* note 18, at 378–79.

[94] *See id.* at 363.

[95] *Id.* at 375.

[96] *Id.* at 380.

[97] *See id.* at 356.

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If what I just described seemed like a description of the rhetorical triangle to you, that is because it is.[98] Genre 2.0 explicitly removes "discourse community" and replaces it with the rhetorical triangle, a far more useful analytical tool and one law students might have learned about as undergraduates, as it is a staple of undergraduate writing programs.[99]

4. Samples Need a System

Step Three of Genre Discovery 1.0, to locate samples of the genre *and* to determine whether the samples are strong or weak, also required lots of scaffolding for new legal writers. New legal writers struggle to tell which samples are strong.[100] Even expert legal writers would have trouble doing so with documents they are not familiar with.[101]

Also, as you might have noticed, it would be mighty difficult to do Step Two, an analysis—whether a discourse analysis or an analysis using the rhetorical triangle—*before* you have samples to analyze. For this reason, Genre Discovery 2.0 swaps the positions of Steps Two and Three.

For the record, "Steph" (meaning myself) merely guessed which samples were strong because she chose only to examine the briefs that won. But as I learned in a recent debate with a colleague,[102] going by whether a brief won or lost is not a valid test of the quality of legal writing because, as the colleague said, "A motion might lose because a judge had a bad tuna sandwich."[103] Determining the *quality* of a sample of an unfamiliar genre is a very difficult task—one that might be impossible.[104] What one can determine, however, is whether a sample is an *outlier*, wildly different from the other samples.[105] Genre Discovery 2.0 modifies Step Three in this way as well, asking only that new legal writers learn to discard outliers.

Step Four, to study strong samples of the genre to identify conventions, is perhaps the most important step of the genre discovery approach.[106] Recall that a genre is a recurring document type that has predictable conventions.[107] The conventions, therefore, compose the genre.[108] Since the publication of Genre Discovery 1.0, a colleague and I have invented a schema for studying the conventions of a genre called "document maps."[109] Genre Discovery 2.0 takes

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[98] CHEW & PRYAL, LEGAL WRITER, *supra* note 19, at 5 ("The rhetorical triangle is a three-part approach to analyzing documents and writing them effectively. The three points of the triangle are (1) audience, (2) purpose, and (3) persona.").

[99] Kevin Dvorak, The Rhetorical Triangle—Writer, Reader, Text, and Context/Purpose—in Composition-Rhetoric: A History (Aug. 2006) (Ph.D. dissertation, Indiana University of Pennsylvania) (ProQuest).

[100] Pryal, *Genre Discovery*, *supra* note 18, at 375.

[101] *Id.* at 355.

[102] Interview with Alexa Z. Chew, Co-Author of the Complete Legal Writer.

[103] *Id.*

[104] Pryal, *Genre Discovery*, *supra* note 18, at 376.

[105] *Id.* at 380.

[106] *Id.* at 375.

[107] *Id.* at 378.

[108] *Id.* at 354.

[109] *See* CHEW & PRYAL, LEGAL WRITER, *supra* note 19, at 32–35.

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the theory of document maps a step further, showing how they operate across time, connecting students' learning of genres together to create metacognition of the genre discovery process.[110]

If all goes well during Steps One through Four, Step Five requires the new legal writer to write the genre. Note that this step is where many traditional legal writing textbooks begin: with a template or model document and step-by-step instructions for how to write a particular genre.[111] Steps One through Four (particularly Four) of genre discovery are hard work. The process requires new legal writers to create "templates" of their own.[112] But what they learn, hopefully, is the skill of "discovering" a genre—any genre—forever.

C. Foundational Literature on Rhetorical Genre Theory in Legal Education

When I wrote Genre Discovery 1.0, I included a literature review of genre theory (and a subset of rhetorical genre theory) in legal education.[113] In my research at the time, I didn't find much work on the subject.[114] However, there had indeed been interesting work in the field that I did not find and that I, therefore, did not include in my review of the literature. In writing this article, I'm grateful for the opportunity to correct this past mistake with new research.[115] The purpose of this section is to show the existing foundation of rhetorical genre scholarship in legal education and LRW in particular, upon which I build Genre Discovery 2.0. In addition to Ramsfield, Rideout, and Margolis, discussed above, I discovered the following.

Elizabeth Fajans and Mary R. Falk approached judicial opinions as a "literary and rhetorical genre" to teach advanced legal writing.[116] Michael R. Smith used legal genre theory to design a new type of advanced legal writing pathway.[117] The pathway diverged from the tradition of teaching multiple genres to the same depth, instead presenting "more sophisticated aspects of a genre to which the students have already been exposed."[118] Karen J. Sneddon

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[110] Part III of this article discusses the teaching of metacognition in detail. *See* discussion *infra* Part III.

[111] Pryal, *Genre Discovery*, *supra* note 18, at 376.

[112] *Id.* at 356.

[113] *Id.*

[114] *Id.* at 363–64 (citations omitted) (In the genre theory literature review in Genre Discovery 1.0, I found, for example, the following: Some scholars have used genre theory to study legal cinema, speeches, and music. One has used genre theory (in the widest sense) to critique legal education. Others have used literary genre theory to study the texts (written and oral) that lawyers produce, the topic of interest here. But few legal scholars have engaged rhetorical genre theory to study these texts.)

[115] On Monday July 26, 2021, I ran the following search in Westlaw Edge: "advanced: (ATLEAST10(genre) and ATLEAST3("legal writing")) & DA(bef 01-01-2013)" in database: Secondary Sources - Law Reviews & Journals. The search yielded twenty-four results, which I have curated here.

[116] Elizabeth Fajans & Mary R. Falk, *Against the Tyranny of Paraphrase: Talking Back to Texts*, 78 CORNELL L. REV. 163, 196 (1993) (The authors hypothesized that teaching their advanced legal writing students to be better legal readers of judicial opinions would teach them to be better writers: "Strong reading . . . demands that the reader consider the judicial opinion as a literary and rhetorical genre.").

[117] Michael R. Smith, *Alternative Substantive Approaches to Advanced Legal Writing Courses*, 54 J. LEGAL EDUC. 119, 120 (2004) (using genres to create a new way of categorizing a legal writing curriculum).

[118] *Id.* at 128.

analyzed the genre of the will, identifying five conventions and analyzing their changing purposes over time.[119]

Legal scholars made important inroads with rhetorical genre theory over the past thirty years.[120] More recently, rhetorical genre theory in LRW scholarship has exploded as LRW scholars have examined how legal genres. Hand-in-hand with this examination has come the opportunity to evolve our teaching as well.[121]

D. The Great (Really!) Email Memo Debate

A lively scholarly debate has taken place regarding one of the legal field's most esteemed genres: the office memo and the emergence (perhaps?) of an offshoot called the "email memo."[122] This debate shows not only how genre studies have blossomed in the field of legal writing but also the importance of teaching genre discovery—that is because genres evolve.

The office memo is one of the canonical genres of legal writing pedagogy.[123] To adopt Kirsten K. Davis's definition, office memos, which have been central to law practice for decades,[124] are "internal memoranda written by one lawyer to another for the purpose of communicating law and legal analysis and meant to serve as the basis for legal advice."[125]

With the advent of email, the information that used to be transmitted via "traditional legal memos"[126] is now being frequently sent via email.[127] The debate, led by Kirsten K. Davis and Kristen Konrad Tiscione, addressed this question: Is the traditional office memo (printed on paper, with the conventions we typically see in our LRW textbooks) going extinct with the advent of the email memo or "informal memos"?[128] Or, is the genre of the office memo flexible enough to encompass the shifting conventions of the genre?[129]

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[119] Karen J. Sneddon, *In the Name of God Amen: Language in Last Wills and Testaments*, 29 QUINNIPIAC L. REV. 665, 665 (2011).
[120] *See generally* Fajans & Falk, *supra* note 116, at 163; Smith, *supra* note 117, at 119.
[121] *See generally* Pryal, *Genre Discovery*, *supra* note 18, at 351; 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, 476 (2013) [hereinafter Davis, *Reports*]; Charles Calleros, *Traditional Office Memoranda and E-Mail Memos, in Practice and in the First Semester*, 21 PERSPS. 105, 105 (2013); Kristen Konrad Robbins-Tiscione, *From Snail Mail to E-Mail: The Traditional Memorandum in the Twenty-First Century*, 58 J. LEGAL EDUC. 32, 34 (2008) [hereinafter Tiscione, *Snail Mail*].
[122] Calleros, *supra* note 121, at 106.
[123] *See* Pryal, *Genre Discovery*, *supra* note 18, at 369.
[124] Davis, *Reports*, *supra* note 121, at 472.
[125] *Id.*
[126] *Id.* at 482 (defining the "traditional" office memo like this: "Certainly, there is fluidity in the term 'traditional legal memo,' and different writers have used the term in different ways. For the purposes of this Article, however, 'traditional' means a memo that is based upon the 'classic' or 'comprehensive' structure and contains most or all of the following parts: question presented, brief answer, statement of facts, discussion, and conclusion.").
[127] *See* Calleros, *supra* note 121, at 105.
[128] Tiscione, *Snail Mail*, *supra* note 121, at 33 (explaining that an informal memorandum "includes a statement of the legal issue and the attorney's conclusion or advice, followed by supporting analysis.").
[129] *Id.*

Davis, in her 2013 article, *"The Reports of My Death Are Greatly Exaggerated": Reading and Writing Objective Legal Memoranda in a Mobile Computing Age*, points out the challenges that the genre of the traditional office memo faces: "In today's legal practice culture of on-screen reading and writing, lawyers complain memos are expensive, time consuming, and perhaps even ill-suited for reading on screens and mobile devices."[130] Worse, "[m]emos can be seen as a waste of client resources, in part because of the inability of lawyers, particularly new lawyers who typically write memos, to write them well."[131] Davis then points to the debate at hand: "Some scholars have suggested that new technology, such as e-mail, requires identifying a new category of legal writing described as 'e-mail' or 'informal' memos."[132]

Davis, needless to say, is opposed to this new category or genre: "[E]-mail memos are not different such that they are a new category of memoranda that has taken, or should take, the place of traditional memoranda. Rather, this Article asserts that email memoranda are well within the flexible boundaries of the 'traditional' category."[133] She points out that the medium of transmission does not affect the genre: "[T]his new form of reading [on screen] does not create a new legal memorandum category."[134] Instead, "new media requires that lawyers pay even more attention to the historically recognized flexibility of the legal memorandum form."[135] In sum, for Davis, the boundaries of the "office memo genre" are expansive enough to encompass memos sent by email or those sent with less formal conventions.[136]

Davis's defense of the office memo did not arise in a vacuum.[137] Prior to Davis's article, in 2008, Tiscione published the results of a survey of law school graduates regarding their use of the office memo genre in practice.[138] The results suggested that "the traditional legal memorandum is all but dead in law practice."[139] The survey participants preferred, instead, two different genres: the "informal memorandum" and the "substantive email."[140] Per Tiscione, an informal memorandum "includes a statement of the legal issue and the attorney's conclusion or advice, followed by supporting analysis."[141] Furthermore, these are the same elements of the substantive email; the only difference is that the memo is sent by email.[142] Tiscione undertook the study to help guide LRW pedagogy: "If the traditional memorandum taught to students no longer reflects reality, then LRW programs are not fulfilling their primary mission to prepare students for the world of legal practice."[143] In the end, Tiscione recognized traditional memoranda as "a dying breed."[144]

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[130] Davis, *Reports*, *supra* note 121, at 473.
[131] *Id.*
[132] *Id.*
[133] *Id.* at 486.
[134] *Id.* at 507.
[135] *Id.*
[136] Davis, *Reports*, *supra* note 121, at 507.
[137] Tiscione, *Snail Mail*, *supra* note 121, at 32.
[138] *Id.*
[139] *Id.*
[140] *Id.* at 33.
[141] *Id.*
[142] *Id.*
[143] Tiscione, *Snail Mail*, *supra* note 121, at 34.
[144] *Id.* at 49.

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Davis was also responding to a 2011 article by Ellie Margolis, in which she discusses an email assignment she taught and her findings from the experience.[145] The assignment required her students "to sum up the results of their research and analysis of a client problem in an e-mail."[146] Based on Margolis's description, the genre she assigned was not an office memo (per Davis) or even an informal memo (per Tiscione) but rather a status report or research summary.[147] Margolis gave her students some parameters for the assignment, including "the need for a clear, up-front answer and succinct analysis as well as the importance of organization, bearing in mind that the message may be viewed on a variety of different electronic devices."[148] She gave no "particular advice about content or level of depth in the analysis."[149] Overall, the experience had Margolis rethinking legal genres and the media we share them by: "I began to think that this kind of e-communication called for a different kind of writing than is traditionally covered in a legal research and writing course."[150] In other words, Margolis's experience led her to believe that the medium of email required *a different type of legal writing* than LRW courses typically taught.[151]

It was against this backdrop that Davis mounted her defense of the office memo genre.[152] Davis brings rhetorical genre theory to bear on the debate, using it, appropriately, as the lens through which to view the evolution of the memo genre:

> [P]itting "formal" against "informal" and "traditional" against "non-traditional" in memo writing misdirects the argument about how to write and read legal memos in a new medium. Instead of structuring the discussion around these false dichotomies, writers and readers should both consider what is necessary for a competent memo in any rhetorical situation.[153]

Davis is correct. The rhetorical situation should always determine the genre—and the way the genre is written.[154]

And that is the thread that Kristen Konrad Tiscione picks up with her response in the office memo debate, *The Rhetoric of Email in Law Practice*.[155] In her article, she argues that the email memo is a new genre because it has these new features:

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[145] Davis, *Reports*, *supra* note 121, at 484 n.63.
[146] Margolis, *Incorporating*, *supra* note 75, at 121.
[147] *Id.* at 123.
[148] *Id.*
[149] *Id.*
[150] *Id.* at 124. *See also* Kendra Huard Fershee, *The New Legal Writing: The Importance of Teaching Law Students How to Use E-Mail Professionally*, 71 Md. L. Rev. Endnotes 1, 13 (2011) (transfering from non-email to email must be taught. Code switch from informal email use to formal email use).
[151] Margolis, *Incorporating*, *supra* note 75, at 124.
[152] Davis, *Reports*, *supra* note 121, at 509–10.
[153] *Id.* at 523.
[154] *Id.* at 524.
[155] *See generally* Kristen Konrad Robbins-Tiscione, *The Rhetoric of Email in Law Practice*, 92 Or. L. Rev. 101, 102 (2013) [hereinafter Tiscione, *Rhetoric of Email*].

- It has a targeted audience,[156] rather than being written to "the file."[157]
- It is part of an ongoing conversation via email.[158]
- It "feels less permanent" than a traditional office memo.[159]
- It uses different document parts than those of the traditional memo, "often combin[ing] the Question Presented, Brief Answer, and significant facts to create a more coherent introduction."[160]

Tiscione is persuasive here in her argument that the email memo is a new genre because she has described a change in the rhetorical situation.[161] With regards to the change in the rhetorical situation, she describes the change in audience (a particular email recipient), a change in exigence (a response to another email), and a change in constraints (loosening of the document parts requirements).[162]

Similarly, Ellie Margolis, in her 2015 article, *Is the Medium the Message: Unleashing the Power of E-Communication in the Twenty-First Century*, comes down on the side of the email memo as a genre when she, too, addresses the change in rhetorical situation: "The email memo creates a different rhetorical situation for the reader than the traditional legal memo, which makes a different writing experience."[163] A new rhetorical situation necessitates a new genre.

Tiscione also claims that email memoranda are "distinguished from traditional memoranda by its lack of format and the subsequent liberation of the writer to respond creatively to the particular circumstances."[164] What this statement—"lack of format"—seems to suggest is that email memos lack conventions at all. She seems to claim that there are no rules, and therefore creativity abounds.[165] But if, as she says, "experienced legal writers produce equally thoughtful and solid analysis in email and memoranda,"[166] then that thoughtful and solid analysis must be presented in some "format" that an audience expects to see. Either the email memo is a genre, or it isn't. If it is a genre, then it must have conventions.[167] And most importantly for our field, those conventions (1) are expected by the audience of the genre, (2) can be learned by legal writers, and (3) can and should be taught to our students.[168]

After the fruitful debate between Davis and Tiscione about the email memo genre, with other contributions such as that by Margolis, many more articles came forth about email

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[156] *Id.* at 107.
[157] *Id.* at 106.
[158] *Id.* at 107.
[159] *Id.*
[160] *Id.* at 109.
[161] *See supra* Part II.B for a discussion of the rhetorical situation and the work of Lloyd Bitzer.
[162] *See generally* Tiscione, *Rhetoric of Email*, *supra* note 155, at 101.
[163] Ellie Margolis, *Is the Medium the Message? Unleashing the Power of E-Communication in the Twenty-First Century*, 12 LEGAL COMMC'N & RHETORIC 1, 9 (2015) [hereinafter Margolis, *Is the Medium the Message*].
[164] Tiscione, *Rhetoric of Email*, *supra* note 155, at 115.
[165] *Id.*
[166] *Id.* at 118.
[167] Pryal, *Genre Discovery*, *supra* note 18, at 351.
[168] *Id.* at 354–55.

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pedagogy in LRW courses.[169] Katrina June Lee's 2016 article, *Process over Product: A Pedagogical Focus on Email as a Means of Refining Legal Analysis*, suggests that for new legal writers, writing via email can work well as a freewriting tool because new legal writers feel comfortable writing via the email medium.[170] Regarding the audience of email, Lee notes, echoing Tiscione, "The intimacy between email author and audience can help a law student feel 'freer' to focus on the audience's needs when writing an email as opposed to a traditional memo."[171] For this reason, Lee suggests using email as an intervention when helping a student with a writing task with which the student has been struggling.[172]

For students who are struggling with feeling "stuck or blocked,"[173] Lee suggests using email as a generative writing tool: "The reasons for assigning email writing in the midst of a long legal writing assignment with many formal requirements, such as a memorandum or appellate brief, mirror the reasons why a legal writing teacher might similarly assign oral presentation exercises or free writing exercises."[174] That is, when "students are freed from the formal restrictions" of the genre they are writing, they are better able to get unstuck.[175]

At one point, Lee makes the common mistake of conflating the *medium* of email with the *genres* that might be written using email: "Today's law students are eminently comfortable with email communications. They are usually not as familiar or comfortable with the office memorandum or the appellate brief."[176] "Email," in this passage, is a medium, not a genre.[177] It, therefore, cannot be compared to the genres of the office memorandum and appellate brief—regarding students' familiarity or any other qualities.[178] For example, a legal memorandum (a genre) sent via email (the medium) might be highly complex and unfamiliar to students, despite their familiarity with email communications generally.[179] Overall, Lee's main argument that teaching the email medium to law students to familiarize them with professional email communication[180] and to provide them with an alternative outlet for legal writing[181] is well taken.

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[169] *See generally* Katrina June Lee, *Process Over Product: A Pedagogical Focus on Email as a Means of Refining Legal Analysis*, 44 CAP. U. L. REV. 655, 655 (2016).

[170] *Id.* at 657.

[171] *Id.* at 666.

[172] *Id.* at 657.

[173] *Id.*

[174] *Id.* at 670.

[175] Lee, *supra* note 169, at 657.

[176] *Id.* at 670; *Cf.* Margolis, *Is the Medium the Message*, *supra* note 163, at 6 ("Yet though it is true that the fundamental task of legal analysis, the message, still involves the rigorous analysis of law and application of that law to facts, it does not necessarily follow that the communication of that analysis does not change through its interaction with the technology that delivers it.").

[177] *Id.*; *see also* Tiscione, *Rhetoric of Email*, *supra* note 155, at 120.

[178] Pryal, *Genre Discovery*, *supra* note 18, at 354.

[179] *See generally* Lee, *supra* note 169, at 667.

[180] *Id.* at 656 ("[E]mail communications should be taught because they are a primary mode of communicating legal analysis in law practice. To prepare law students for law practice, legal writing professors need to teach students how to write the types of documents that they will be writing.").

[181] *Id.* at 657 ("The relative informality and familiarity of the email medium help liberate the modern student writer and can create an opening for deeper analysis where previously the student writer felt stuck or blocked.").

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In 2018, Joe Fore contributed an analysis of the email memo as a genre with multiple subgenres.[182] He begins by addressing the debate over email memos, noting "to the extent the debate focused on the question of whether email memos should have a place in first-year legal writing at all, that question is increasingly being answered in the affirmative."[183] Thus, accepting that email should be (and often is) taught in LRW courses, he moves on to his next point: "[T]here are different types of e-memos—just as there are different types of traditional, formal memos."[184] In his analysis of the email memo genre, he discusses these different types: "Some involve simple legal issues that call for short, simple responses; some involve complex matters calling for complex analysis."[185] In the pedagogical sphere, he differentiates between "summary email assignments,"[186] such as those described by Margolis,[187] and "Standalone E-memo" assignments, which he advocates for teaching in his article.[188] Standalone email memo assignments "require students to complete limited independent research and write an email response on a legal issue that they have not previously worked on."[189] These assignments "may better approximate the shorter, simpler emails that many of today's lawyers are writing."[190]

Fore then outlines five conventions of these shorter, simpler email memos that "the limited scholarship on real-world emailing practices, coupled with [his] own experience" has revealed:[191]

- Email memos are short, tending toward one page in length.[192]
- Email memos tend to be "rule-focused" and do not require "rule synthesis" or analogies.[193] That is, they answer questions that require little to no in-depth legal analysis.
- Email memos have right and wrong answers and require a confident tone.[194]
- Email memos rely on research sources most law students are unfamiliar with.[195]

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[182] *See* Joe Fore, *The Comparative Benefits of Standalone Email Assignments in the First-Year Legal Writing Curriculum*, 22 J. LEGAL WRITING INST. 151, 158 (2018).
[183] *Id.* at 157.
[184] *Id.* at 158.
[185] *Id.*; *see also* Jennifer Will, *Call It an E-Convo: When an E-Memo Isn't Really a Memo at All*, 24 J. LEGAL WRITING INST. 269, 271 (2020) (suggesting another type of email communication called an "e-convo," which are "emails [that] replace or supplement what would otherwise be oral communications and handwritten notes.").
[186] Fore, *supra* note 182, at 160.
[187] *See* Margolis, *Incorporating*, *supra* note 75, at 124.
[188] Fore, *supra* note 182, at 161.
[189] *Id.*
[190] *Id.* at 164.
[191] *Id.* at 166. For an alternative view of the conventions of email memos, *see* CHEW & PRYAL, LEGAL WRITER, *supra* note 19, at 129–35 (providing three samples of email memos, a list of the genre's distinguishing features, and a rhetorical analysis of the genre).
[192] Fore, *supra* note 182, at 165.
[193] *Id.* at 166.
[194] *Id.* Note that Fore's sample "Standalone E-memo" assignment in the article requires only the reporting of rules and not the application of rules to facts. As he describes, his assignment is meant to mimic real-world practice.
[195] *Id.*

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- Email memos are "time sensitive," with deadlines measured in "hours."[196] (This time constraint has ramifications for the conventions of the memo, such as how long it can be, how much research can be done, and so forth.)

Although none of the conventions of Fore's list are specific document parts, if one were to write an email memo, one could rely on this list along with the conventions of professional correspondence and the office memo to craft an email memo to fit a particular rhetorical situation.[197]

The best current data on email memo conventions comes from a recent empirical study by Brad Desnoyer, who surveyed practicing attorneys about their preferences for email memos and published the data in 2021.[198] Desnoyer undertook his study to aid the pedagogy of LRW: "Unfortunately, as e-memo pedagogy evolved, academic advice branched in diverse directions."[199] Desnoyer thus suggests, "The next stage in teaching e-memos then requires building on our pedagogical foundations with empirical evidence."[200]

Desnoyer's findings suggest the importance of such traditional memo conventions as applying facts to the law;[201] using explanatory parentheticals as "a condensed form of case illustrations";[202] and using inline citations.[203] Desnoyer warns, "E-memos, of course, have their shortcomings. They tempt the writer to skip logical steps and provide weak analyses without support."[204] In other words, the lack of predictable conventions—due to the newness of the genre—can lead to a sort of sloppiness.[205] A study such as Desnoyer's is just what our field needed to add predictability to the conventions by learning what our audiences expect.[206]

But what about the office memo question? Is an email memo an office memo? Of course it is.[207] And it isn't—depending on your point of view.[208] The traditional office memo genre is not a template with inflexible rules that must be followed in lockstep.[209] And the email memo genre is not free-flowing and loosey-goosey, as Desnoyer's study showed.[210] As genres, though, traditional office memos and email memos serve different purposes and serve them well.[211] Just because an email memo no longer uses the "question presented" and "brief answer" subsections

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[196] *Id.*
[197] *Id.* at 164.
[198] Brad Desnoyer, *E-Memos 2.0: An Empirical Study of How Attorneys Write*, 25 LEGAL WRITING 213, 226 (2021).
[199] *Id.* at 222.
[200] *Id.* at 226.
[201] *Id.* at 253.
[202] *Id.*
[203] *Id.* at 255.
[204] Desnoyer, *supra* note 198, at 272.
[205] *Id.* at 271.
[206] *Id.* at 225.
[207] *Id.* at 220.
[208] *Id.* at 214–15.
[209] Calleros, *supra* note 121, at 107.
[210] Desnoyer, *supra* note 198, at 215.
[211] *See id.* at 261, 272.

and instead uses a brief introduction does not make it less rigorous.[212] It just makes it evolve to suit a new rhetorical situation.[213] After all, when I started law school, there were no law firm blog posts or email memos. We certainly didn't read email memos on our phones. (I got my first cell phone while I was in law school. It was a six-inch long rectangle with a small LCD screen, and I could hammer nails with it.)

As the email memo debate has shown, when rhetorical situations change, genres evolve.[214] Our pedagogical canon only becomes a problem when it stops reflecting the reality of our field.[215] Fortunately, LRW as a field remains nimble, adjusting its pedagogy to reflect new genres that are emerging[216] and current genres that are evolving.[217]

When we teach our students the ability to transfer their legal writing knowledge from our classrooms into practice, we must prepare them not only to write the genres that exist today but also to write the genres that may evolve in the future. To prepare students to write any legal genre they encounter, we must teach them metacognition.

III. METACOGNITION WAS THE MISSING ELEMENT FROM GENRE DISCOVERY 1.0

The goal of legal writing courses is to prepare our students to write, reason, and research in any lawyering situation in the future so that they can be good lawyers.[218] For example, we have been appropriately concerned about email memos because we want our students to be able

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[212] Calleros, *supra* note 121, at 108.

[213] *Id.* at 105.

[214] Pryal, *Genre Discovery*, *supra* note 18, at 358–59.

[215] *Id.* at 369–70.

[216] One emerging genre that has received its due attention is the law firm blog post (along with the genre family of public legal writing). For more on this important new topic, *see* Jennifer Murphy Romig, *Legal Blogging and the Rhetorical Genre of Public Legal Writing*, 12 LEGAL COMMC'N & RHETORIC 29, 29 (2015) ("Now is the time to bring scholarly attention to a new genre of legal writing: the blog posts, tweets, updates, and other writing on social media that many lawyers generate and many others would consider generating, if they had the time and skill to do so."); Cecilia A. Silver, *Breaking News: Drafting Client Alerts to Prepare for Practice*, 27 PERSPS. 78, 78 (2019) ("Client alerts, at their core, are a low-cost marketing tool. They are short news bulletins that inform clients (and the general public, when posted on firm blogs) about recent developments in the law."); Kirsten K. Davis, *[Classical] Lawyers as [Digital] Public Speakers: Classical Rhetoric and Lawyer Digital Public Commentary*, 20 NEV. L.J. 1137, 1175 (2020) [hereinafter Davis, *Commentary*] ("Lawyers have a professional responsibility to perform as citizen lawyers and speak to educate and inform the public about issues of law, rule of law, and participation in democratic government.").

[217] Davis, *Commentary*, *supra* note 216, at 1140.

[218] *See* MODEL RULES OF PRO. CONDUCT r. 1.1 (AM. BAR ASS'N 2023) ("A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."); MODEL RULES OF PRO. CONDUCT r. 1.1 cmt. 2 (AM. BAR ASS'N 2023) ("A newly admitted lawyer can be as competent as a practitioner with long experience. Some important legal skills, such as the analysis of precedent, the evaluation of evidence and legal drafting, are required in all legal problems. Perhaps the most fundamental legal skill consists of determining what kind of legal problems a situation may involve, a skill that necessarily transcends any particular specialized knowledge. A lawyer can provide adequate representation in a wholly novel field through necessary study."); Niedwicki, *Lifelong Learning*, *supra* note 11, at 152–53 (By pointing out that competence requires a skill that "transcends . . . specialized knowledge," Rule 1.1 unintentionally advocates for metacognition).

to write the genres that the profession currently demands and may demand in the future.[219] After all, the "primary mission" of LRW courses is "to prepare students for the world of legal practice."[220]

LRW professors—and others in legal education—describe this primary mission in different ways.[221] Students must be "practice-ready."[222] They must be "lifelong learners"[223] who can continue to learn new knowledge throughout their legal careers because law school can't possibly teach them everything they need to know.[224] They need to learn how to "think like lawyers."[225] The knowledge they learn in law school must "transfer" to practice.[226]

LRW professors are concerned with preparing our students to succeed beyond our classrooms because it is the best way to teach, and we know it.[227] Cramming for one good grade in one course—only to shrug off the knowledge and begin again—is not good education.[228] Thus, the desire to teach skills that stick comes from our own internal desire to see our students succeed.[229]

However, pressure to teach skills that stick also comes from external sources that include criticism from more powerful colleagues, as LRW faculty tend to be contingent faculty with less institutional power.[230] I recall many conversations by the faculty coffee maker where well-meaning, tenured colleagues bemoaned the poor writing skills of their students, an inadvertent[231] disparagement of their students' learning in my courses.

There is also the pressure that comes down from the nationwide level and, from there, from our institutional administration.[232] Current pressure comes from the 2015 ABA

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[219] Desnoyer, *supra* note 198, at 217.

[220] Tiscione, *Snail Mail*, *supra* note 121, at 34.

[221] *Id.* at 33.

[222] *See, e.g.*, Niedwiecki, *Lifelong Learning*, *supra* note 11, at 151 ("[T]he need to prepare law students to be practice-ready and to help make them better prepared for lifelong learning, something that goes to the core of what it means to be a lawyer.").

[223] *Id.*

[224] *Id.* at 153.

[225] *See* Preston et al., *supra* note 1, at 1054 ("Even in a discipline where ambiguity is cherished, law professors are stumped when it comes to understanding the content of legal education's motto: 'Teach them to think like a lawyer.'").

[226] *Id.* at 1075.

[227] Kowalski, *supra* note 7, at 51 ("As legal educators, we have also experienced the frustration that comes from our students' struggles to identify and transfer skills from one learning environment to another.").

[228] *Id.* at 51–52.

[229] Niedwiecki, *Lifelong Learning*, *supra* note 11, at 176.

[230] *See* Alexa Z. Chew & Rachel Gurvich, *Saying the Quiet Parts Out Loud: Teaching Students How Law School Works*, 100 NEB. L. REV. 887, 891–92 (2022) ("[S]tudents might not realize . . . that the teachers they have the most individual contact with, like their legal writing professors, are also the teachers who are paid the least and have the least amount of job security.").

[231] Pryal, *Genre Discovery*, *supra* note 18, at 371.

[232] Historically, for example, there is commonly called The Carnegie Report, published in 2007 and which still casts a long shadow. SULLIVAN ET AL., *supra* note 9, at 105 (The Carnegie Report insisted that law students must be able to "cross the bridge from legal theory to professional practice.").

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Standards,[233] specifically Chapter 3, "Program of Legal Education,"[234] which presents many pedagogical challenges to law schools regarding learning objectives and outcomes.[235] Under Standard 301, "Objectives of Program of Legal Education," part (a) states: "A law school shall maintain a rigorous program of legal education that prepares its students, upon graduation, for admission to the bar and for effective, ethical, and responsible participation as members of the legal profession."[236] According to this standard, upon graduation, *without further training*, law students must be able to practice law effectively, ethically, and so on.[237] In other words, this standard requires practice-readiness.[238]

The specific learning outcomes listed under Standard 302(b) are skills that are the responsibility (according to most law schools) of LRW faculty: "Legal analysis and reasoning, legal research, problem-solving, and written and oral communication in the legal context."[239] In short, according to the ABA, LRW faculty have a responsibility to teach LRW skills in a way that will prepare our students to practice law effectively upon the day they graduate.[240] The skills we teach them must transfer so that our students are immediately practice-ready.[241]

No pressure.

Practice-readiness. Lifelong learning. Thinking like lawyers. Knowledge transfer. What do these pedagogical goals have in common? The answer is *metacognition*.[242]

Anthony Niedwiecki, one of the first law professors to write about metacognition in law schools, pointed out the connection between "lifelong learning" and metacognition: "The most important skills law schools can teach students to make them better lifelong learners are metacognitive strategies."[243] Why teach metacognition? "Because law schools cannot teach students every area of the law or every skill they will use as lawyers, the focus should be on teaching them *how to transfer* their learning in law school to the novel situations they will face in the legal profession."[244]

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[233] *See generally* ABA, *supra* note 10, at 15.

[234] *Id.*

[235] *Id.*; Derek Luke, *From Filling Buckets to Lighting Fires: The ABA Standards and the Effects of Teaching Methods, Assessments, and Feedback on Student Learning Outcomes*, 81 U. PITT. L. REV. 209, 215, 217 (2019).

[236] ABA, *supra* note 10, at 15.

[237] *Id.*

[238] *Id.*

[239] *Id.*

[240] *See also id.* at 17 (These requirements also implicate metacognition and skill development, especially the required opportunities for feedback and self-reflection. They must provide "opportunities for performance, feedback from a faculty member, and self-evaluation.").

[241] Niedwiecki, *Lifelong Learning*, *supra* note 11, at 151.

[242] *See, e.g.*, SULLIVAN ET AL., *supra* note 9, at 173. The Carnegie Report mentioned metacognition by name when pointing out the dilemma all law professors face: the impossibility of teaching our students *everything* they might encounter in law practice. The Carnegie Report points out that metacognition is the solution to this intractable problem: "[T]he essential goal of professional schools must be to form practitioners who are aware of what it takes to become competent in their chosen domain and to equip them with the reflective capacity and motivation to pursue genuine expertise. They must become 'metacognitive' about their own learning."

[243] Niedwiecki, *Lifelong Learning*, *supra* note 11, at 155.

[244] *Id.* at 153 (emphasis added).

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In short, metacognition teaches students how to transfer knowledge.[245] Indeed, metacognition is "the gold standard of transfer tools."[246] When I refer to knowledge transfer, I use Laurel Oates's definition: "the use of knowledge or a skill acquired in one situation to perform a different task."[247] Teaching LRW skills so that they transfer beyond our courses has long been a concern of LRW professors.[248] Indeed, Michael Hunter Schwartz called it a "core goal of all instruction."[249] For example, if a new legal writer learns to write legal analysis in a closed-universe office memo assignment in class, the writer *must* be able to transfer that knowledge of legal analysis to an office memo assignment in an internship.[250] As LRW professors, we must ensure that the "legal analysis" concept doesn't get stuck back with the assignment with which the writer first learned it.

I posit, as many others have before me, that teaching metacognition should be the guiding force of our pedagogy.[251] "Metacognition holds particular promise for legal education because it strengthens a core legal skill: the ability to transfer and adapt complex, abstract principles to new contexts."[252] This Part will provide a brief review of metacognitive pedagogy and how it is currently used in law schools, along with some suggestions for improvement.

A. Metacognition Is Both Knowledge and Regulation

Cheryl B. Preston, Penée Wood Stewart, and Louise R. Moulding define metacognition as "the concept that individuals can *monitor* and *regulate* their own cognitive processes and thereby improve the quality and effectiveness of their thinking."[253] For Anthony S. Niedweicki, metacognition is "self-monitoring by an individual of his own unique cognitive processes. Generally, metacognition refers to having both awareness and control over one's learning and thinking."[254] In more common parlance, metacognition is "thinking about thinking,"[255] although I believe that phrase demeans metacognition a bit, giving the activity an air of snobbish Enlightenment philosophy. Metacognition isn't navel-gazing.[256] It is hard, frustrating work, and

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[245] J. Lee, *supra* note 7, at 265.

[246] *Id.* at 266 (quoting Kowalski, *supra* note 7, at 101).

[247] Oates, *supra* note 3, at 1.

[248] *See id.*; *see also* Judith B. Tracy, "*I See and I Rememeber; I Do and Understand" Teaching Fundamental Structure in Legal Writing Through the Use of Samples*, 21 Touro L. Rev. 297, 299 (2005) ("Teachers want students to be able to apply what they learned from the LR&W course assignments to what they will be called upon to do as upper-level law students, legal interns, summer associates and, ultimately, as practitioners.").

[249] Michael Hunter Schwartz, *Teaching Law by Design: How Learning Theory and Instructional Design Can Inform and Reform Law Teaching*, 38 San Diego L. Rev. 347, 366 (2001).

[250] J. Lee, *supra* note 7, at 265.

[251] *See generally id.* at 230–33.

[252] *Id.* at 265.

[253] Preston et al., *supra* note 1, at 1057 (emphasis added).

[254] Anthony S. Niedwiecki, *Lawyers and Learning: A Metacognitive Approach to Legal Education*, 13 Widener L. Rev. 33, 35 (2006) [hereinafter Niedwiecki, *Metacognitive Approach*].

[255] Niedwiecki, *Lifelong Learning*, *supra* note 11, at 153; Preston et al., *supra* note 1, at 1057.

[256] *See generally* Niedwiecki, *Lifelong Learning*, *supra* note 11, at 157 ("Although cognitive skills are focused on a specific subject area, metacognitive skills 'span multiple, often divergent subject areas and involve a greater degree of thinking about the learning process.'").

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when we teach our students how to do it, we need to keep that in mind.[257] (Not that we wouldn't.)

Metacognition is composed of two parts—having "*awareness* of the [learning and thinking] process" and having "the *ability to control* learning and thinking."[258] These two parts of metacognition can be called "metacognitive knowledge" and "metacognitive regulation."[259] The two do not develop at the same pace; typically, regulation develops more slowly.[260]

1. Metacognition Is Knowledge

Also phrased as "knowledge of cognition," metacognitive knowledge "involves an awareness of which knowledge and skills a person brings to the learning task, an awareness of what the new task requires, and matching the knowledge and skills to the new task."[261]

Implementing metacognitive knowledge can thus be thought of as a process with three steps:

(1) Figuring out what knowledge *you already have.*
(2) Figuring out what knowledge the *new task requires*.
(3) Figuring out how to *match* your prior knowledge to the knowledge the new task requires.[262]

Memory plays an important role in metacognition because memory manages how well we can store new knowledge, retrieve our current knowledge, and put it to use.[263] New knowledge that we encounter attaches to old knowledge in our memory of a similar type or category.[264] "People make the unfamiliar familiar by organizing the myriad of stimuli that bombard their senses into like categories."[265] Metacognition allows a person to make deliberate decisions about how knowledge will be stored in their memory.[266] As Scott Fruehwald notes, "How students organize knowledge is part of metacognition."[267] Fruehwald describes how to maximize memory (and, therefore, retrieval).[268] Typically, "[m]aterial is stored in long-term memory in relation to how it is learned."[269] But this default organization is not helpful. Instead,

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[257] *Id.* at 155.

[258] Preston et al., *supra* note 1, at 1058 (emphasis added).

[259] *Id.*

[260] *Id.*

[261] Niedwiecki, *Lifelong Learning*, *supra* note 11, at 159.

[262] *Id.*

[263] ROBERT J. MARZANO, A THEORY-BASED META-ANALYSIS OF RESEARCH ON INSTRUCTION 39 (1998). ("Storage and retrieval are, of course, innate processes—they are part of every human's neurological 'hard wiring' and are therefore not learned. This is not to say, however, that they cannot be enhanced via the use of learned tactics.").

[264] *Id.* at 39–40.

[265] *Id.*

[266] Fruehwald, *supra* note 87, at 112.

[267] *Id.*

[268] *See id.*

[269] *Id.* at 113.

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"students should organize knowledge in their minds in relation to the context and function of the material."[270] Fruehwald expands: "Experts organize by recognizing deep patterns in the knowledge. For example, a law expert would organize a series of cases by the types of reasoning a court used, then organize on a sublevel by the similarities and the differences among the cases."[271] Professors can intervene by teaching metacognition in relation to memory, by teaching "students how to recognize deep-organizing patterns in material."[272]

Gaining the ability to "match" one's prior knowledge to the knowledge required to complete a new task is a hallmark of a person with strong metacognitive knowledge.[273] Such a person "will consciously evaluate what they bring to the learning experience and try to match those skills with the requirements of the task on hand."[274] Indeed, "[o]nce the learner has consciously begun to match knowledge and skills with the new task, the learner moves to the next step in the learning process—the regulation of cognition."[275]

2. Metacognition Is Regulation

First, a caveat: the term self-regulation (in the pedagogical context) has experienced some slippage during its tenure in legal education scholarship.[276] Preston and others point out, "While metacognition, self-regulation, and self-regulated learning are technically different skills, many education scholars recognize that the meaning of these three terms '[has] been inextricably intertwined within the educational literature, either intentionally or unintentionally.'"[277] Indeed, my research, what scholars are tending to call "metacognition" today, consists solely of metacognitive *regulation*—the second part of metacognition that I describe below. Metacognitive knowledge (what I described just above) tends to be left out in current discussions of metacognition.[278]

This loss of the first half of metacognition from pedagogical theory means that the teaching of metacognition has become thin.[279] Later in this article, I show a way to bring it back in again to make the teaching of metacognition more robust.

Metacognitive regulation, also phrased as "the regulation of cognition,"[280] involves three main skills: "planning, monitoring, and evaluation."[281] In his 2006 article on metacognition in law school, Anthony Niedwiecki explains the three parts:

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[270] *Id.* at 112.
[271] *Id.*
[272] Fruehwald, *supra* note 87, at 113.
[273] Niedwiecki, *Lifelong Learning*, *supra* note 11, at 160.
[274] *Id.*
[275] *Id.* at 161.
[276] Preston et al., *supra* note 1, at 1084.
[277] *Id.* at 1082 (citing Patricia A. Alexander, *Why This and Why Now? Introduction to the Special Issue on Metacognition, Self-Regulation, and Self-Regulated Learning*, 20 EDUC. PSYCH. REV. 369, 369 (2008)).
[278] *See generally id.* at 1083.
[279] *See* Niedwiecki, *Metacognitive Approach*, *supra* note 254, at 44.
[280] *Id.*
[281] *Id.*

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- **Planning**: "the selection of appropriate strategies and [the] allocation of resources [that] affect performance."[282]
- **Monitoring**: "an individual's continuous awareness of 'comprehension and task performance.'"[283]
- **Evaluating**: the process of "appraising the final outcome of learning"; assessing "one's initial goals and final conclusions by judging whether the learning strategy employed brought about the expected outcome"; planning the next "learning experience."[284]

Note, however, that Niedwiecki *does* address metacognitive knowledge as a separate part of metacognition from metacognitive regulation: "After the students have taken steps to become aware of the task requirements and their personal resources (cognitive knowledge), they need to begin the step of regulating their learning—the planning, monitoring, and evaluating of their learning."[285]

Michael Hunter Schwartz, in a foundational article on metacognition in legal education, *Teaching Law Students to Be Self-Regulated Learners*, presents self-regulation as a "recursive cycle" that has "three phases: forethought, performance, and reflection."[286] This cyclical nature of metacognitive regulation is fundamental to its success.[287]

As I mentioned at the beginning of this section, in much metacognition scholarship, especially recently, metacognitive regulation has come to stand in for all of metacognition, eliding metacognitive knowledge.[288] A common phrase to refer to this current model is "plan, do, and reflect."[289] By leaving out metacognitive knowledge, this model of metacognitive teaching is weaker than its forebears.[290]

B. Current Strategies for Teaching Metacognition

As I describe in the opening paragraphs of Part II, the call has been made for teaching metacognition in law schools.[291] The ABA does so implicitly in its assessment guidelines.[292]

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[282] *Id.*

[283] *Id.*

[284] *Id.*

[285] Niedwiecki, *Metacognitive Approach*, *supra* note 254, at 61.

[286] Michael Hunter Schwartz, *Teaching Law Students to Be Self-Regulated Learners*, 2003 Mich. St. DCL L. Rev. 447, 454 (2003) [hereinafter Schwartz, *Self-Regulated*].

[287] *Id.* at 455.

[288] J. Lee, *supra* note 7, at 237.

[289] *Id.* at 241 (citing Meredith Heagney, *Plan, Do, Reflect: Clinical Teaching at the Law School*, 59 U. Chi. L. Sch. Rec. 42, 43 (2013)).

[290] *See* David R. Krathwohl, *A Revision of Bloom's Taxonomy: An Overview*, 41 Theory Into Prac. 212, 214 (2002) (Metacognitive knowledge "is of increasing significance as researchers continue to demonstrate the importance of students being made aware of their metacognitive activity, and then using this knowledge to appropriately adapt the ways in which they think and operate.").

[291] *See* Sullivan et al., *supra* note 9, at 173.

[292] ABA, *supra* note 10, at 23.

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Standard 314, "Assessment of Student Learning," provides, "A law school shall utilize both formative and summative assessment methods in its curriculum to measure and improve student learning and provide meaningful feedback to students."[293] Interpretation 314-1 on assessment types shines light on why the ABA requires formative assessments: "Formative assessment methods are measurements at different points during a particular course or at different points over the span of a student's education that provide meaningful feedback *to improve student learning.*"[294] The goal of formative assessments is not just to test whether a student is learning but to improve learning itself.[295] These words are a call for teaching metacognition.

However, Preston and others note, "[A]s of yet, few law schools teach metacognitive skills."[296] And although the literature provides many suggestions for teaching metacognition,[297] we must ensure that the teaching tasks we suggest and implement follow through on their promise.

Preston and others have provided guidance for what a teaching task must contain in order for it to teach metacognition.[298] When we, in our pedagogical literature, suggest tasks that teach metacognition, Preston and others recommend that we "identify the critical attributes of the tasks that make them metacognitive" and also "provide . . . guidance for using them as metacognitive exercises."[299] If we follow this advice, then we will be more rigorous going forward when generating a much-needed body of metacognitive teaching materials.[300]

In critiquing the current body of tasks that aim to teach metacognition, Preston and others state that, in order to teach metacognition, a task must teach a student:

- To "identify and reflect on their learning processes, and consequently re-direct such [learning] processes."[301]
- To "document the cognitive processes . . . and evaluate them for patterns of thinking behavior that were more or less successful."[302]
- To "go beyond recording what happened or the content of what [students] learned and describe the strengths and weaknesses of their thinking process, take actions to

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[293] *Id.*

[294] *Id.* (emphasis added). Compare with the same Interpretation's guidance on summative assessments: "Summative assessment methods are measurements at the culmination of a particular course or at the culmination of any part of a student's legal education that measure the degree of student learning."

[295] Anthony Niedwiecki, *Prepared for Practice? Developing a Comprehensive Assessment Plan for a Law School Professional Skills Program*, 50 U.S.F. L. Rev. 245, 255 (2016) [hereinafter Niedwiecki, *Prepared for Practice*].

[296] Preston et al., *supra* note 1, at 1086.

[297] *Id.* at 1084.

[298] *Id.* at 1083–86.

[299] *Id.* at 1084. This recommendation comes in the form of a criticism of the teaching exercises of the otherwise well-regarded article, Paul D. Callister, *Time to Blossom: An Inquiry into Bloom's Taxonomy as a Hierarchy and Means for Teaching Legal Research Skills*, 102 L. Libr. J. 191, 191 (2010).

[300] Preston et al., *supra* note 1, at 1063.

[301] *Id.* at 1084.

[302] *Id.* at 1083–84.

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correct errors or weaknesses, and propose solutions for improving their thinking processes."[303]

Allow me to restate Preston and others' critiques as a set of learning outcomes for tasks that teach metacognition.[304] By having a set of learning outcomes, we can test our assignments for their metacognitive value and improve them if necessary.[305] Here are the *metacognitive learning outcomes* I propose:

- Students will learn to *identify* what they are about to do and, afterwards, what they did.
- Students will learn to *evaluate* what they did, both well and poorly.
- Students will learn to *improve* what they did.
- Students will learn to *plan* their future performance.

Although these four outcomes align with Preston and others' observations (I believe) and with the common three-phase process (e.g., "plan, do, and reflect"), I find it incomplete. Students must not only learn to plan but also learn to *apply* what they've planned to future tasks.[306] In order for them to learn to apply, we must teach them to do so. We must guide them through revision of the same writing task using feedback. And we must also guide them through the process of transferring their knowledge to a new, different writing task. Another learning outcome is, therefore, this:

- Students will learn to *apply* their plan to a future task.

Yet the learning outcomes are still incomplete. While these outcomes will teach students metacognitive *regulation*, see Part II. A above, they do not teach metacognitive *knowledge*. These outcomes simply presume that students possess that already.

Recall from Part II. A that the three skills of metacognitive knowledge are (1) to know what knowledge you already have, (2) to know what knowledge the new task requires, and (3) to match your prior knowledge to the knowledge the new task requires.[307]

Learning how to bring prior knowledge to bear on a present task is essential for learning metacognition.[308] Metacognitive knowledge is a prior skill to metacognitive regulation.[309] To

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[303] *Id.* at 1085.
[304] Jaime Alison Lee has articulated a 12-step sequence for metacognition in law schools that she calls "the metacognitive approach." J. Lee, *supra* note 7, at 238–39.
[305] Niedwiecki, *Lifelong Learning*, *supra* note 11, at 164.
[306] *Id.* at 155.
[307] *Id.* at 159.
[308] *Id.* at 160–61.
[309] *Id.* at 161.

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learn metacognitive knowledge, students must be taught how to "match" their prior knowledge with the knowledge required to complete a new task.[310] Thus, the final learning outcome is this:

- Students will learn to *match* their prior knowledge to the knowledge a new task requires.

"Matching" their knowledge means identifying what knowledge they already have, figuring out the knowledge a new task requires, and matching those two things together to accomplish the new task.[311]

These six learning outcomes are not a list, however, and they do not operate in order. They are a recursive cycle, and a student might begin at any place in the cycle.

Rather than thinking of the metacognitive learning outcomes as a list, consider them as spokes on a wheel, one that is constantly turning. When looking at metacognition from the perspective of recursion, one can see that teaching metacognition takes place *across time*: students look to the past to identify what they did.[312] Then, in the present, students evaluate what they did.[313] Finally, students use this present evaluation to plan for the future, in which they apply their plan to a future assignment.[314] So turns the metacognitive wheel.

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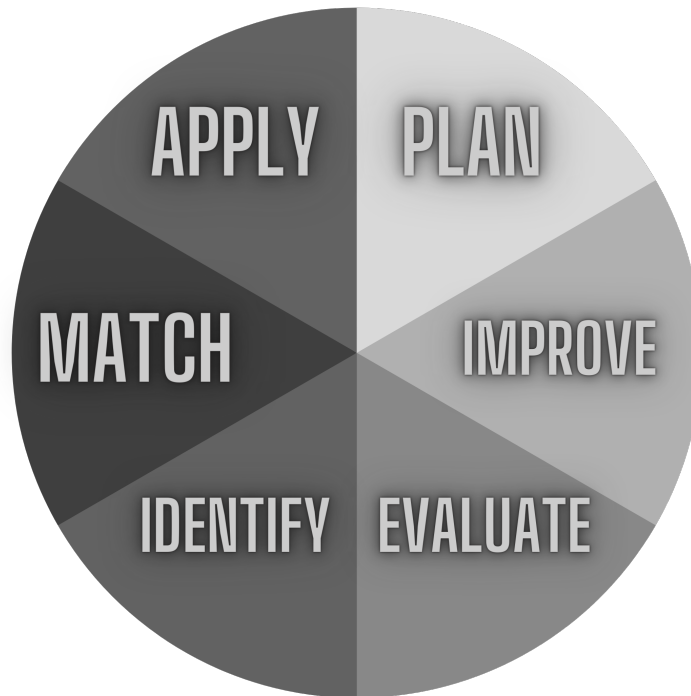
[310] Preston et al., *supra* note 1, at 1086.
[311] Niedwiecki, *Lifelong Learning*, *supra* note 11, at 159.
[312] *Id.* at 161.
[313] *Id.* at 162.
[314] *Id.*

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Next, I look briefly at metacognitive teaching strategies in the literature, comparing them with the metacognitive wheel and suggesting adjustments as needed. The goal is to grow our body of metacognitive teaching materials.

1. Formative Assessments, Done Right, Teach Metacognition

Formative assessments are, according to the ABA, "measurements at different points during a particular course or at different points over the span of a student's education that provide meaningful feedback *to improve student learning*."[315] Drawing from the work of educational theorists, Anthony Niedwiecki provides this definition: "Formative assessment 'is to be interpreted as encompassing all those activities undertaken by teachers, and/or by their students, which provide information to be used as feedback to modify the teaching and learning activities in which they are engaged.'"[316] Niedwiecki draws the connection to metacognition: If law schools "effectively" use formative assessment, "law schools can improve their students' learning abilities and sharpen students' metacognitive skills."[317] Indeed, Joan W. Howarth and Judith Welch Wegner (Wegner was a co-author of the Carnegie Report) suggest that law schools should be assessing—and providing formative assessment on—metacognition itself:

> In light of the importance of knowing what one does not know and what one needs to do to learn it, arguably an exam intended to provide a formative assessment of critical student development at the end of the first year of law school should also endeavor to assess a basic level of metacognition. Formative assessment of metacognition being used in law school classes could be adapted for this purpose.[318]

The point is that formative assessment has always been the best way to provide feedback, and now the ABA is requiring law schools to do it.[319] Furthermore, when done properly, it appears that formative assessment can teach metacognition.[320]

Formative assessment can teach cognition, Niedwiecki suggests, when it "identifies a gap in learning, provides feedback to the student about the gap and closing the gap, involves the student in the process, and advances the students' learning."[321] The best feedback "helps clarify the goals of an assignment, provides opportunities to close the gap between the students' performance and the desired learning outcomes, encourages an open dialogue between the

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[315] ABA, *supra* note 10, at 23 (emphasis added). Compare with the same Interpretation's guidance on summative assessments: "Summative assessment methods are measurements at the culmination of a particular course or at the culmination of any part of a student's legal education that measure the degree of student learning."

[316] Niedwiecki, *Lifelong Learning*, *supra* note 11, at 175 (quoting Paul Black & Dylan Wiliam, *Assessment and Classroom Learning*, 5 ASSESSMENT EDUC. 7, 7 (1998)).

[317] *Id.*

[318] Joan W. Howarth & Judith Welch Wegner, *Ringing Changes: Systems Thinking About Legal Licensing*, 13 FIU L. REV. 383, 419 (2019).

[319] ABA, *supra* note 10, at 23.

[320] Niedwiecki, *Lifelong Learning*, *supra* note 11, at 174–75.

[321] *Id.* at 177.

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professor and the students, and provides information to professors so they can adjust their teaching."[322]

As Niedwiecki describes formative assessment, it touches on five spokes of the metacognitive wheel.[323] "Clarifying goals" lines up with *identification*; identifying "gaps" in learning, giving feedback, and helping students close the gaps lines up with *evaluation* and *improvement*. Providing opportunities to close the gap lines up with *planning* and *applying*. The only spoke not explicitly touched on by Niedwiecki is *matching*, but it would easily fit into the process; for example, when identifying gaps in learning, a professor could discuss with a student ways that the student can use her prior knowledge to fill in those gaps.

The only problem with formative assessments seems to be that professors don't do them or don't do them well: "[L]aw faculties generally do not do enough formative, programmatic, or institutional assessments, all of which are now required to be part of the program of legal education [by the 2016 ABA standards]."[324]

2. Reflections and Self-Assessments Must Include Reflection on Learning Processes

Reflection activities include learning journals, reflection questions (often paired with a writing task or other assessment), self-questioning, learning or reflection blogs, and more.[325]

Per Niedringhaus, "Self-regulated learners spend time reflecting on what they have learned and what they need to spend additional time learning. These students reflect on how effective their strategies for learning and problem solving have been."[326] Thus, in order to teach metacognitive regulation, we should teach reflection. "One way to encourage reflection is through journaling, student podcasting, writing blogs, and participating in discussion boards. Each of these techniques can be used as an open-ended technique or with teacher-directed questions."[327]

Niedwiecki similarly suggests blogs for reflection: "Learning blogs should be used to get the students to actively plan and monitor their learning by requiring them to articulate their learning process."[328] Tonya Kowalski recommends teaching what she calls "metacognitive reflection," which means "planning, monitoring, and evaluating one's own thinking . . . [and] thinking about how to approach a task this time or to do better next time."[329] Methods for reflection include "journaling," writing a "'private memo' to record struggles," and creating

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[322] *Id.*

[323] *Id.*

[324] Niedwiecki, *Prepared for Practice*, *supra* note 295, at 254.

[325] *See, e.g.*, Niedwiecki, *Metacognitive Approach*, *supra* note 254, at 65 (discussing learning blogs); Kristina L. Niedringhaus, *Teaching Better Research Skills by Teaching Metacognitive Ability*, 18 PERSPS. 113, 116–17 (discussing reflection and self-questioning); J. Lee, *supra* note 7, at 245 (discussing reflective questioning).

[326] Niedringhaus, *supra* note 325, at 116.

[327] *Id.*

[328] Niedwiecki, *Metacognitive Approach*, *supra* note 254, at 65.

[329] Kowalski, *supra* note 7, at 101.

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"dialogue with one's legal writing professor or clinical supervisor."[330] Niedwiecki provides an example of a post-task reflection in the form of a self-assessment that students complete when submitting a finished task.[331] "The assessment should ask the students to identify the strengths and weaknesses of their work, allow the students to ask any questions about the assignment, and evaluate whether the students met the assignment's goals."[332] These reflection questions appear to be narrowly tailored to meet the goals of metacognition.

Note that reflections are not quite the same as self-assessment activities, such as questionnaires.[333] Metacognitive questionnaires "provide specific questions" for students to answer, for example, "about the students' past academic experiences that may affect their learning in law school."[334] One metacognitive purpose of such a questionnaire, per Niedwiecki, is to "help[] the students understand how they individually process information."[335] Niedwiecki suggests that "[t]he first self-assessment tool should occur at the beginning of the course, where the students articulate what they bring to the class, including their past learning experiences, their own skill set, their cognitive abilities and preferences, and which skills the course requires."[336] By posing these questions and tying them specifically to the specific skills taught in the course,[337] the professor "engage[s] the students in that first stage metacognition—the knowledge of cognition,"[338] that is, *matching*.

Another type of metacognitive self-assessment that Niedwiecki describes is a post-task assessment, where the student assesses their writing task using guidelines from their professor, then compares their assessment of their work with the professor's assessment.[339] "If the assessment between the students and the professor differs, the students will have to think deeply to determine why the disparity exists."[340]

Do reflections teach students metacognition? Per Preston and others, "Recording reflections in journals and blogs is metacognitive only if students use these resources to identify and reflect on their learning processes, and consequently re-direct such processes."[341] Furthermore, journaling and similar activities only "engage metacognition when the students go beyond recording what happened or the content of what they learned and describe the strengths and weaknesses of their thinking process, take actions to correct errors or weaknesses, and propose solutions for improving their thinking processes."[342] In other words, on the page, most reflection tasks described in the literature do not teach metacognition.[343] Preston and others carve

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[330] *Id.* at 101–02.
[331] Niedwiecki, *Lifelong Learning*, *supra* note 11, at 188.
[332] *Id.*
[333] Niedringhaus, *supra* note 325, at 116–17.
[334] Niedwiecki, *Metacognitive Approach*, *supra* note 254, at 48.
[335] *Id.* at 49.
[336] Niedwiecki, *Lifelong Learning*, *supra* note 11, at 186.
[337] *Id.* at 187.
[338] *Id.* at 186.
[339] *Id.* at 189.
[340] *Id.*
[341] Preston et al., *supra* note 1, at 1084.
[342] *Id.* at 1085.
[343] *Id.*

out an exception specifically for Niedwiecki, who "has provided the best legal scholarship on metacognition to date."[344] They specifically praise Niedwiecki's self-assessment tools.[345]

3. Modeling Is Not Inherently Metacognitive But Can Be Used to Teach Metacognition

Modeling, sometimes called "thinking out loud,"[346] occurs when a professor, while teaching, chooses to "discuss explicitly why choices were made to teach certain materials, demonstrate self-questioning and reflection . . . , and provide a running dialogue or classroom discussion about problem-solving strategies while resources are being taught," to use law librarian Kristina L. Niedringhaus's description.[347]

Many have chimed in about how to use modeling in teaching.[348] Michael Hunter Schwartz, in 2003, described a teaching program that uses "cognitive modeling . . . to show how experts rely on reflection and introspection, balance all the information given and account for its limitations, suspend judgment while considering possible interpretations, rely on field-specific tacit assumptions, and deal with uncertainty."[349] Another important part of modeling is "to connect to prior learning and to teach thinking within the discipline."[350] Niedwiecki states that the purpose of modeling is to "provide[] the students [with] examples of what they should be asking themselves when they read cases."[351] Jaime Alison Lee describes modeling as "when an expert describes to students her 'inner monologue,' demonstrating her intellectual process step-by-step 'by stating out loud every thought with respect to the problem being solved, seeking to provide students with a rough information-processing demonstration.'"[352]

Let's compare modeling with the six metacognitive learning outcomes I described—the "metacognitive wheel"—to see how well modeling can teach metacognition and how it might do so better.

Modeling, in the end, is a demonstration.[353] Without further effort by the student to implement what the professor is modeling, the teaching strategy does not teach metacognition.[354] But it can do so when paired with a teaching task that requires students to actively engage with the modeling.[355]

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[344] *Id.*

[345] *Id.* at 1086.

[346] Schwartz, *Self-Regulated*, *supra* note 286, at 503.

[347] Niedringhaus, *supra* note 325, at 115.

[348] *See* Schwartz, *Self Regulated*, *supra* note 286, at 503.

[349] *Id.* at 503–04.

[350] *Id.* at 504.

[351] Niedwiecki, *Metacognitive Approach*, *supra* note 254, at 64.

[352] J. Lee, *supra* note 7, at 282.

[353] *See id.*

[354] *Id.* at 242.

[355] *Id.* at 282.

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For example, Schwartz describes that professors can model how to connect new learning with prior learning—this type of connection is *matching*, one of the spokes on the metacognitive wheel.[356] This same strategy holds true for all spokes of the metacognitive wheel. For example, as a professor models that process of *identifying*[357] the task the professor is completing, they must, in turn, help their students do the same. Many of our students have trouble understanding what task they are doing at all. For example, a professor might say, while teaching, "Right now, I am writing a rule illustration." A demonstration might ensue. But what follows must be something like, "Let's figure out how you can know when you are writing rule illustrations." This example pairs the modeling of a metacognitive task with instruction for that same task.

Showing how modeling might touch all six spokes of the metacognitive wheel is beyond the scope of this article, but in order for it to teach metacognition, modeling must do so.[358]

C. Teaching Integrated Metacognition Tasks

While the current methods for teaching metacognition can work well, they require two steps: the underlying task[359] itself (such as an LRW writing assignment) and then the separate metacognitive task (e.g., a reflection on the task or a self-assessment).[360] I call these separate metacognition tasks "overlays."[361]

A more efficient and effective approach to teaching metacognition is to integrate the teaching of metacognition into your pedagogy itself. I call assignments that support this pedagogy "integrated metacognition strategies." These tasks are more efficient for LRW professors in the execution stages—during the semester—and more efficient for your students because they have fewer individual tasks to keep track of and complete.[362]

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[356] Schwartz, *Self Regulated*, *supra* note 286, at 504. The relevant metacognitive learning goal that I describe above is, "Students will learn to match their prior knowledge to the knowledge a new task requires."

[357] The relevant metacognitive learning goal that I describe above is, "Students will learn to identify what they did."

[358] *Id.* at 500–01.

[359] J. Lee refers to the non-metacognitive task as the "underlying content." For example, when discussing the metacognitive technique of reflection questions, she writes: "How are students taught to engage in the metacognitive approach? Whatever the underlying content being taught, the most prevalent technique for engaging students in metacognition is to ask carefully crafted reflective questions." J. Lee, *supra* note 7, at 245.

[360] *Id.*

[361] A newish type of overlay is the "exam wrapper." Adams Pate et al., *The Use of Exam Wrappers to Promote Metacognition*, 11 CURRENTS PHARMACY TEACHING & LEARNING 492, 493 (2019) ("Exam wrappers are a metacognitive tool used in conjunction with exam review that guide students to reflect in three key areas: preparation, types of errors made, and what they will change in preparation for the next exam. Although format varies, these tools typically consist of probing questions that guide self-reflection about preparation and performance on the exam, categorizing exam errors by type and frequency, and synthesis of this information to develop goals and strategies to address self-identified strengths and weaknesses.").

[362] *Id.* at 497.

IV. USING GENRE DISCOVERY 2.0 TO TEACH METACOGNITION

Genre Discovery 2.0 teaches metacognition with integrated metacognition tasks. Genre Discovery 1.0 was always meant to teach metacognition, but there were gaps in its pedagogy. Here, I fill those gaps.

I use Genre Discovery 2.0 to modify the five-step process of Genre Discovery 1.0 to make it more approachable for both students and professors. Among its other improvements, Genre Discovery 2.0 also provides a framework for studying genre samples called "document maps."[363] As I show in this Part, this framework not only scaffolds the learning of legal genres but also facilitates even greater learning of metacognition.

But the Genre Discovery 2.0 pedagogy did not emerge in a vacuum. It emerged at 2 a.m. in my living room, via Skype (before Zoom existed), across two cities, into the living room of Professor Alexa Chew. Via Skype, text message, and email, we co-wrote our textbook, *The Complete Legal Writer*.[364] The conditions were adverse: we each had small children, heavy teaching loads, and no rooms of our own. But in the end, we created a book that not only teaches readers about kangatarianism[365] and qiviut[366] but also about how to implement genre discovery.[367] (The book teaches more than genre discovery, but those topics are beyond the scope of this article.)[368]

During the process of writing the book, we taught with PDF drafts, and our supportive colleagues did as well; we received and implemented feedback from not only our colleagues but also our students. We examined the book's strengths and weaknesses and improved the weaknesses. In the end, we took the theory of Genre Discovery 1.0 and created a teaching method to support it. In this Part, I use what Professor Chew and I organically developed to present the theory that underpins our pedagogy and make explicit our metacognitive strategies.[369]

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[363] *See* CHEW & PRYAL, LEGAL WRITER, *supra* note 19, at 32.

[364] *Id.*

[365] In teaching students how to do legal reasoning by extracting invisible rules from case law, our sample fact pattern included these facts: "Mrs. Gibbs is a kangaroo rancher. She raises kangaroos for their meat, which is considered a delicacy by a number of area restaurants. Indeed, she is well known Kangatarian circles as a provider of sustainable, organic kangaroo meat." *Id.* at 46.

[366] A sample case in *The Complete Legal Writer*, *State v. Bosley*, turned on qiviut: "The following facts are uncontested: The victim owned four muskoxen. He harvest qiviut (pronounced KIH-vee-uht), a valuable type of animal fiber, from these muskoxen." *Id.* at 51.

[367] *Id.* at 48.

[368] For example, the book provides a robust pedagogy for citation literacy. *See id.* at 379. ("Learning to read citations is the first step in gaining citation literacy, which means the ability to read and write legal citations fluently. The next step in gaining citation literacy is learning to write legal citations."); *see also* Alexa Z. Chew, *Citation Literacy*, ARK. L. REV. 869, 869 (2018).

[369] In other words, Professor Chew co-wrote approximately 50% of this article metaphorically, if not literally. I excuse her from the literature reviews.

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A. Genre Discovery 1.0 and 2.0 Comparison Chart

Here is a comparison chart of the different learning goals of Genre Discovery 1.0 and 2.0. (You can review Part II-B for more detail about 1.0.)

	Genre Discovery 1.0	**Genre Discovery 2.0**
Step Zero	*Did not exist.*	Learn about the Genre Discovery Approach and how it works. *You will give students an overview of the five steps and explain why Genre Discovery is important. This will create buy-in.
Step One	Learn how to identify a legal document as a genre.	Learn how to identify the genre of the legal document you've been asked to write. * To scaffold Step One, you will tell them what the genre is that they have been asked to write. Teach them about genres by having them match prior knowledge about a familiar genre (e.g., a grocery list) with new knowledge about the unfamiliar legal genre they will be asked to write (e.g., an email memo).
Step Two	Learn how to identify the discourse community (or sub-community) of a legal genre and locate yourself within that community.	Learn how to locate samples and discard outliers. * To scaffold samples, you will give students samples for their first few assignments, such as email memos and office memos, which has the added benefit of saving students the effort of finding samples of non-public (internal) legal documents.
Step Three	Learn how to locate examples of the new genre and figure out which examples are strong and which are weak.	Learn how to analyze your genre using the rhetorical triangle. * To scaffold this assignment, first use the unfamiliar analytical tool to analyze a familiar document (e.g., a grocery list). Then, once the tool is familiar, use it to analyze the unfamiliar document (e.g., the email memo).
Step Four	Learn how to study examples of the new genre to identify conventions, including form, style, and tone.	Learn how to use a document map to identify your genre's conventions. * To scaffold document maps, coach your students about how to structure them, and then help them fill in the maps for their first assignment, partially fill in for their second, and so on.
Step Five	Learn how to put these "discoveries" together and write the new genre.	Learn how to write your document using your document map.

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As I present the five steps of Genre Discovery 2.0, I will discuss how each step touches on the spokes of the metacognitive wheel. I will also present a teaching example for the approach.

B. Step Zero. Introduce Your Students to the Genre Discovery Approach

Genre discovery 2.0 has five steps:

(1) Learn how to identify the genre of the legal document you've been asked to write.
(2) Learn how to locate samples and discard outliers.
(3) Learn how to analyze your genre using a rhetorical triangle.
(4) Learn how to use a document map to identify your genre's conventions.
(5) Learn how to write your document using your document map.

When you teach genre discovery to your students, Step Zero is to give them an overview of the five steps and explain the purpose of learning this approach to legal writing. You can create a handout, for example, to share this information.[370]

Tell your students that learning genre discovery will teach them how to *teach themselves* how to write any legal document they may encounter in the future.[371] These future documents include documents in law school (which will help their GPAs, journal work, and work in law school clinics), as well as documents they will encounter in law practice. Tell them there is a limited amount of time in their LRW course, so they can only learn a few of the many genres they will use in their legal careers.[372] Because of this time limitation, you need to teach them how to be independent learners.[373]

Your goal with sharing this information (what I'm calling "Step Zero") is to create student buy-in. You want your students to be invested in learning genre discovery because, at first, learning genre discovery is hard. If they have friends at other law schools, they might hear that their friends have it easier in LRW courses. Their friends might be receiving templates (either visual samples or in list form). These templates directly tell students how to write legal genres and are easy to follow.[374]

Your students might ask you to just "tell them what to write."

But genre discovery is a metacognitive approach to learning legal writing.[375] Students are learning *how to learn* legal genres, and learning metacognition can be hard, frustrating work.[376]

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[370] *See also* CHEW & PRYAL, LEGAL WRITER, *supra* note 19, at 27–35 chapter on genre discovery.
[371] Pryal, *Genre Discovery*, *supra* note 18, at 371.
[372] *Id.* at 353.
[373] *Id.* at 373.
[374] *Id.* at 368, 373–74.
[375] *Id.* at 375.
[376] Pryal, *Genre Discovery*, *supra* note 18, at 376.

When we teach our students how to do it, we need to be sympathetic to their frustrations. We also need to preview how hard the work might be so that they can manage their expectations. Previewing, too, is metacognitive because it helps our students plan their future work.

Once your students have an overview of the genre discovery approach, it's time to start teaching it.

C. Step One. Learn How to Identify the Genre

In Genre Discovery 2.0, Step One is to learn how to identify the genre of the legal document you've been asked to write.

New legal writers likely do not have the ability to identify the genre of a legal document. They likely do not know the word "genre" at all. Therefore, Step One of Genre Discovery 1.0, learning "how to identify a legal document as a genre,"[377] was far too difficult. The task required students to identify a genre while at the same time learning what "genre" meant.[378] It thus asked them to learn two new concepts at once, which was overwhelming, and it did not teach them to match their new knowledge with prior knowledge, which meant the task failed to teach metacognition.

Therefore, before you teach students to identify the genre of the document they've been asked to write, you must first teach them what genres are and how they work.

For most new law students, learning about genres will require learning new concepts. You can facilitate their learning of this new concept by teaching them how to *match* their prior knowledge to the knowledge a new task requires.[379] To do so, you must also teach students *how to do* matching as a metacognitive skill. Unlike overlay metacognitive learning tasks, with genre discovery, the learning task itself is metacognitive. In the instance of learning to identify a genre, the task requires doing matching *and* teaches matching at the same time.[380]

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[377] *Id.* at 375.

[378] *Id.* at 378.

[379] A parallel concept to matching is the known-new technique. The know-new technique is a way to present new knowledge to a reader of a document by pairing it with knowledge the reader already knows: "The known-new technique is connecting something that your reader already knows—something known—to something your reader doesn't already know—something new. . . . The technique works because *new information is most easily understood by your reader when you bundle it with information your reader already knows*." CHEW & PRYAL, LEGAL WRITER, *supra* note 19, at 397 (emphasis added).

[380] Susan Greene and Meg Holzer present a learning activity that also used matching, in their case, to teach IRAC. Instead of forming arguments about the law using the IRAC structure, which would require learning two new things (the law and IRAC), students are asked to form arguments (using IRAC) about photographs. Photographs are something they are already familiar with. "[T]o get students to buy into IRAC as an effective organizational tool, we made sure to place the exercise outside of any professional realm. Our goal was for students to see the practicality of IRAC in everyday life. As such, we structured the exercise with a 'real world' problem and audience." Susan Greene & Meg Holzer, *Between IRAC & a Hard Place: A Strategy for Winning Early Student Buy-In to the Paradigm*, 34 SECOND DRAFT 1, 4 (2021).

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1. Use a Familiar Genre to Teach Genres, Which Build on Knowledge Students Already Have

To teach your students about genres, start by using a genre that your students are already familiar with. The familiar genre will activate your students' prior knowledge—that is, the knowledge that they will use to match with the new knowledge about genres that they will be asked to write.

Here is an activity that you can use, one that I have used with success. Plan to use this activity during the class period when you introduce the first legal writing task. The activity should take up less than half of the class period, and it should be followed closely by the introduction of the first legal genre. Following the activity with the introduction of the legal genre will help your students match their existing knowledge with the new.

At the beginning of class, tell your students that they are going to learn about genres. Give them the definition of "genre," the definition of "conventions" with regard to genres, and anything else you want them to know about genres in order for them to do genre discovery.[381] You can give them this information by creating a handout, for example. Acknowledge to your students that this knowledge is likely unfamiliar to them. Tell them that you will now help them match it with the knowledge they already have, and explain what matching is.

For example, you might tell them what you are doing like this:

When learning something new and weird, like "genres," it is easier to start by connecting the new and weird thing with something that is familiar to you. So we're going to do a short exercise that will help you understand what genres are by looking at a genre that is familiar to you. This process is called "matching": you are matching your prior knowledge with new, unfamiliar knowledge. When you learn new things in the future (in my class or law school), you can use matching to help you learn new stuff.

You will modify that language to suit your teaching style, but the point is you are not only using matching to teach genres, but you are also using matching to *teach matching*.

In this activity, you need to select a genre that is familiar to most of your students. I use a grocery list. You can use another everyday genre if you'd like.

Here's the task:

First: In class, have each of your students individually write a grocery list. Have them write the genre the way they would ordinarily do so, using the medium they would ordinarily use (paper, cell phone notes, etc.). Make sure that they know in advance that their lists will be seen

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[381] *See, e.g.*, CHEW & PRYAL, LEGAL WRITER, *supra* note 19, at 27–35 (Chapter 3, "Genre Discovery," provides an overview of the knowledge of genres that students might need for learning to do genre discovery).

by their classmates, but also make sure that they write their lists as close to the way they ordinarily do. Some students might be embarrassed about the prospect of their lists being shared and will modify their list-writing, but that will not alter the outcome of the assignment.

Second: Once the students finish writing their lists, share them one at a time. Ideally, share them so that everyone can see each list as a large group. For each list, ask, "How can you tell that this document is a grocery list?" Their answers will be statements like, "it's a list," and "there is food." As your students call out answers, write them on your whiteboard (or a similar classroom feature). Scroll through as many student sample lists as possible, writing down answers to the "how can you tell" question. You will likely get similar or the same answers for each list you show. When that happens, write hash marks next to those statements to keep count. Ideally, when you are done, a few of the statements (e.g., "it's a list") will have many hash marks next to them. Talk about the differences between the lists. Talk about why the lists are recognizable as grocery lists even though they have differences.

Third: Ask if anyone had trouble identifying some of the lists as grocery lists. There may be some outliers among the lists that fall so far beyond the genre conventions of "grocery list" that they aren't recognizable as grocery lists at all. Teach what an outlier is.

Fourth: Turn to the list of answers to the question, "How can you tell that this document is a grocery list?" The answers, especially the ones with many hash marks next to them, are likely the conventions of the genre. The conventions your students named might be these:

- a list of items;
- mostly food;
- stuff you can purchase at a grocery store.

Talk about how these commonalities are genre conventions. Point to the handout with genre concepts on it and tell them to match their prior knowledge (what makes a grocery list) with the new knowledge (what a genre convention is). Point out to your students that variations don't matter (for example, whether the list is numbered, on paper or digital, vertically listed, or run together with commas) so long as the conventions are met.[382] Point out how the outliers deviate too far from these conventions, and that's why they can't tell the outliers are grocery lists.

Fifth: Remind your students that they have learned what genres are, how conventions shape a genre, and how a genre can vary while sharing the same conventions. Ask them for feedback regarding these learning goals.

Sixth: Explicitly explain how they *matched* their prior knowledge (i.e., of grocery lists) to the knowledge a new task required. Tell them, "You used a familiar genre while you learned about what genres are and how to analyze genre conventions. We did this on purpose so you could match your prior knowledge with new knowledge."

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[382] Please note: My words here are an oversimplification of genre theory. But I think they will do for the purposes of this teaching method.

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Seventh: It is time to blow their minds: Tell them, "The knowledge of genres and how they work belongs to you. This knowledge is now your 'prior' knowledge. You will use this prior knowledge of how genres work to study a legal genre that you are likely unfamiliar with. Right now."

2. As You Go, the Unfamiliar Becomes the Familiar

Your students just finished using grocery lists to learn about genres and conventions. They also learned about matching, a spoke in the metacognitive wheel, when they *matched* their prior knowledge of "grocery lists" to the knowledge required by the task of "learning about genres." Finally, they learned that they now possess "knowledge about genres," and that is their new "prior knowledge." It's time to introduce them to their first legal writing task so that they can match their prior knowledge of genres and conventions to the knowledge required by the new task—identifying a legal genre.

Now, suppose the first writing task you are teaching is an email memo. It is a single-issue problem, and the research is closed universe. Say the turnaround time is one week, and the word count is limited to 500 words.

Recall that the learning goal of Step One of genre discovery is for students to be able to "identify the genre of the legal document you've been asked to write." Most first-year law students have likely never encountered an email memo before.[383] Thus, to scaffold[384] genre discovery, you will, for this first assignment, tell them explicitly what the genre is—for example, in your assigning memo. (That's how I do it.)

After your students finish the grocery list activity and you prepare them to match their newly acquired knowledge, give them the assigning memo for the email memo assignment. Before they read the assigning memo, tell them that an email memo is a genre and has conventions. They will know what those things mean because that knowledge matches the knowledge that they learned during the grocery list exercise. You will also tell them that, over the next time period (however your classes are scheduled), they will discover what those conventions are using the steps of genre discovery. Explicitly say that you will not be giving them a template for how to write an email memo.

At this point, they might get annoyed that you aren't giving them a template. You might tell them something like this:

> I'm not going to give you a list of steps for how to write an email memo. Just as there is no static grocery list, there is no static email memo. You don't, and you shouldn't, memorize someone else's steps for how to write one. That's the point of genre discovery—you learn how to generate the steps yourself for whatever document you need to write. For this first assignment, I'm going to help you a lot.

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[383] Fershee, *supra* note 150, at 3.

[384] For an explanation of scaffolding, *see* Fruehwald, *supra* note 87.

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As the semester goes on, you won't need my help as much. By the end of the semester, you will be able to figure out how to write any legal document without my help. After all, in the future, you need to be able to write legal documents independently.

By explaining what the task is (writing an email memo, with some guidance from you) and what the ultimate outcome will be (writing legal documents independently), you not only create buy-in with your students ("I'll be able to write *any* legal document? Sweet!") but also metacognition. Recall that to *plan* for future performance is a spoke on the metacognitive wheel.

At this point, you are ready to move on to the second step of genre discovery: locating samples.

D. Step Two. Locate Samples and Discard Outliers

Step Two of Genre Discovery 2.0 is this: to learn how to locate samples and discard outliers. Learning from samples is at the heart of genre discovery because "students who are novices in a genre or a discourse community will learn more quickly and more easily from examples and models."[385]

In Genre Discovery 1.0, Step Two was to learn how to "identify the discourse community . . . of a legal genre and locate [yourself] within that community"; Step Three was to learn how to "locate examples of the new genre and figure out which examples are strong and which examples are weak."[386] However, in Genre Discovery 2.0, with feedback from colleagues (and use of basic logic), I've swapped Steps Two and Three because it is impossible to do an analysis of a document that you don't have samples of.

1. The Literature on Samples Says You Must Give Students Guidance

Using samples to teach students how to write legal documents is not a new strategy.[387] The prevailing wisdom is that if you are going to give your students samples to use, you must also give guidance about how to use the samples.[388] In 2005, Judith B. Tracy explained how to use sample office memos to help students inductively discover the structure of a memo.[389] Per Tracy, such inductive learning via samples also creates buy-in to the memo structure: "This self-realization of the structure of the presentation provides students with the ability and willingness to apply it to a current memorandum assignment."[390] In 2006, Niedwiecki stressed that students should be given guidance when studying samples: "The students insert comments after each sentence in the [sample] memo to show where there is a rule statement, a topic sentence, a fact-

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[385] Terrill Pollman, *The Sincerest Form of Flattery: Examples ad Model-Based Learning in the Law School Classroom*, 64 J. LEGAL EDUC. 298, 314 (2014).
[386] Pryal, *Genre Discovery*, *supra* note 18, at 375–76.
[387] *See generally,* CHEW & PRYAL, LEGAL WRITER, *supra* note 19; Pryal, *Genre Discovery*, *supra* note 18.
[388] Pryal, *Genre Discovery*, *supra* note 18, at 380.
[389] Tracy, *supra* note 248, at 328.
[390] *Id.* at 328–29.

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to-fact analogy, and so forth."[391] Niedwiecki thus guides his students in their analysis of the document.[392] In 2010, Chris Coughlin and others advised using "several samples, not just one."[393] One reason for doing so is to avoid having students misconstrue a sample as a "model" or perfect answer.[394] Another reason to use multiple samples is to facilitate transfer: "[E]ducational psychologists have posited that '[e]ncountering multiple examples enable solvers "to form generalized rules that are not restricted to overly specialized contexts thus facilitating transfer."'"[395] Others have also covered the topic.[396]

Providing guidance when studying samples is central to the genre discovery approach, and Genre Discovery 2.0 provides even more guidance than Genre Discovery 1.0.

2. At the Beginning, Give Them Samples Outright

As I stated earlier, Step Two of genre discovery is to learn how to locate samples and discard outliers. Because this is the first time they have done genre discovery, you will simply give them samples. Therefore, you will need to have those samples on hand, ready to distribute.

With this first assignment, then, I advise *not* spending class time teaching your students how to search the internet for samples. Instead, teach your students about searching for samples by sharing something like this:

> When you do genre discovery, you can easily find samples of public documents, such as complaints, trial and appellate briefs, and judicial opinions, on the internet. It is harder to find samples of internal documents, such as memos and letters. However, in practice, your firm will have samples that you can use (often called go-bys). With this email memo assignment, we will use mock internal go-bys that I'm about to give you. In future assignments, I will teach you how to use internet searches to find samples.

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[391] Niedwiecki, *Metacognitive Approach*, *supra* note 254, at 67.

[392] *Id.*

[393] Coughlin et al., *supra* note 43, at 388.

[394] *Id.*

[395] Coughlin et al., *supra* note 43, at 388 (quoting Zhe Chen, *Schema Induction in Children's Analogical Problem Solving*, 91 J. EDUC. PSYCH. 703, 703 (1999)).

[396] Recently, Jonathan Garcia conducted a study whose findings suggested that legal interns rely heavily on samples when they enter the workplace and therefore suggests LRW professors teach students how to use them. He suggests a rhetorical genre approach to studying samples so that "whenever [students] are asked to write a new genre, can first analyze that genre's rhetorical situation, can next seek out as many examples as possible, and can then learn more confidently from trial and error because instructor feedback and mentorship can point out what rhetorical moves work and which ones do not and why." Garcia notes that working with samples in this fashion is important "[b]ecause no course can teach students all legal writing genres." Jonathan Garcia, *How Do Law Students Develop Writing Expertise During Summer Internships?: An Interview-Based Study*, 23 LEGAL WRITING 129, 165 (2019); *see also* Pryal, *Genre Discovery*, *supra* note 18, at 353 ("Because no legal writing course can hope to teach law students how to write every text that lawyers encounter in practice, we must ask ourselves this question: how do we prepare students to write legal documents that we never teach them to write?").

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This information allows your students to see the big picture of the task and situate themselves within that big picture. Although they are receiving samples from you at this phase of *this* assignment, in future assignments, they will have to find their own. In metacognitive terms, this knowledge helps them *plan* for future work (finding their own samples on a future LRW assignment *and* using go-bys in legal practice) and *identify* the work that they're about to do now (using samples they will receive from you). Your information helps them situate themselves on the metacognitive wheel.

As an added benefit, giving students samples of email memos and office memos, which are typically the first assignments of a student's law school career, saves students from the nearly impossible task of finding samples of these non-public (internal) legal documents.

Once your students understand where they are on the metacognitive wheel *and* in the genre discovery process, distribute your sample email memos. You should have three. If you only give one sample memo, your students will treat it as a model or template.[397] If you give two, they will compare them to see which is "better" and use the better one as a model.[398] With three, there is enough variety for students to learn how to analyze the similarities and differences between the samples and to learn that one document can have strengths and weaknesses.[399] The samples can be different from each other in some ways, but they must share the conventions of the email memo that you want your students to learn (no outliers).[400]

As the semester goes on, you can scaffold "locating samples" by providing two and having them locate one, then providing one and having them locate two, and so on. Also, teach them about outliers, "a sample that is wildly different from the others."[401] Match legal genre outliers to their knowledge of grocery list outliers. Teach them that if they "have an outlier, set it aside. The outlier probably *bends too many conventions* of the genre."[402]

Now that they have the three sample email memos in hand, they are ready to begin their analysis of the genre.

E. Step Three. Analyze the Genre Using the Rhetorical Triangle

Step Three of Genre Discovery 2.0 is to learn how to analyze the genre using the rhetorical triangle.[403]

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[397] *See* Coughlin et al., *supra* note 43, at 388.

[398] *Id.*

[399] *See id.*

[400] To learn more about the conventions of the email memo, *see also* CHEW & PRYAL, LEGAL WRITER, *supra note* 19, at 129–35 (Chapter 10, Email Memo). *See generally* Desnoyer, *supra* note 198.

[401] CHEW & PRYAL, LEGAL WRITER, *supra* note 19, at 33.

[402] *Id.*

[403] For more on using the rhetorical triangle to analyze a genre, *see id.* at 5.

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In Genre Discovery 1.0, Step Two was to learn how to "identify the discourse community . . . of a legal genre and locate [yourself] within that community."[404] This learning goal was overly full of jargon specific to the discourse community (heh) of rhetoric scholars and was of little use to legal writing professors or legal writers—and especially of little use to *new* legal writers. (It also required a legal writer to identify the discourse community of a genre without having a sample of the genre, which is why Step Two is now Step Three.)

A simpler way to state the goal is this: to learn how to analyze your genre's audience, your genre's purpose, and how you want to come across as a writer of the genre. Those three tasks make up a rhetorical analysis using the rhetorical triangle.[405]

Once your students know that the genre they are writing is an email memo and have located samples of the email memo (which, in this instance, you have given to them), you are going to help them understand more about the email memo using the rhetorical triangle: audience, speaker, and persona.[406]

Here is a specific teaching activity.

Like with Step One, before using an unfamiliar framework (the rhetorical triangle) to analyze an unfamiliar document (the email memo), use the unfamiliar framework to analyze a familiar document. (Note: Some students might be familiar with the rhetorical triangle from their undergraduate education. If so, great!) You can use the grocery list again, or you can pick something else. The point is to pick something familiar to your students. Then, remind them that this is a task similar to one that they have done before so that they can touch various spokes of the metacognitive wheel: *identify* the task they did before and the task they're about to do now, *match* their knowledge of the two tasks, *plan* how to complete the present task, and so on.

Here's the exercise:

Display the three familiar genre samples to your students and have your students identify the genre. Then, go through the same steps of the grocery list from the exercise in Step One. Start by identifying similarities—the conventions. Then identify differences and note how these differences don't make a difference when determining whether the genre is the genre.

Now pause. Ask your students to *identify* what task they just completed, which was the identification of a genre. (Recall that "identify" is a spoke on the metacognitive wheel.) They need to know what task they just completed because they're going to step forward into a new task—a rhetorical analysis of the flier. Tell them this as well.

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[404] Pryal, *Genre Discovery*, *supra* note 18, at 375–76. As a sidenote: The term "discourse community" is important, but it isn't important so much to law students. And, in any event, they likely don't know what it means to "locate yourself within" a discourse community. Most lawyers don't know either. In short, I made Step 2 overly complicated and therefore unpractical.

[405] CHEW & PRYAL, LEGAL WRITER, *supra* note 19, at 5.

[406] *Id.*

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Now, use the rhetorical triangle to analyze the audience(s), purpose(s), and persona(s) of one (or more) of the fliers. I suggest you do this as a small-group exercise.[407] Have the groups come back together and share their rhetorical analyses, comparing their findings.

Only after your students are familiar with conducting rhetorical analyses—matching their current knowledge with new knowledge—do you move on to a rhetorical analysis of an unfamiliar document. Tell your students that because they know how to conduct an analysis of a familiar document, they can now match their (now current) knowledge of rhetorical analysis to the new task of a rhetorical analysis of an email memo. The genre might be unfamiliar, but the analysis process is not. Furthermore, *matching* is no longer unfamiliar; neither is *identifying* the task. Ask them to use their prior knowledge of genres and rhetorical analyses to *plan* their rhetorical analyses of the email memo.

Then, assign the rhetorical analysis of the genre of the email memo as an individual writing task. Students should analyze all three memos as a set. The analysis task should be short, perhaps 100 words per "corner" of the rhetorical triangle. After they write the task, have volunteers share some with the class so that they can *evaluate* their performance on the task. The rhetorical analysis is mission-critical to writing an effective email memo, so their evaluations are also mission-critical. Have them quickly revise their analyses based on their evaluations before moving forward to Step Four.

F. Step Four. Use a Document Map to Identify a Genre's Conventions

Step Four of Genre Discovery 2.0 is to learn how to use a document map to identify a genre's conventions.

In Genre Discovery 1.0, Step Four was to learn how to "study strong samples of the genre to identify conventions."[408] Over time, it became apparent that this step needed a lot of scaffolding, even more than any of the other steps. As I noted above, the literature on studying samples reveals that students need guidance when learning to study samples.[409]

When we wrote *The Complete Legal Writer,* my co-author, Alexa Z. Chew, and I created a guidance system called "document maps."[410] A document map is a chart on which a writer notes their observations about a genre's samples and synthesizes their observations in order to identify their genre's conventions.[411]

We suggest three columns for a document map:

[407] I'm presuming that you are familiar with how to use the rhetorical triangle to analyze a document. If you are not familiar with this task, *see* Joseph S. Jackson, *Adding Genre Discovery to 1L Writing Instruction*, 29 PERSPS. 5, 6 (2021).
[408] Pryal, *Genre Discovery*, *supra* note 18, at 375.
[409] *See supra* Part II.B.1.
[410] CHEW & PRYAL, LEGAL WRITER, *supra* note 19, at 32.
[411] *Id.*

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Genre Structure:	Genre Execution:	Your Judgment:
What document *parts* do you see?	In what *ways* do you see the parts structured or worded?	What will you do?[412]

As a legal writer studies their samples, they initially fill in the first column, noting all of the common parts shared by the genre samples.[413] We suggest these instructions in the book: "Taking the documents together, what is the overall structure that you see? Are there headings? Where do the parts go in the document?"[414]

After filling in the first column as much as possible, the legal writer then moves on to the second column, where they note the following: "[H]ow [did] the writers of each sample *execute[]* the document parts [they] wrote in the first column"?[415] In the third column, they synthesize their observations to describe how they will write their own document.[416]

Early in the semester, it is important to aid students in writing their document maps to scaffold the process. As the semester goes on, students are able to write the document maps on their own.

1. Document Maps Are Schemata

Although the guidance system for analyzing samples that Chew and I created is the document map, when you teach with genre discovery, you can use any system that works for you so long as it provides a *schema* for analyzing genre samples. The schema is essential for metacognition. Elizabeth Fajans and Mary R. Falk explain the importance of schemata: they help students swiftly acquire new knowledge and put past knowledge to work in present situations.[417] Jill J. Ramsfield also discusses schemata, explaining how they help us connect old and new information: "Schema theory suggests that we remember new information by comparing it to old, familiar information that is stored in patterns, or schemata, in our brains."[418] Schema thus aids in *matching*.

Because new legal writers lack "past knowledge and experience," we must scaffold schemata—"interpretative frameworks"—for them. We do so by providing document maps (or a schema of your choice). Furthermore, with writing tasks early in the semester, we also assist our

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[412] *Id.*
[413] *Id.* at 33.
[414] *Id.*
[415] *See id.*
[416] CHEW & PRYAL, LEGAL WRITER, *supra* note 19, at 32.
[417] Fajans & Falk, *supra* note 116, at 177.
[418] Ramsfield, *supra* note 90, at 170.

students in filling in their document maps, thereby coaching students on how to use the schema to acquire and store knowledge for future use.

As students fill in their document maps during the semester—as the map *moves across time*—students are able to compare analyses of various genres against one another. This comparison reveals multiple layers of knowledge to the student. When a student compares her first document map of an email memo to her second document map of an office memo, she is not only comparing the samples of one genre (which is genre analysis) but also how she conducted her analysis of that genre with how she conducted the analysis of later genres in the semester. The schema itself thus teaches the student many metacognitive skills:

- The student can *identify* what they did.
- Looking back at earlier schemas and comparing them to later ones, the student can *evaluate* what they did (well or poorly).
- The student can then *improve* on what they did.
- Using this information, the student can *plan* for improved future performance.
- The student can *apply* this plan to a future schema.
- When writing the future schema, the student can *match* past knowledge of schema writing to the new task.

Wow. Using document maps (or a schema of your choice) teaches students *every spoke* of the metacognitive wheel.

2. Scaffold Your Students' First Document Maps

Let's see how document maps work in a classroom setting by returning to the hypothetical teaching demonstration of an email memo at the beginning of the first semester.

At this point, your students have learned about genre discovery itself (Step Zero), and they have learned what genres are and identified the genre they are writing as an email memo (Step One). They have learned about locating samples of genres and outliers, and you have given them sample email memos (Step Two). They learned how to conduct an analysis using the rhetorical triangle, and they wrote analyses of their sample email memos (Step Three). Now that they understand the audience of the email memo, the purpose, and how they, as writers, should come across while writing it, it is time to dig in and figure out how to do so.

In this teaching hypothetical, I'm assuming that you are using the document map schema designed by Chew and me.[419] I prefer to have students use a spreadsheet to write their document maps so that it is easier for them to see how their analysis moves across time. They can use Google Sheets, Apple Numbers, or Microsoft Excel; it doesn't matter. They will do a repeating series of three columns, one after another, as they progress through their LRW course. They will

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[419] You can download a blank document map to teach under Student Resources, THE COMPLETE SERIES FOR LEGAL WRITERS, completelegalwriter.com.

thus have, in one spreadsheet, as you read from left to right, document maps for the email memo, office memo, client letter, trial brief, and so on. I recommend you guide your students this way as well so that they can see how document maps *move across time*. They can make connections between genres. They can see how their learning progresses.

Before you do this activity, you must teach your students what document maps are and how they work. Instruction on document maps prior to writing them is essential. You can draw from this article, for example, to make a handout.

First: Once students know how to write document maps, have each of your students create a document map spreadsheet in the software of their choice. Have them label the first three columns this way (as I described above):

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?[420]

Second: Just like with Steps One (identify the genre) and Three (rhetorical triangle), your students are about to use an unfamiliar framework (the document map) to analyze an unfamiliar document (the email memo). Instead, have them use the unfamiliar framework to analyze a familiar document so that they can learn the framework first.

I call the familiar document "Genre Zero." Genre Zero will fill the first set of columns on their document map spreadsheet. Because they will have Genre Zero on their document maps, they will have prior knowledge to match with future genres before they ever analyze a legal genre using document maps. Be sure to share the many purposes of Genre Zero with your students as they work through this activity.

Genre Zero can be any formal document that they have written, either for work or for school. As a legal writing professor, you can probably think of some formal genres that might work well for Genre Zero. Here are some suggestions:

- Lab report for a science class or a science workplace.
- A white paper or report for a political workplace.
- Cover letter for a job application. (Most students will have one of these.)

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[420] CHEW & PRYAL, LEGAL WRITER, *supra* note 19, at 32.

Before class, message your students so they have at least one document on hand that they can use as their Genre Zero. Let them know that they will be working in small groups; they need to know in advance that others will see their document.

Genre Zero is a genre your students already know how to write; after all, they've written it. Filling out the document map with Genre Zero, then, is not really "discovery" of the genre but rather a *discovery of the document map*. Tell them this.

Have them work in groups to fill in the document maps using their Genre Zeroes and the instructions you gave them about document maps. Although each person is writing their own document map, they can ask each other questions to ensure they are doing the activity properly and share their maps with each other to get ideas for how to fill them out.

Third: Have student volunteers share their Genre Zero maps with the whole class. Viewing three or four of them, talk through whether the document maps are filled out properly or not. After this discussion, allow students time to revise their Genre Zero maps.

Fourth: Have your students create a new set of document map columns adjacent to the first three. It's time to analyze a new genre—the email memo. Some students might like to use shading to differentiate between genres on the document map as their spreadsheet grows. Wonderful!

Fifth: As a class, you will create the document map for the email memo genre. By working together through the first legal genre, you are scaffolding the process of discovering a new genre. Your students are already familiar with the analysis structure of document maps from their Genre Zero task. Now, they can match that knowledge to the new task of writing a document map of the email memo. To speed things up, you can even give them a handout of a partially completed document map for an email memo and have them copy it into their spreadsheets.

Sixth: After they have completed their document maps for the email memo, have them compare that map with the Genre Zero map. What are the similarities and differences between the genres? Teach them how to do this comparison. Explain that once they are writing legal genres, especially legal genres that share some characteristics, being able to compare document maps will help them transfer knowledge from one genre to the next. Lastly, reassure them that, for the first few genres they write, you will continue to provide (gradually less) assistance with filling in their document maps.

G. Step Five. Write Your Document Using Your Document Map

Step Five of Genre Discovery 2.0 is to learn how to write your document using your document map.

Once students have completed their document maps for the email memo, the third column should contain instructions that they have written to themselves on how to write the document.

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In your course, they still need to learn how to execute other fundamental components of legal writing, such as legal analysis structure (i.e., C-RAC), legal citation style, and more. These components, however, should *also* be noted in their document maps: Did the email memo use formal citation style? Did it use C-RAC or a modified version? New legal writers' unfamiliarity with all of the components of writing a legal document is one reason we must scaffold the document maps.

Now it is time to teach them, in your way, how to use their discoveries to write the email memo or other legal document you chose to start your semester with. As you do so, remind them that they are working from a template they helped create and that they will be able to create one on their own by the end of your course.

V. Conclusion

This article adds to the important discussion on metacognition, genre theory, and legal education generally. As I have shown, Genre Discovery 2.0 is the ideal way to teach legal research and writing to new legal writers because it integrates metacognition into its pedagogy. The approach gives new legal writers the skills they need to learn how to write in law school, how they learn, and how to be lifelong learners.

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