



ARTICLE

Teaching Genre Through Descriptive Analysis

Susan L. Tanner

*Assistant Professor of Professional Practice
Louisiana State University, Paul M. Hebert Law Center*

Published: May 2022

As a Legal Writing professor, I am always looking ahead to how my students will use what they have learned in my class when they are eventually asked to apply those skills in their other classes, clinics, internships, and jobs. And yet, I find it easy to lose sight of the importance of transfer in the midst of all the other demands of my course. I so constantly need to give my students enough guidance to write a good legal memo or appellate brief *right now* that I often deprioritize the long-term goal of preparing them for the types of writing they will be asked to do in their summer internships and first jobs. As a result, I find myself concentrating on “just-in-time” interventions to help students get past an immediate hurdle and worrying less about whether students are developing the grit and skills to allow them to rise to the challenges they will inevitably face down the road. Consequently, my lofty goals of helping my students develop transferable skills often take a back seat to making sure they can write a good appellate brief at the end of the semester.

Perhaps there are pragmatic reasons for this. Rigorous studies on student writing transfer often yield disappointing results.¹ Few empirical studies on student transfer exist specifically within the context of the legal writing classroom.² A recurrent theme in the literature about transfer is that genre knowledge is key, but there are few resources that speak to best practices on teaching genre in the LRW classroom.³ This paper will introduce one writing activity focused on teaching genre as a way of increasing transfer and explain how I have adapted it for my purposes in my classroom.

1. Genre and Transfer

Numerous writing studies show that genre⁴ and transfer are intricately linked. Genre awareness helps most directly with *near transfer*,⁵ a student's ability to transfer knowledge of one writing task to another, substantially similar task (e.g., writing an office memo for class and then later writing an office memo during an internship). It is also helpful with *far transfer*,⁶ or transferring skills to a

¹ See generally ANNE BEAUFORT, *COLLEGE WRITING AND BEYOND: A NEW FRAMEWORK FOR UNIVERSITY WRITING INSTRUCTION* (2007); Linda S. Bergmann & Janet S. Zepernick, *Disciplinary and Transfer: Students' Perceptions of Learning to Write*, *WRITING PROGRAM ADMIN. J.*, Fall-Winter 2007, at 124, 127; LEE ANN CARROLL, *REHEARSING NEW ROLES: HOW COLLEGE STUDENTS DEVELOP AS WRITERS* (2002).

² But see Mary Nicol Bowman & Lisa Brodoff, *Cracking Student Silos: Linking Legal Writing and Clinical Learning Through Transference*, 25 *CLINICAL L. REV.* 269, 272 (2019); Anne M. Enquist, *Unlocking the Secrets of Highly Successful Legal Writing Students*, 82 *ST. JOHN'S L. REV.* 609, 611-23 (2008).

³ But see Joseph Jackson's recent article in *Perspectives*, in which he advocates for an inductive-reasoning model of genre instruction: "Genre discovery . . . , with regard to larger-scale, document-level concerns of substance, organization, and tone, . . . shifts some of the method of instruction from frontal transmission—professors telling students what the sections of an office memo are, or how to frame a Question Presented or Brief Answer—to a more inductive and interactive approach, asking students to tease out from a set of examples how a Question Presented should be structured, or what information a Brief Answer should contain." Joseph S. Jackson, *Adding Genre Discovery to 1L Writing Instruction*, *PERSPS. TEACHING LEGAL RES. & WRITING*, Spring 2021, at 5, 7.

⁴ My understanding of genre is largely predicated on Carolyn Miller, *Genre as Social Action*, 70 *Q. J. SPEECH* 151 (1984). While genre is often thought of as a textual artifact, it really is a reflection of the shared values of a discourse community. Genres are generative—that is, they spring from a need to accomplish something in particular—and they are always evolving. I tell my students to think of genres like stabilized rhetorical situations. That is, similar rhetorical situations reappear enough that particular writing strategies become more entrenched.

⁵ Angela Rounsaville, *Situating Transnational Genre Knowledge: A Genre Trajectory Analysis of One Student's Personal and Academic Writing*, 31 *WRITTEN COMMUN* 332 (2014).

⁶ David N. Perkins & Gavriel Salomon, *Transfer of Learning*, in *INTERNATIONAL ENCYCLOPEDIA OF EDUCATION* (2d ed. 1992).

less-closely related writing task (e.g., from the first-semester memo to first-semester exams). Genre is so fundamental to writing transfer that it is the organizing principle in many legal writing handbooks.⁷ But mere familiarity with a genre form may not be as useful to student learning as a broader genre knowledge and awareness of rhetorical situation.⁸

If we think of genre less as a noun than as a verb, genre becomes a response to a repeated rhetorical need and an artifact of a writing process, not merely a written product. That is, it considers what an author is trying to accomplish in a particular type of document, and the various means the author uses to achieve those goals rather than simply the words on the paper. Attention to this process can create a valuable learning opportunity for students to begin to realize how foundational an understanding of genres is to an understanding of the legal profession more broadly. One way students can do so, according to Berkenkotter and Huckin, is to “study the textual character of disciplinary knowledge” by “exam[in]g both the situated actions of writers, and the communicative systems in which disciplinary actors participate.”⁹ By paying attention, not just to *what* attorneys write, but *how* they write, students get a better understanding of what they will be asked to do in the future.

In my class, I have adapted a process pioneered by these and other scholars in the Writing across the Curriculum and Writing in the Disciplines (WAC/WID) and Professional Communications fields, the *Comparative Genre Analysis*.¹⁰ Using a modified version, what I call Descriptive Analysis, students learn how to work from model writing samples to understand a new genre.

I introduce the topic by priming students to think about future writing they will be asked to do. The first day we discuss genre in class, I pose the following question to my students: *You are a 2L and you just made law review (congratulations!) You know you will have to write a note but have no idea how to do so. Where do you turn first?* Then, I ask my teaching assistants to share the process they use

⁷ See, e.g., HELENE SHAPO ET AL., *WRITING AND ANALYSIS IN THE LAW* (7th ed. 2018); ANN SINSHEIMER ET AL., *LEGAL WRITING, A CONTEMPORARY APPROACH* (2d ed. 2018); RICHARD K. NEUMANN JR. ET AL., *LEGAL REASONING AND LEGAL WRITING* (8th ed. 2017).

⁸ I borrow my definition of “genre knowledge” from Berkenkotter and Huckin: “The term ‘genre knowledge’ refers to an individual’s repertoire of situationally appropriate responses to recurrent situations—from immediate encounters to distanced communication through the medium of print, and more recently, the electronic media.” CAROL BERKENKOTTER & THOMAS N. HUCKIN, *GENRE KNOWLEDGE IN DISCIPLINARY COMMUNICATION: COGNITION/CULTURE/POWER* ii (1995).

⁹ *Id.*

¹⁰ See Joanna Wolfe et al., *Knowing What We Know about Writing in the Disciplines: A New Approach to Teaching for Transfer in FYC*, 25 WAC J. 42 (2014).

in law review to learn how to write a note/comment. At my home institution, new law review students are given a binder of successful student notes and told to look through the examples and model their paper after those. As a class, we talk about other such experiences my students have had in the past. I explain that these are common experiences in “real world” writing situations and in many professional writing scenarios and preview how similar situations may come up in their future jobs.

2. Three Common Types of Writing Instruction for Learning Genre

Next, I preview three common types of writing instruction with which they may or may not be familiar, and we discuss the drawbacks and benefits of each.

2.1. *Prescriptive Instruction*

Both students and professors find comfort in prescriptive instruction about genre. Under this schema, a scholar of a particular genre (e.g., an appellate brief) gives explicit instructions about the common features of the form. This type of instruction provides comfort because it, arguably, communicates the most amount of information in the least amount of time. It is also the mode of instruction with which students are most familiar because it is how most students have learned to write since grade school. In these contexts, prescriptive instruction makes sense. Generally, until college, students primarily learn classroom genres¹¹ with the occasional foray into other types of writing, such as writing a letter to the editor of their local newspaper. In this type of instruction, the essay is king.

Prescriptive instruction is effective in this schema where the students are ultimately responsible only to their instructor and there is no assumption that the students will ever have to transfer their skills to a fundamentally different context or for a different audience. In other words, the focus is on near transfer—preparing high school students in Freshman English for Sophomore English, and then eventually for college English. And in fact, prescriptive instruction has many advantages. It can lead to high short-term student writing gains, especially when judged from the perspective of the primary audience—the writing instructor. I, for one, take immense pride in the transformation that my students undergo in their first year and do not easily forgo those short-term gains for the mere promise of long-term benefits. But prescriptive instruction tends to focus

¹¹ See Thomas E. Nunnally, *Breaking the Five-Paragraph-Theme Barrier*, 80 ENGL. J. 67 (1991).

on near rather than far transfer and therefore may not always be the most effective method for teaching real-world genres.¹²

2.2. *Try and Revise*

The next type of writing instruction is one that most new lawyers are familiar with. I call it “try and revise.” The classic scenario is where a more senior attorney asks a junior associate to write something—perhaps a memo. The junior associate tries to remember what was learned almost three years ago in the first-year legal writing course, drafts a memo, and submits it. The senior attorney inevitably marks it up and has the junior associate revise it based on the feedback. This type of expert/novice writing apprenticeship is an age-old practice not just in legal writing, but in almost all types of professional writing. The advantage of this type of writing instruction is that it is specifically tailored to the needs of a given audience and situation. When it goes well, it is done with attention to the process. It is what we do when we confer with students and give feedback on their written work. It can be especially effective because it allows the expert writer to focus on the individual needs of the novice writer. And it can be a comforting step in the process for our students to get feedback about how their intended audience experienced their writing.

But when this type of instruction goes bad, it is reminiscent of the “rundown” scene in *The Office*: an employee is asked to give a new supervisor a “rundown” of his clients, the employee pretends to understand what a rundown is, and he then spends the rest of the day trying to understand what has been asked of him. This can be an especially frustrating scenario for the novice writer because he is simultaneously trying to learn what a rundown is and conform to his audience’s expectations with very little input at the beginning of the process. Here, the supervisor is thinking only of his short-term needs—the information contained in “the rundown”—and has not considered the needs of the novice writer to grow and learn about the writing process.

2.3. *Descriptive Analysis*

When I think of descriptive analysis, I think first of the ways new attorneys have all been asked (though not explicitly) to do it, and how frustrating the process likely was. I call this the “here, make it look like this” type of writing instruction. I imagine an older attorney in a large, wood-paneled corner office

¹² See generally Wolfe et al., *supra* note 10. Of course, there is no world in which I would suggest that we do away with prescriptive writing instruction altogether. I just advocate for less reliance on it as the only or primary method of instruction.

shoving a stack of stapled papers into a young and nervous recent law graduate's hands and demanding he produce a piece of writing with only the instructions, "here, make it look like this!" In these cases, the novice writer is given something written within the target genre (often only one or two examples), with no scaffolding, and is left to flounder on his own to try to figure out what to do with these alien writing forms. This process can be frustrating, not only for the new attorney who is unsure where to start, but also for the senior attorney who is too busy to provide more formal prescriptive instruction and is hoping that the new lawyer has the skills to hit the ground running.

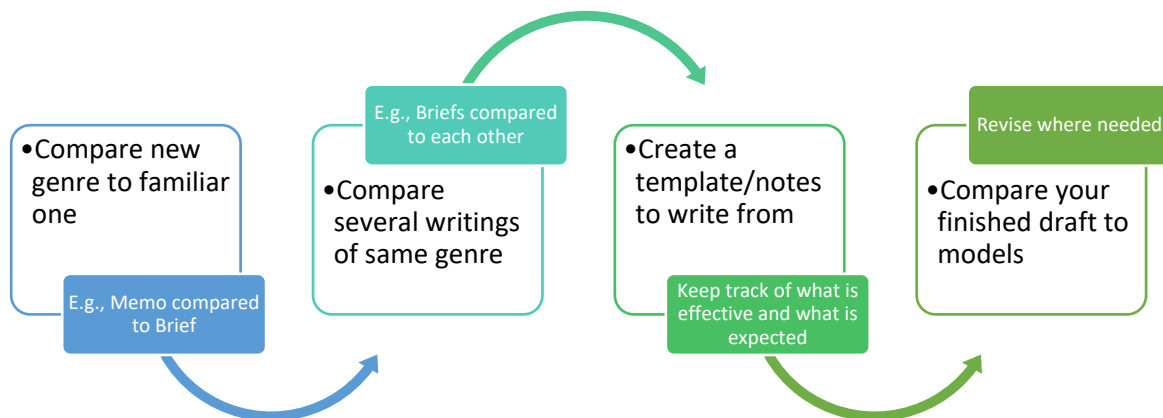
Despite its potential pitfalls, descriptive analysis is a method nearly every writer employs on a regular basis when writing within an unfamiliar genre. Sometimes we do this formally, sometimes informally. When I sat down to write my first attempt at a submission for *The Second Draft*, I did not search the internet for instructions. Nor did I simply write a draft, secure in the fact that the types of academic writing I have done in the past would fully prepare me for writing within this slightly different context. Instead, I looked at numerous examples of the types of writing that were published in earlier volumes. In doing so, I looked past the topic or particular subject matter of each article and instead formed generalizations of the types of writing that commonly appear in the sub-genre. This is what my students will be asked to do when they write their first note or their first moot court brief. This is what expert writers do when writing in new genres, and so I try to give my students the skills and strategies to do this on their own when I am not there to guide their way.

3. A Series of Activities and Assignments

My students learn genre through all three methods: prescriptive instruction, try and revise, and descriptive analysis. As the above description suggests, all have their place in effective legal writing instruction. But one advantage to using the descriptive analysis method is that it also helps with students' self-regulation strategies and gives them tools to adapt to future writing situations.¹³ The process in my classroom looks like this:¹⁴

¹³ See Ryan Roderick, *Self-Regulation and Rhetorical Problem Solving: How Graduate Students Adapt to an Unfamiliar Writing Project*, 36 WRITTEN COMMUN. 410 (2019); Ryan T. Roderick & Craig Moreau, *Becoming a Scholar: Genre Knowledge, Self-regulation, and a Graduate Student's Transition from MA to PhD*, 12 WRITING & PEDAGOGY 157 (2020).

¹⁴ [Here is an example](#) of a handout I use in class.



When using this approach, I do not initially give students explicit instruction on genre. That is, I avoid a prescriptive instruction approach. Rather, piece-by-piece, students assemble a template for themselves that they will use when they write the final assignment on their own. After students review each section of a sample document (for example, in an office memo: Heading, Issue, Brief Answer, Facts, Discussion, and Conclusion—though the categories are somewhat flexible and depend on the models we have been using to form our template), students turn in a template with their notes and observations, and we talk about the common characteristics the class found for each section.

The process can be time-consuming and laborious, and there is no guarantee that the students will notice the features in the briefs that I am hoping to highlight, but they do always learn *something* about the genre. For instance, during an analysis of Louisiana state court appellate briefs, many students noticed that the headings of the model briefs we were analyzing did not match the court rules for formatting appellate briefs. While this initially led to confusion about what was necessary to include in an appellate brief, it also led to an important discussion about variability within a genre.

Over the course of the year, the students become better at using models—both good and average models—to plan their own writing.¹⁵ When students first begin the process of genre analysis, their observations are not always particularly astute. Their initial observations about what makes a memo a memo tend to focus less on the language and style and more on the substance of the argument.

¹⁵ I assign a series of ungraded assignments and in-class activities. I generally assign at least one descriptive-analysis assignment before every section in our class. For instance, they have to identify key features of a memo before we learn objective/predictive writing and find examples of appellate briefs before we discuss predictive writing. We do the same for letter-writing and citations.

But as they learn more about the rhetorical situation of an office memo, they can start to generalize key features about the genre.

Throughout the series of activities, students teach themselves patterns from the sample memos. For instance, students must divine for themselves at first what a typical memo's Issue Statement might look like. We talk about several ways an Issue Statement is usually phrased (e.g., "whether" and "under, does, when" formats) and why readers might expect to see it phrased a particular way. Another activity has students color-coding sample memos to find out whether the sample documents use IRAC, CREAC, or some other organizing principle. In this way, students learn to write much as they have for centuries, by reading.

The advantage to this method is not that students necessarily write better memos or briefs at the end of the semester than they would through other instructional methods.¹⁶ The main benefit is that students will learn more about the process of writing and will develop self-regulation strategies that will help them work through future difficulties when faced with a new type of writing. It will be a struggle for many students, but it is a productive struggle. If they flounder, they have someone to help guide them back on the right track. Even with guidance, the process is still not an easy one for students, but I remind them that it is better to struggle and even fail now, while I am there to help, than to fail when failing could have dire consequences for their client.

4. Conclusion

Research into student grit and perseverance suggests that legal writing professors must explicitly introduce self-regulation strategies into the classroom and guide students through the process of working through obstacles.¹⁷ Teaching genre through descriptive analysis in the 1L legal writing classroom is one way to explicitly discuss the process of writing in a small-to-no-stakes environment, which in turn prepares them later to recognize and employ the strategies they have developed in their classrooms, when they are on their own. By having developed their own coping mechanisms for learning a new genre, they are less likely to freeze when faced with a new writing task in the future. Legal Writing professors cannot possibly prepare students for every type of writing they will

¹⁶ Because the memos tend to show greater variation than those written under a purely prescriptive approach, some students may choose to emulate a variation of the genre that the writing instructor may not prefer. But by de-emphasizing perfection in the short term, greater long-term gains are possible.

¹⁷ See, e.g., Roderick, *Self-Regulation and Rhetorical Problem Solving*, *supra* note 13.

do in the future, but we can equip them with the tools to teach themselves how to adapt.