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Beyond Contrastive Rhetoric: Helping International Lawyers Use Cohesive Devices in U.S. Legal Writing

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BEYOND CONTRASTIVE RHETORIC:
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IN U.S. LEGAL WRITING

*Elizabeth R. Baldwin**

I. INTRODUCTION

Law is not a natural language, but learning to speak and write about the law is like learning a language.[1] Even highly educated, native

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speakers of English (now NSs)[2] go through a process like language acquisition when learning U.S. law.[3] As part of this process, they learn the phonology, a new lexicon, and the various discourse expectations for speaking and writing about U.S. law—expectations that tend to vary by register and genre (*e.g.*, from appellate briefs and court etiquette to emails and conversations with clients). Over time and with effort, successful law students develop the necessary competence to navigate these nuances and join the "U.S. legal discourse community."[4]

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    1. Jim Chen, *Law as a Species of Language Acquisition*, 73 WASH. U. L.Q. 1263, 1285, 1286, 1290 (1995). *See also* Terrill Pollman & Judith M. Stinson, *IRLAFARC! Surveying the Language of Legal Writing*, 56 ME. L. REV. 239 (2004).

    2. Native Speaker (NS) is a common term in linguistics, describing individuals who learn and use a language as their first and primary language. For simplicity's sake, this Article uses the term NS to mean Native Speakers of *English*—unless otherwise noted.

    3. *See* Chen, *supra* note 1, at 1286. *See also* Susan L. DeJarnatt, *Law Talk: Speaking, Writing, and Entering the Discourse of Law*, 40 DUQ. L. REV. 489 (2002). Similarly, in her Article, Jill J. Ramsfield explains that even for native speakers of English, the properties and conventions of U.S. legal writing registers and genres present "a new culture, a new English, and new rhetorical preferences." Jill J. Ramsfield, *Is "Logic" Culturally Based? A Contrastive, International Approach to the U.S. Law Classroom*, 47 J. LEGAL EDUC. 157, 161 (1997) [hereinafter Ramsfield, "Logic"]. As such, international students have the additional task of learning the "new language" of U.S. legal writing registers and genres while they continue to build their command of Standard English. *Id.* For a wonderful discussion of particular analytical patterns and NNS students of law, see JILL J. RAMSFIELD, CULTURE TO CULTURE (2005) (breaking down western analytical patterns: Classicism, Neoclassicism, Modernism, and Postmodernism) [hereinafter RAMSFIELD, "CULTURE"].

    4. Ramsfield, "Logic," *supra* note 3, at 164 (naming and describing the "U.S. legal discourse community," and citing John Swales). Notably, linguist John Swales explains that a "discourse community" shares the following characteristics:

> (1) A discourse community has a broadly agreed set of common public goals . . . (2) A discourse community has mechanisms of intercommunication among its members . . . (3) A discourse community uses its participatory mechanisms primarily to provide information and feedback . . . (4) A discourse community utilizes and hence possesses one or more genres in the communicative furtherance of its aims . . . (5) In addition to owning genres, a discourse community has acquired some specific lexis . . . (6) A discourse community has a threshold level of members with a suitable degree relevant content and discoursal expertise.

Enter international graduate students of law and legal professionals who are non-native speakers of English (now NNS lawyers).[5] These NNS lawyers have already learned a legal language abroad, where many of them have achieved academic excellence and successful legal careers.[6] For them, the task of becoming competent in the language of U.S. law is not just *like* learning a language, it is inextricably intertwined with the experience of learning English.

While some legal skills transfer well across the globe, simple translations from language to language will rarely satisfy expectations in a different legal discourse community, especially when it comes to the task of writing. And among the writing skills NNS lawyers must develop, analytical and persuasive U.S. legal writing (now U.S. legal writing) tends to cause the greatest stress and frustration.

In addition to expected comments on and edits for grammar and usage,[7] NNS lawyers may receive feedback that their writing seems

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John Swales, *The Concept of Discourse Community, in* GENRE ANALYSIS: ENGLISH IN ACADEMIC AND RESEARCH SETTINGS 21, 24–27 (Carol A. Chappelle & Susan Hunston eds., 1990).

5. Non-native speaker, or NNS, is a common term in linguistics and second language acquisition scholarship, describing people who are learning or using a language other than their first or native language. In this Article, the Author uses the term NNS to mean non-native speaker of *English*, unless otherwise noted. The Author uses NNSs as the plural. Notably, linguists often use *L2* to mean *second language*, and they refer to non-native students of English as *L2 English students* (or simply *L2 students*). The Author prefers NNS because often students of English speak *many* other languages with various levels of proficiency, so she feels like L2 oversimplifies their experience of language acquisition.

6. While most international graduate students study in the United States to support their transnational practices or to increase their competitiveness in their home countries, others come to develop as legal academics and participate in the growing international academic discourse on legal issues; to inform their efforts as law reformers in their home countries; to support their practice of domestic law in the United States; or to support other professional endeavors. *See generally* Mark E. Wojcik & Diane Penneys Edelman, *Overcoming Challenges in the Global Classroom: Teaching Legal Research and Writing to International Law Students and Law Graduates*, 3 LEGAL WRITING: J. LEGAL WRITING INST. 127 (1997); Stephen M. Worth, *The Transnational Practice of Law: Staggering Growth In Spite of Economic and Regulatory Barriers to Entry*, 7 GONZ. J. INT'L L. 5 (2003–2004); Carole Silver, *States Side Story: Career Paths of International LL.M. Students, or "I Like to Be in America,"* 80 FORDHAM L. REV. 2383, 2384 (2012); Carole Silver, *Internationalizing U.S. Legal Education: A Report on the Education of Transnational Lawyers*, 14 CARDOZO J. INT'L & COMP. L. 143, 174 (2006).

7. The mechanics of English writing remain a challenge for most NNS lawyers, and standard NNS problems with syntax and usage prevail among the most obvious of errors. Even though many students continue to need additional English grammar and usage support, most graduate programs in law find that there is little time to address these kinds of English language issues in a typical legal research and writing course. In fact, in her study assessing required law school coursework for international graduate students, Julie Spanbauer found that most law schools do not offer special English support to NNS international students of law; at best, these students can receive some English assistance through standard academic support programs that offer access to a writing or ESL specialist. Spanbauer, *supra* note 7, at 414. A few law schools reported having an ESL coordinator charged with helping groups and individuals, but this was not

disorganized or disjointed, feels stilted, or lacks a sense of logical connectedness.[8] These comments about flow have great significance in law, especially given the importance of logical connectedness to effective legal arguments—arguments that can be key to the success or failure of a case. Many NNS lawyers are used to managing those stakes in a different language and legal discourse community, unfettered by concerns about coherence or flow.

While NNS lawyers may be particularly troubled by this challenge, they are not alone. Advanced English language learners, in general, regularly receive critical feedback about their appearance of coherence in English writing.[9] In fact, since before the 1960s, linguists and scholars in second language acquisition have studied these same struggles, searching

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the norm. *Id.* at 436. While grammar and usage may be troublesome for students, the Author maintains that these types of errors are probably not solvable within the law school curriculum of a year-long LL.M. program; English proficiency problems simply will not resolve unless a student puts in the required hard work and practice—outside of the law school classroom. Cohesion and coherence, on the other hand, can be addressed in the context of writing assignments, either designed for that purpose (as suggested here) or through intensive critiques and conferencing.

8.   While many of these NNS lawyers achieve high scores on tests like the TOEFL, IELTS, or other standardized tests of English proficiency, they do not necessarily come to U.S. law schools ready to produce English writing that meets the expectations and conventions of U.S. legal discourse communities. Julie M. Spanbauer, *Lost in Translation in the Law School Classroom: Assessing Required Coursework in LL.M. Programs for International Students*, 35 INT'L J. LEGAL INFO. 396, 414–16 (2007) (stating that standardized measures of English proficiency tests are not good predictors of academic success for ESL students and citing Melanie L. Schneider & Naomi K. Fujishima, *When Practice Doesn't Make Perfect: The Case of a Graduate ESL Student, in* ACADEMIC WRITING IN A SECOND LANGUAGE: ESSAYS ON RESEARCH AND PEDAGOGY 3, 4 (Diane Belcher & George Braine eds., 1995)). *See also* Wojcik & Edelman, *supra* note 6, at 131–32. At best, these tests indicate a general command of Standard Academic English; they do not test for familiarity with the nuances of U.S. legal register, argument, logical schemes, analytical paradigms, or rhetorical preferences. *See* Ramsfield, "Logic," *supra* note 3, at 190. For information about the TOEFL, see *About the TOEFL iBT Test*, ETS, https://www.ets.org/toefl/ibt/about (last visited June 30, 2014).

9.   Ann M. Johns, *Coherence and Academic Writing: Some Definitions and Suggestions for Teaching*, 20 TESOL Q. 247, 247 (1986) (discussing a survey of college professors working with NNS writers and reporting that professors found NNS student writing is often "incoherent"). Howard Williams, a lecturer in Applied Linguistics and TESOL at Columbia University, recently described the problem this way:

> Instructors of English as a second language or foreign language (ESL/EFL) who teach higher-level writing often encounter English learner compositions said to lack a quality called "coherence." A paper lacking in coherence fails (in whole or in part) to "hang together" as a single, seamless unit in a reader's eyes; it may be difficult to see relationships between clauses, sentences, or paragraphs. As a result, certain stretches of the paper may require multiple readings to grasp the writer's intentions, quite apart from any problems with grammar or word choice.

Howard Williams, *Cohesion and Pragmatic Theory in Second-Language Writing Instruction*, 6 LANGUAGE & LINGUISTICS COMPASS 768, 768 (2012).

for explanations and paths to helping students improve their coherence in English.[10] Among these studies, explorations in contrastive rhetoric[11] have been particularly helpful for understanding differences and similarities in cultural views on logic and organization that may influence NS and NNS English writing, differences that affect perceptions of what coherent writing is and the culturally determined schemas that affect how writers approach analysis, argument, and structure.

In recent years, some legal writing scholars have begun to encourage incorporating lessons from contrastive rhetoric into the law school classroom,[12] recommending contrastive analysis of the multiliteracies,

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10. *See generally* Robert Kaplan, *Cultural Thought Patterns in Intercultural Education*, 16 LANGUAGE LEARNING 1 (1966); Ilona Leki, *Twenty Five Years of Contrastive Rhetoric: Text Analysis and Writing Pedagogies*, 25 TESOL Q. 123 (1991); Paul Kei Matsuda, *Contrastive Rhetoric in Context: A Dynamic Model of L2 Writing*, 6 J. SECOND LANGUAGE WRITING 45, 48 (1997); Ulla Connor, *Contrastive Rhetoric Redefined* [hereinafter Connor, *Contrastive Rhetoric*], *in* CONTRASTIVE RHETORIC REVISITED AND REDEFINED 75, 76 (Clayann Gillia Panetta & G. Mahwah eds., 2001); Ulla Connor, *New Directions in Contrastive Rhetoric*, 36 TESOL Q. 504 (2002) [hereinafter Connor, *New Directions*]. Among these studies, explorations in contrastive rhetoric have been particularly helpful for understanding differences and similarities in cultural views on logic and organization that may be influencing NS and NNS English writing, differences that affect our perceptions of what is coherent writing. Ken Hyland observes this shift in approaches to teaching English for Academic Purposes: "Instead of focusing on why learners have difficulties in accessing academic discourses, EAP now addresses the influence of culture and the demands of multiple literacies on students' academic experiences." Ken Hyland, *English for Academic Purposes and Discourse Analysis*, *in* THE ROUTLEDGE HANDBOOK OF DISCOURSE ANALYSIS 412, 413 (James Paul Gee & Michael Handford eds., 2012).

11. Early studies in contrastive rhetoric, like Robert Kaplan's groundbreaking "doodles" article from 1966, sought to explain differences in rhetorical characteristics—or logical systems—of the English writing of NS and NNS writers. Kaplan, *supra* note 10. Kaplan was likely inspired by the so-called Sapir-Whorf Hypothesis that language influences thought, see Ulla Connor, *Mapping Multidimensional Aspects of Research: Reaching to Intercultural Rhetoric*, *in* CONTRASTIVE RHETORIC: REACHING TO INTERCULTURAL RHETORIC 301 (Ulla Connor et al. eds., 2008), finding that "each language and each culture has a paragraph order unique to itself, and that part of the learning of a particular language is the mastery of its logical system." Kaplan, *supra* note 10, at 20. Distilling these logical systems into five simple diagrams, the 'doodles,' he sought to provide a visual representation of the rhetorical preferences—or logics—of English, Semitic, Oriental, Romance, and Russian linguistic systems. *Id.* Kaplan concluded that language learners should compare the rhetorical patterns of their own languages with patterns in English as a practical way of learning to produce the English structures. *Id.* at 11–24. Since the "doodles," contrastive rhetoric has grown as a field of study, and Kaplan's original approach and characterizations have been both scrutinized and developed by various scholars (including Kaplan himself). *See* Robert Kaplan, *Cultural Thought Patterns Revisited*, *in* WRITING ACROSS LANGUAGES: ANALYSIS OF L2 TEXT 9–22 (Ulla Connor & Robert B. Kaplan eds., Reading, MA: Addison Wesley, 1987). *See also* JoAnne Liebman, *Contrastive Rhetoric: Students as Ethnographers*, 7 J. BASIC WRITING 6, 7 (1988); Carol Severino, *The "Doodles" in Context: Qualifying Claims About Contrastive Rhetoric*, 14 WRITING CTR. J. 44 (1993). For example, Carol Severino warned that the 'doodles' and Kaplan's conclusions were overbroad, exaggerated, and in need of clarification. *Id.* at 45.

12. *See, e.g.*, Ramsfield, "Logic," *supra* note 3, at 158; Marian Dent, *Designing an LL.M.*

rhetorical preferences, and cultural perspectives that students bring to U.S. law schools and legal writing in general.[13] This scholarship has raised awareness about the complex, cultural dimensions of the task of writing, exploring how culture may affect one's views on rhetoric and logic,[14] attribution,[15] and other conventions of the various legal and academic writing genres. Successful implementation of this approach requires cross-cultural communication and respect of differences; and if done well, it promises to improve academic success for foreign lawyers in U.S. law programs while enriching the law school experience for all.[16]

Yet those of us who teach legal research, analysis, and writing to NNS lawyers know that these students continue to struggle to satisfy expectations for coherence despite our efforts to incorporate contrastive analysis of rhetorical preferences and analytical paradigms into the classroom.[17] Our approach tends to emphasize the top-down

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Curriculum for Non-Western-Trained Lawyers, 13 PERSP. TEACHING LEGAL RES. & WRITING 87 (2005); Elizabeth L. Inglehart, *Teaching U.S. Legal Research Skills to International LL.M. Students: What and How*, 15 PERSP. TEACHING LEGAL RES. & WRITING 180 (2007); Robin Nilon, *The Calculus of Plagiarism: Toward a Contrastive Approach to Teaching Chinese Lawyers*, 2 S.C. J. INT'L L. & BUS. 1 (2006).

    13.   *See id.* Notably the various legal writing registers may include the Traditional Legal Writing Register or the Modern Legal Writing Register, and the genres may include objective memos, motions and briefs, letters, contracts, statutes, and academic writing. *See* Ramsfield, "Logic," *supra* note 3, at 177.

    14.   *See id.* at 170.

    15.   Robin Nilon advocates for contrastive approaches to teaching U.S.-style attribution or citation expectations to foreign lawyers, an approach she developed while teaching Chinese lawyers through Temple's LL.M. Program in Beijing, China. Nilon, *supra* note 12, at 7. Nilon stresses that we often expect students to adapt to U.S.-style conventions of citation and attribution without taking the necessary time to systematically break down the conventions, teach the skills required to meet the expectations of the U.S.-style of attribution, and engage students in a contrastive analysis of plagiarism and attribution practices in the United States and their home countries. *Id.* at 5. Nilon urges legal educators to implement a new, contrastive way of viewing plagiarism and teaching attribution in the U.S.-style, noting that "[t]here is a direct connection between U.S. legal attribution form and our legal system, but the fact remains that it *is* a rhetorical preference." *Id.* at 4.

    16.   *See, e.g.,* Spanbauer, *supra* note 7, at 402; Ramsfield, "*Logic,*" *supra* note 3. For example, Ramsfield strongly advocates for using contrastive approaches in legal writing curricula to "explain analytical paradigms not in isolation, but in comparison to others." *Id.* at 170. She proposes that "U.S. legal 'logic' is one of many 'logics,'" and she emphasizes that contrastive approaches can "illustrate the structure, assumptions, and traditions of U.S. paradigms" and build a student's ability to produce them when writing for the U.S. legal discourse community. *Id.* at 185. She argues that this approach not only improves NNS student performance, but also enriches the U.S. law school classroom for everyone, including professors of law. *Id.* at 204.

    17.   The Author's perspective has been shaped by her work with international LL.M. students in the context of the core legal research and writing course she teaches as a lecturer at University of Washington School of Law. In addition, since 2009, the Author has served as a professor and writing advisor for students in the special Afghan and Indonesian rule of law and legal education support programs. The Author also serves as an English writing advisor for first-

organizational skills related to coherence—or the logical flow of ideas. I do not argue that this emphasis is misguided—it is essential to helping NNS students write for U.S. legal discourse communities. I do suggest, however, that a focus on top-down expectations is not enough to help NNS students create legal writing that flows for U.S. audiences. I posit that our students continue to struggle with flow, at least in part, because they need similar contrastive analysis for the bottom-up skills related to cohesion. These skills involve using discrete features of language for signaling and restricting connections between clauses (*e.g.*, using transitional words and phrases and other connective features of language), and they are essential for directing a reader through complex facts, law, and argument.

Substantial research in linguistics supports this position, showing that like rhetorical preferences, logical schemas, and patterns of analysis, meanings and uses of cohesive devices vary across languages and cultures.[18] In fact, cohesive relationships may be indicated or implicated in different ways depending on a host of factors including background knowledge, culture, register, genre, educational history, professional training, and distinct features of a language itself.

Because of this complexity, mastering the meanings and expected uses of English cohesive devices is notoriously difficult for NNS writers.[19] It requires much more than a command of English grammar and

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year NNS students in the PhD program. The views the Author expresses in this Article are her own and are not attributable to the University of Washington Law School or its affiliated programs. *See also infra* note 23.

18. *See* Eli Hinkel, *What Research on Second Language Writing Tells Us and What it Doesn't* [hereinafter Hinkel, *What Research*], *in* HANDBOOK OF RESEARCH IN SECOND LANGUAGE TEACHING AND LEARNING VOL. 2, at 523, 530 (Eli Hinkel ed., 2011), *available at* http://www.elihinkel.org/downloads.htm (last visited July 20, 2014). Notably, Hinkel remarks that differences in top-down rhetorical preferences and analytical paradigms may be declining. *Id.* at 527.

19. Unlike native speakers of English, NNSs often struggle to master effective and appropriate use of cohesive devices in English. F. Dubin & E. Olshtain, *The Interface of Writing and Reading*, 14 TESOL Q. 353, 356 (1980). *See also* Vivian Zamel, *Teaching Those Missing Links in Writing*, 37 ELT J. 22, 25 (1983). *See* Cristin Carpenter & Judy Hunter, *Functional Exercises: Improving Overall Coherence in ESL Writing*, 15 TESOL Q. 425, 426 (1981) (stating that "the discourse processes involved in creating a coherent overall organization for a composition or paper generally prove to be the most elusive skills to master for students in advanced writing classes"); *see also* Aziz Khalil, *A Study of Cohesion and Coherence in Arab EFL College Students' Writing*, 17 SYSTEM 359, 366 (1989); Aram Reza Sadeghi & Amineh Danaee, *A Comparative Study of Academic Articles Written by Iranian Scholars and English Native Scholars Based on Textual Cohesion*, 8 IRANIAN EFL J. 154 (2012); Meihua Liu & George Braine, *Cohesive Features in Argumentative Writing Produced by Chinese Undergraduates*, 33 SYSTEM 623 (2005); Shirley E. Ostler, *English in Parallels: A Comparison of English and Arabic Prose*, *in* WRITING ACROSS LANGUAGES: ANALYSIS OF L2 TEXT 169 (Ulla Connor & Robert Kaplan eds., 1987).

vocabulary or a literal translation from one language to another.[20] Studies in linguistics show that even NNS students who exhibit high levels of English proficiency may draw from a limited repertoire of cohesive devices, and they may inappropriately or ineffectively transfer cohesive features from their native languages into in their English writing.[21] When these writers misuse, underuse, or overuse cohesive devices, they can interrupt or misdirect a reader's interpretation of the text they intend to create. The consequences can be particularly frustrating for NNS lawyers because their writing may *appear* to lack a sense of coherence or flow, *even if the logical structure may otherwise meet U.S. legal writing expectations for organization of content.*

I have repeatedly seen this phenomenon through my work with international LL.M.s at the University of Washington Law School. In American Legal System and Method (UW Law's core legal research and writing course for international LL.M.s),[22] I have been fortunate to teach lawyers from a wide range of linguistic and cultural backgrounds, including Japanese, Korean, Thai, Kenyan,[23] Chinese, Colombian, and Dutch (Netherlands), to name just a few.[24] In addition, I have had the

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20.   *See* Hinkel, *What Research, supra* note 18, at 530.

21.   Mohammed Akram A.M. Sa'adeddin, *Text Development and Arabic-English Negative Interference*, APPLIED LINGUISTICS, 10, 36 (1989) (finding transfer from common writing patterns in Arabic, in which coordinate and parallel constructions are common); Joy Reid, *A Computer Text Analysis of Four Cohesion Devices in English Discourse by Native and Nonnative Writers*, 1 J. SECOND LANGUAGE WRITING 79, 80 (1992); Aisha Mohamed-Sayidina, *Transfer of L1 Cohesive Devices and Transition Words into L2 Academic Texts: The Case of Arab Students*, 41 RELC J. 253, 254 (2010). *But compare* Eli Hinkel, *Analysis of Second Language Text and What Can Be Learned from Them, in* HANDBOOK OF RESEARCH IN SECOND LANGUAGE TEACHING AND LEARNING 615 (Eli Hinkel ed., 2005) (explaining that the issue of transfer is far from settled ground, and that NNS writing mostly suffers from limited lexical and syntactic repertoire, which might be explained and resolved by academic training). *Also compare* Miranda Y.P. Lee, *Structure and Cohesion of English Narratives by Nordic and Chinese Students*, 31 NORDLYD 290, 299 (2003) (finding "no consistent conclusion that L1 [first language] plays a direct role in the density of connectors of Chinese ESL and Nordic EFL writing").

22.   This course is required for international LL.M. students in the following concentrations: Asian and Comparative Law, Global Business, Sustainable International Development, and General International LL.M. students from the Tax and Health Law programs may also take this course.

23.   While Kenyans speak English as a first language, their use patterns and rhetorical preferences vary somewhat from those found most commonly in the United States.

24.   While not true of everyone, many NNS students come from systems of education and legal training that provide little to no formalized instruction in legal writing techniques—in any language. As such, their efforts at U.S. legal writing may reflect not only a typical transfer of top-down rhetorical preferences and bottom-up language use patterns, but also a lack of experience crafting analytical and persuasive legal writing text, in general. These students explain that if they have had any previous training in legal writing, it has usually come from on-the-job experiences and mentorship, or through special training programs or seminars that they elect to take after they receive their law degrees.

distinct pleasure of working closely with lawyers from Afghanistan and Indonesia, assisting them with legal English and U.S. legal writing through special grant funded programming.[25] In reviewing the English legal writing of all of these NNS lawyers, problems with cohesion consistently emerge among the most salient. The following student example typifies the cohesion errors I often see, while illustrating the complexity and nuance of this issue:

> While <u>on one hand</u> Afghanistan has experienced many constitutions in the last 90 years, <u>on the other hand</u>, its constitutional history has been consistently riddled with conflict, power struggles, and popular uprising.[26]

In this example, the use of *on one hand/on the other hand* directs a reader to view the two clauses in contrast to one another, reflecting an inconsistency or a contradiction between multiple constitutions and political instability. Most U.S. legal readers, however, would see these clauses as logically consistent: the content of the second clause as either containing the *cause* of the first, or simply offering an *additional fact*. As a result, these readers would likely re-read (and re-read) the clauses to be sure that they arrived at the right interpretation—the one the author presumably intended when he chose the contrastive connector. When we return to this example in Part II.B, this Article explains that the process of re-reading can lead a reader to frustration and possible judgment that either the writer is unknowledgeable or his point is illogical.

In this case, neither is true. There are multiple complex explanations for why a NNS lawyer might choose to use *on one hand/on the other hand* in this way, and they go beyond the simple assessment that he does not understand what the device actually means. Any correction that fails to take these reasons into account will do little to prevent a writer like this

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25. These programs are called, the Legal Education Support Program—Afghanistan (now LESPA) and Educating and Equipping Tomorrow's Justice Reformers (E2J Indonesia, a program that ended as of Summer 2014). Both programs have required students to take an intensive, non-credit writing support tutorial, English for Legal Writing, which covers topics in contrastive rhetoric, discourse strategies, U.S. legal writing conventions and expectations, as well as English grammar and mechanics—a course the Author designed and taught based on the text, ANNE ENQUIST & LAUREL CURRIE OATES, JUST WRITING: GRAMMAR, PUNCTUATION, AND STYLE FOR THE LEGAL WRITER 311 (4th ed. 2013) (discussing rhetorical preferences and writing conventions at length, and providing a table of distinctions). In thinking through this Article, the Author has drawn heavily on experience from the LESPA and E2J programs, and she has used, in some cases, specific examples from participants in those programs. LESPA and E2J are funded by the U.S. Department of State and USAID, respectively. Views expressed in this Article are solely the Author's own and are not attributable to LESPA, E2J, or their sponsors.

26. In this example, the student is paraphrasing and combining ideas from two different sources.

from making the same error over and over again—with this or another cohesive device.

This Article attempts to use linguistics, specifically text analysis and pragmatics,[27] to help explain how and why NNS lawyers struggle with cohesion in their U.S. legal writing. Then in light of that discussion, it offers a four-step, receptive and productive exercise to engage students in contrastive analysis of cohesive features across languages and cultures.[28] It begins by distinguishing coherence (top-down flow related to rhetorical preferences and organization of content and argument) from cohesion (bottom-up flow related to the surface features that exhibit connections between clauses).[29] As background, it explores the role of cohesion in English as understood by linguists in text analysis. Through this discussion, it explains that while cohesion does not create coherence, inappropriate or incorrect use of cohesive devices may interfere with coherence and a sense of top-down flow, which is of particular concern for NNS lawyers. Next the Article offers perspectives from pragmatics, primarily Relevance theory, to identify the principles that guide a writer's decisions about when and whether to use cohesive devices[30]—principles that provide insight into how NNS lawyers may approach the problem of connecting. From there, it elaborates on how the use of cohesive ties varies across languages and cultures.

Finally, the Article argues that law professors can extend the contrastive analysis they already do for top-down organization and flow to bottom-up structures related to cohesion. To this end, the Article offers a simple, adaptable exercise aimed at helping NNS lawyers increase their

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27. Pragmatics is the study of language *use*, not structure, born out of studies in philosophy examining the relationship between signs and their interpreters. DEIRDRE WILSON & DAN SPERBER, MEANING AND RELEVANCE 1 (2012).

28. There are many other difficulties that typical NNS legal writers face, including overuse of nominalizations, distance between subjects and verbs, failure to use operative facts in application sections of objective memos, and other writing problems that most legal writing texts and programs already try to address. The Author tries to address using operative facts in application sections of objective memos in another forthcoming article, "Writing Memos for U.S. Legal Discourse Communities: Application is not Repetition" (exploring how NNS international graduate students who have been trained in other legal systems may be reluctant to "show their work" in the U.S. legal writing style and recommending an approach to helping them bring detail and fact into their application sections).

29. For this Article, the Author's definition of "legal writing" will include the standard analytical or persuasive legal writing projects that are required in typical U.S. graduate programs of law, including scholarly writing that defends a claim. In the discipline of law, where we are mostly concerned with arguments and analysis, each of these genres tends to conform to the kind of structure that scholars like Bryan A. Garner describe as basic to analytical or persuasive writing: "the question, the answer, and the reasons for that answer." Bryan A. Garner, *The Deep Issue: A New Approach to Framing Legal Questions*, 5 SCRIBES J. LEGAL WRITING 1, 2 (1994–95).

30. The Author is indebted to Howard Williams for this insight. *See* Williams, *supra* note 9, at 776.

repertoires of cohesive devices as well as their understanding of how NS writers use cohesive devices to signal connections and relationships between their ideas. This exercise asks students to (1) use contrastive analysis to examine the cohesive features of a model, five-paragraph, persuasive essay; (2) write a similar, research-free, five-paragraph essay based on lessons from discussion of the model; (3) engage in an intensive, guided peer-review of the cohesive ties in these essays; and (4) revise their own work based on comments and contrastive analysis. At each stage, students identify important nuances and differences between how cohesive devices are defined and used in different legal discourse communities, while building their own repertoires and commands of the cohesive devices used by successful U.S. legal writers.[31]

II. ANTICIPATING BOTTOM-UP FLOW ACROSS LANGUAGES AND LEGAL WRITING CULTURES

It is widely accepted among U.S. legal writing scholars that rhetorical preferences and cultural expectations influence a writer's approach to organization and structure, development of ideas, coherence, and style.[32] We also know that these expectations appear to vary somewhat, not only from culture to culture, but also from genre to genre within any one culture.[33] In addition, perceptions of what constitutes a seamless logical argument or analysis may also be affected by educational background,[34]

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31. For example, effective U.S. legal writers use explicit logical connectors *not every time* there is a connector that fits, but when using a connector is necessary or customary to convey, clarify, or emphasize the intended logical relationship between sentences. Understanding this need or custom requires much more than memorizing lists of connectors or receiving correction without inquiry into why writers use or omit these devices.

32. JOHN B. THORNTON, U.S. LEGAL REASONING, WRITING, AND PRACTICE FOR INTERNATIONAL LAWYERS 143 (2014) (including a chapter, "Contrasts Between the Rhetorical Styles of English and of Other Languages"); ENQUIST & OATES, *supra* note 24 (including a comprehensive section dedicated to ESL legal writers with a subsection entitled "Rhetorical Preferences in Writing"); RAMSFIELD, "CULTURE," *supra* note 3, at 103, 145 (including a chapter on U.S. analytical patterns and a chapter on U.S. English for Legal Purposes); LAUREL CURRIE OATES & ANNE ENQUIST, THE LEGAL WRITING HANDBOOK: ANALYSIS RESEARCH AND WRITING (6th ed. 2014) (including Book 7/Chapter 31, entitled "A Guide for Legal Writing for English as a Second Language Writers," which discusses rhetorical preferences and writing conventions across language groups and cultures).

33. Ramsfield, "Logic," *supra* note 3, at 166; Connor, *New Directions*, *supra* note 10, at 504.

34. Mohamed-Sayidina, *supra* note 21, at 254 (explaining how educational practices like memorizing the Quran and classical poetry affect the way Arabic students use cohesive devices).

professional training,[35] and background knowledge in general.[36] As such, NNS lawyers bring varied perspectives on when and whether legal writing flows from a rhetorical or analytical standpoint (*i.e.*, a top-down view).

What may be less widely understood outside of linguistics and second language education scholarship, however, is that text construction norms, like the meaning and use of cohesive devices, also "differ substantially across languages and cultures."[37] For example, different languages have different cohesive devices that may or may not transfer well into English.[38] Furthermore, different legal discourse communities have different expectations and practices for how to use those cohesive devices to create unified text that flows.[39] Finally, different individuals have different kinds of background knowledge, training, and educational

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35. Connor, *New Directions, supra* note 10, at 504. *See also* Paul Kei Matsuda, *Contrastive Rhetoric in Context: A Dynamic Model of L2 Writing*, 6 J. SECOND LANGUAGE WRITING 45, 48 (1997). As Helena Whalen-Bridge notes: "Once students receive their first training in the methodology of a particular legal system, they acquire a bias in favor of that system that is difficult to overcome." Helena Whalen-Bridge, *The Reluctant Comparativist: Teaching Common Law Reasoning to Civil Law Students and the Future of Comparative Legal Skills*, 58 J. LEGAL EDUC. 364, 369 (2008).

36. More recent discussions in the discipline of contrastive rhetoric have come to encourage increased sensitivity to the individuality of members of different linguistic groups, acknowledging that writers do not belong to separate, identifiable cultural groups; instead, they should be viewed as "individuals in groups that are undergoing continuous change." Connor, *Contrastive Rhetoric, supra* note 10, at 76. Other scholars offer similar, deep insights into the complexity of writing tasks for NNS students in law and other academic fields. Hasan Ansary & Esmat Babaii, *A Cross-Cultural Analysis of English Newspaper Editorials: A Systemic-Functional View of Text for Contrastive Rhetoric Research*, 40 RELC J. 211–49 (2009); Ramsfield, "Logic," *supra* note 3. In addition, as Williams and Colomb explain in their enduringly helpful text, *Style: Lessons in Clarity and Grace*, the experience of coherence is closely tied to the knowledge and perspective we bring to a piece of writing:

> Coherence is an experience we create for ourselves as we make our own sense out of what we read. . . . That experience depends most on the knowledge we bring to our reading. We can make sense out of almost anything, even incoherence, if we're motivated to read it and we already know a lot about its subject matter. But when we don't have prior knowledge to help us through a text, we depend on signals that we see on the page to help us integrate what we read with the knowledge we have.

M. WILLIAMS & GREGORY G. COLOMB, STYLE: LESSONS IN CLARITY AND GRACE 179 (10th ed. 2010). In this paragraph, Williams and Colomb suggest that cohesive devices can help a text cohere for a reader, helping a reader see the connections that were intended by the writer. The Author explores this idea later in Part II.B.

37. Hinkel, *What Research, supra* note 18, at 526. *See also* Mohamed-Sayidina, *supra* note 21, at 254 (discussing this phenomenon as to Arabic students).

38. Eli Hinkel, *Matters of Cohesion in L2 Academic Texts*, 12 APPLIED LANGUAGE LEARNING 111, 128–29 (2001).

39. *See* Hinkel, *What Research, supra* note 18, at 530.

experiences, and each of these differences also affects assumptions and expectations about the need for connection through the use of explicit cohesive devices.[40]

This Part attempts to shed light on the complexity of connecting from the bottom-up, especially for NNS lawyers who aim to write for U.S. legal audiences. It also suggests that typical NNS problems with cohesion can look like problems with coherence—misdirecting, confusing, or interrupting readers through misuse of cohesive features.

A. *The Role of Cohesive Features in English*

Bottom-up skills are essential to successful U.S. legal writing because of the strong rhetorical preference and cultural expectation for clarity, directness, and explicitness.[41] Indeed, U.S. legal writing is "writer-responsible,"[42] as readers in U.S. legal discourse communities expect to be led down a path of reasoning, without struggling to draw connections or see relationships on their own.[43] As such, successful U.S. legal writers typically do this challenging work for the reader,[44] often through the effective use of logical connectors and other cohesive devices.[45]

In linguistics, discussions of cohesive devices or ties usually begin with Halliday and Hasan. In their groundbreaking book from 1976, *Cohesion in English*, Halliday and Hasan attempted to distinguish *text*, or any spoken or written passage that forms a unified and cohesive whole, from collections of unrelated sentences.[46] They posited that *coherence* derives from a combination of cohesion and register—register describing how the context of a situation affects the meaning of language.[47] According to them, unlike register, cohesion is manifested by the surface structures of a language, and they determined that this structure is expressed through both grammar and vocabulary.[48] Through their

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40. *See* Williams, *supra* note 9, at 774 (discussing the importance of considering the background knowledge of the audience).

41. *See generally* ENQUIST & OATES, *supra* note 24, § 10.2; RAMSFIELD, "CULTURE," *supra* note 3.

42. ENQUIST & OATES, *supra* note 24, at 294; OATES & ENQUIST, *supra* note 32, § 31.2. Enquist and Oates's discussion builds on the work of John Hinds in *Reader Versus Writer Responsibility: A New Typology, in* WRITING ACROSS LANGUAGES: ANALYSIS OF L2 TEXT (Ulla Connor & Robert B. Kaplan eds., 1987).

43. *Id.* at 293.

44. *See generally* ENQUIST & OATES, *supra* note 24, § 10.2.

45. *See* RAMSFIELD, "CULTURE," *supra* note 3, at 173.

46. M.A.K. HALLIDAY & RUQAIYA HASAN, COHESION IN ENGLISH 1, 4 (1976).

47. *Id.* at 22. They explain that register is the meeting of "field," "tenor," and "mode," and that a text "is coherent with respect to the context of situation, and therefore consistent in register; and it is coherent with respect to itself, and therefore cohesive." *Id.* at 23.

48. *Id.* at 26 (emphasizing that cohesion does not encompass the meaning of the text, but rather "how the text is constructed as a semantic edifice").

comprehensive taxonomy, Halliday and Hasan identified and analyzed (1) four types of grammatical cohesive ties—*reference* (including personal pronouns, comparatives, and demonstratives),[49] *substitution*,[50] *ellipsis*,[51] and *conjunction*;[52] and (2) two types of lexical cohesive ties (vocabulary ties)—*reiteration* and *collocation*.[53] This taxonomy remains an essential tool or starting place for studies in text analysis and for ESL and EFL curriculum on cohesive devices.

More controversially, Halliday and Hasan seemed to suggest that cohesive devices help to *create* and *enable* coherence—as though they cause coherence itself.[54] However, today linguists tend to agree that explicit cohesive devices are not needed for a text to be coherent.[55] At the same time, they explain that a text can be cohesive on the surface, but not

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49.   Under Halliday and Hasan's taxonomy, *reference* concerns two linguistic elements that are related in what they refer to, such as personal *pronouns* (*e.g.*, me, I, he, her, you, them, it), *comparatives* (*e.g.*, same, similar, different, more, better), and *demonstratives* (*e.g.*, this, that, these, those). *Id.* at 31. The cohesion of reference stems from the continuity expressed through "the same thing enter[ing] into the discourse a second time." *Id.* at 31.

50.   In contrast to *reference*, *substitution* signifies "a relation in the wording rather than the meaning," or when one lexical item is exchanged for another. *Id.* at 90.

The judge *entered* the courtroom. The jury <u>did</u> too.

51.   Ellipsis describes "substitution by zero," or when there is no overt tie, but the cohesive tie is clear. *Id.* at 142–43. The following example illustrates verbal ellipsis:

Have you <u>filed the motion yet</u>?—Yes, I have.

Adapted from an example by Halliday and Hasan. *Id.* at 167. Notably, ellipsis is less common in analytical and persuasive writing because it is generally reserved for dialogue.

52.   *Id.* at 226.

53.   *Id.* at 4, 5.

54.   *Id.* at 13 (asserting that "the concept of cohesion accounts for the essential semantic relations whereby any passage of speech or writing is enabled to function as a text"). Halliday and Hasan are known for being somewhat inconsistent on whether coherence actually results from the use of cohesive devices or depends on additional factors like register. Williams, *supra* note 9, at 768.

55.   Ted Sanders & Henk Pander Maat, *Cohesion and Coherence: Linguistic Approaches, in* ENCYCLOPEDIA OF LANGUAGE AND LINGUISTICS 592 (Keith Brown ed., 2d ed. 2006); DIANE BLAKEMORE, UNDERSTANDING UTTERANCES: AN INTRODUCTION TO PRAGMATICS 85 (1992) (stating that "meaning relations do not have to be realized explicitly for a discourse to have coherence"); Johns, *supra* note 9, at 249 (discussing the Prague School and its influence on linguistics, and asserting that coherence comes not from the use of cohesive devices, but from "sticking to the point"). *See also, e.g.*, John L. Morgan & Manfred B. Sellner, *Discourse and Linguistic Theory, in* THEORETICAL ISSUES IN READING COMPREHENSION 179 (Rand J. Spiro et al. eds., 1980); MARGARET S. STEFFENSEN, REGISTER, COHESION, AND CROSS-CULTURAL READING COMPREHENSION, TECHNICAL REPORT NO. 220, CENTER FOR THE STUDY OF READING (1981); GILLIAN BROWN & GEORGE YULE, DISCOURSE ANALYSIS (1983); ROBERT J. TIERNEY & JAMES H. MOSENTHAL, THE COHESION CONCEPT'S RELATIONSHIP TO THE COHERENCE OF TEXT, TECHNICAL REPORT NO. 221, CENTER FOR THE STUDY OF READING (1981).

logical or coherent.[56]

In fact, successful English writers tend to make connections clear through a range of cohesive *strategies* that reflect careful choices about arrangement of content and consistency of topics over faithful inclusion of explicit cohesive devices. For example, one cohesive strategy might include beginning sentences with old or familiar content and ending them with new or complex content.[57] This method eases a reader down a path of reasoning, securing that reader in what she already knows (usually in the subject place of the sentence) before challenging her with new and complicated ideas (complexity that readers usually prefer toward the end of the sentence).[58] Another strategy might include using the same subject from sentence to sentence within a paragraph (*i.e.*, consistent topic strings), helping a reader see that one idea is being developed per paragraph and reinforcing the writer's ability to go "old to new."[59]

That said, studies do show that NS writers who receive higher ratings on academic English essays tend to use a wider variety of explicit cohesive ties, if not all of those identified by Halliday and Hasan, and they use them more frequently than NS writers who receive lower ratings.[60] So the importance of explicit cohesive ties should only be

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56. Witte and Faigley asserted that while "[c]ohesion and coherence interact to a great degree, . . . a cohesive text may be only minimally coherent." Stephen P. Witte & Lester Faigley, *Coherence, Cohesion and Writing Quality*, 32 C. COMPOSITION & COMM. 189, 200 (1981). They emphasized that in addition to the explicit cohesive devices used in a text, "a text must conform to a reader's expectations for particular types of texts and the reader's knowledge of the world." *Id.* They emphasized that in addition to the explicit cohesive devices used in a text, "a text must conform to a reader's expectations for particular types of texts and the reader's knowledge of the world." *Id.* In this same vein, Patricia Carrell added the following observation: "Cohesion is not the cause of coherence; if anything, it's the effect of coherence. A coherent text will likely be cohesive, not of necessity, but as a result of that coherence. Bonding an incoherent text together won't make it coherent, only cohesive." Patricia L. Carrell, *Cohesion is not Coherence*, 16/4 TESOL Q. 479, 486 (Dec. 1982). Carrell explained that text can be coherent or unified without the inclusion of explicit cohesive devices (*e.g., The picnic was ruined. No one remembered to bring a corkscrew*). *Id.* at 484. And she maintained that, instead, coherence relies on the connectivity and flow of the ideas themselves, not just the surface features that illustrate those connections. *Id.* (emphasizing that "[i]f a reader does not have, or fails to access, the appropriate background schema underlying the text, all the cohesive ties in the world won't help that text cohere for that reader"). Williams and Colomb also describe how "faked cohesion" fails to make a text coherent. WILLIAMS & COLOMB, *supra* note 36, at 78 (discussing "faked cohesion," or when writers use conjunctions regardless of whether they signal logical relationships).

57. WILLIAMS & COLOMB, *supra* note 36, at 69–70 (providing explanation and exercises on how to achieve this kind of cohesion in English); *see generally* BATES, *infra* note 196 (offering various explanations and exercises throughout her text dedicated to "transitions").

58. *See id.*

59. *See id.*

60. Witte & Faigley, *supra* note 56, at 196. *See also* George A. McCulley, *Writing Quality, Coherence, and Cohesion*, 19 RESEARCH IN THE TEACHING OF ENGLISH 269–82, 278 (1985) (testing Witte & Failey's results, finding a correlation between coherence scores and frequency of cohesive devices, and suggesting that "cohesion is a sub-element of coherence"); Abodoljavad

qualified, not dismissed; clearly, they play a significant role in successful English writing.

Among the ties Halliday and Hasan identified, *demonstrative reference (e.g.,* this, that, these, those, such), *conjunction (e.g.,* however, but, since), and *lexical cohesion (e.g.,* reiteration and collocation) appear to be the most helpful for guiding and constraining interpretation of text.[61] For this reason, they are particularly useful tools for achieving cohesion in analytical and persuasive writing (like U.S. legal writing). In contrast, other forms of *reference* like *personal pronouns (e.g.,* me, I, he, her, you, them, it), *comparatives (e.g.,* same, similar, different, more, better), and *substitution (e.g.,* one, some, do, so, not) have more to do with grammatical correctness than signaling logical relationships or organizing content. As such, this Article focuses on just demonstrative reference, conjunction, and lexical cohesion. The following are some simple explanations and examples of each to provide readers with the foundation needed to engage in contrastive analysis with students in legal writing classrooms, examining both (1) textual properties and (2) common use patterns in U.S. legal writing, which I mainly illustrate through legal language examples, including language from U.S. Supreme Court opinions.[62]

1. Demonstrative Reference

In English, demonstratives (*e.g.,* this, that, these, those, such)[63] are used to point to certain words or concepts expressed in a text—signaling proximity and reference to text.[64] They are abundant in successful academic English writing, as they are often used in conjunction with abstract nouns that clarify, summarize, or characterize preceding

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Jafarpur, *Cohesiveness as a Basis for Evaluating Compositions,* 19 SYSTEM 459 (1991); Ann M. Johns, *Cohesion in Written Business Discourse: Some Contrasts,* 1 ESP J. (1980); Zhang Meisuo, *Cohesive Features in Expository Writing of Undergraduates in Two Chinese Universities,* 31 RELC J. 61 (2000).

61. *See, e.g.,* Hinkel, *supra* note 38, at 116; Anita Fetzer, *Textual Coherence as a Pragmatic Phenomenon, in* THE CAMBRIDGE HANDBOOK OF PRAGMATICS 455 (Keith Allan & Kaisa M. Jaszczolt eds., 2012); Caterina Mauri & Johan van der Auwera, *Connectives, in* THE CAMBRIDGE HANDBOOK OF PRAGMATICS 378 (Keith Allen & Kasia M. Jaszczolt eds., 2012).

62. It must be noted that for each of these categories, Halliday and Hasan have identified numerous complexities and subcategories. These examples are only meant to help readers understand what these terms mean, in general.

63. Notably, several linguists do not recognize significant distinctions between academic uses of demonstrative pronouns and demonstrative determiners. *See, e.g.,* DOUGLAS BIBER ET AL., LONGMAN GRAMMAR OF SPOKEN AND WRITTEN ENGLISH 349–50 (1999). Similarly, Eli Hinkel does not distinguish between demonstrative determiners and demonstrative pronouns, following R. QUIRK ET AL., A COMPREHENSIVE GRAMMAR OF THE ENGLISH LANGUAGE (1985). Hinkel, *supra* note 38, at 130 n.1. This Article also considers them together as one category—demonstratives.

64. HALLIDAY & HASAN, *supra* note 46, at 57; BIBER ET AL., *supra* note 63, at 274.

information, assisting a reader with interpretation or effecting elaboration.[65] They can be used to modify nouns, as heads of sentences, and as adverbs, among other functions.

In the following example from *Miranda v. Arizona*,[66] the demonstrative, *these*, modifies the noun, *rights*, which signals to the reader that the second sentence is commenting on the *rights* listed in the first, providing elaboration or clarification. This is classic anaphoric reference—or a backward looking reference—the most common type of demonstrative reference in English.[67]

> Prior to any questioning, the person must be warned that he has a *right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed.* The defendant may waive effectuation of <u>these</u> rights, provided the waiver is made voluntarily, knowingly and intelligently.[68]

Demonstratives in English can also be used to reference nouns in the subsequent text, which is known as cataphoric reference.[69] This construction, although less common than anaphoric reference, can be effective for highlighting a point or creating a sense of suspense.[70] In the next example from the Declaration of Independence, *these* references the *truths* in the following clause, and the reader is left waiting to discover the details about what those truths are.

> We hold <u>these</u> truths to be self-evident, *that all men are created equal . . .*

Notably, when English demonstratives are used without accompanying nouns (*i.e.*, in the above two examples *rights* and *truths* are the accompanying nouns), they tend to provide an imprecise or overly broad text reference.[71] An overbroad demonstrative reference, at best, causes a reader extra work, interfering with interpretation; at worst, it

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65. In their study, Witte and Faigley found that stronger NS academic writers used this kind of *reference cohesion* about twice as often as NS writers who received lower ratings, and they suggested that this difference might reflect the fact that the stronger essays tended to offer more elaboration in subsequent units of text. Witte & Faigley, *supra* note 56, at 196.

66. Miranda v. Arizona, 384 U.S. 436, 444 (1966).

67. HALLIDAY & HASAN, *supra* note 46, at 57.

68. *Miranda*, 384 U.S. at 444.

69. HALLIDAY & HASAN, *supra* note 46, at 57.

70. MICHAEL MCCARTHY, DISCOURSE ANALYSIS FOR LANGUAGE TEACHERS 35–36 (1991). Notably, McCarthy warns that this skill is particularly challenging for NNS students of English, and it must be taught carefully to prevent inappropriate use. *Id.*

71. Hinkel, *supra* note 38, at 117. *See also* ENQUIST & OATES, *supra* note 24, § 8.5.2.

fails completely.[72] To be effective, demonstratives need clear and identifiable references to nouns, noun phrases, or clauses, which should be present in the immediate proximity; they "cannot be used to refer to entire contexts or implied referents."[73]

U.S. legal writing and legal style texts that teach cohesion for native speakers of English typically address this limitation on the cohesive power of demonstratives. For example, in *The Legal Writing Handbook* and *Just Writing: Grammar, Punctuation, and Style for the Legal Writer*, Enquist and Oates give excellent examples and explanations of the proper use of demonstratives in legal writing, warning against the dangers of overbroad reference and recommending the use of abstract nouns to narrow and clarify the referent.[74] Likewise, in *Legal Writing in Plain English*, Bryan Garner incorporates discussion of demonstratives, calling them "pointing words."[75] He also recommends using these demonstratives with "echo words," words or phrases "in which a previously mentioned idea reverberates."[76]

2. Conjunction

Conjunction in English conveys syntactic and semantic interconnectedness among phrases and sentences, alerting a reader to intended relationships in the text (*e.g.*, and, but, however, because, on the other hand).[77] Unlike demonstratives or other forms of reference, conjunctive ties do not refer to other elements in the text—nor do they replace them; instead, they provide "direction for interpreting an element in terms of its environment."[78] In this way, conjunction may signal a logical connection between two sentences where other structural referential ties may not exist.[79]

Halliday and Hasan divided conjunctions into four categories by

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72. *See generally* HALLIDAY & HASAN, *supra* note 46, at 31–84.

73. Hinkel, *supra* note 38, at 129.

74. ENQUIST & OATES, *supra* note 24, § 8.5.2; OATES & ENQUIST, *supra* note 32, § 27.5.2.

75. BRYAN A. GARNER, LEGAL WRITING IN PLAIN ENGLISH 67 (2001).

76. *Id.*

77. HALLIDAY & HASAN, *supra* note 46, at 226; Hinkel, *supra* note 38, at 117. *See also* McCulley, *supra* note 60, at 278. Notably, McCulley found a lack of significance of other cohesive subcategories like conjunction and substitution, concluding that not all of Halliday and Hasan's subcategories are important to writing quality and coherence. *Id.*

78. HALLIDAY & HASAN, *supra* note 46, at 226–27.

79. *Id.*

meaning:[80] *additive* (*e.g.*, and, furthermore, further, that is, likewise);[81] *adversative* (*e.g.*, yet, however, actually, instead, in either case);[82] *causative* (*e.g.*, consequently, because, otherwise, it follows);[83] and *temporal* (*e.g.*, then, next, finally, in conclusion, up to now).[84] These ties can take the form of phrase conjunctions, coordinating conjunctions, subordinating conjunctions, or conjunctive or linking adverbials (including sentence transitions).[85]

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80. Notably, Vivian Zamel explains that students must learn the nuances and individual meanings of each conjunctive feature; however, the trouble with introducing students to conjuncts based on semantics alone, separate from grammar and use, is that students tend to substitute one for the other (such as *but* for *however*). Zamel, *supra* note 19, at 25. If they do, they may end up producing grammatically awkward or incorrect sentences. *Id.* Therefore, she recommends that along with semantic restrictions of conjuncts, students should learn their grammatical and use restrictions. *Id.* For this reason, unlike in Halliday and Hasan's taxonomy, scholars like Zamel recommend introducing students to conjunctions based on their grammatical functions: coordinating conjunctions (*e.g.*, 'and,' 'or,' 'but'), subordinating conjunctions (*e.g.*, 'because,' 'although,' 'if'), and conjunctive adverbs (*e.g.*, 'on the other hand,' 'nevertheless'). *Id.* Zamel explains that students can learn that "coordinating conjunctions *connect* independent clauses that subordinating conjunctions *transform* the independent to which they are appended into subordinate ones, and that conjunctive adverbs have semantic weight, but no grammatical function." *Id.*

81. Here is an example of additive conjunction:

> It is not just the subnormal or woefully ignorant who succumb to an interrogator's imprecations, whether implied or expressly stated, that the interrogation will continue until a confession is obtained or that silence in the face of accusation is itself damning and will bode ill when presented to a jury. Further, the warning will show the individual that his interrogators are prepared to recognize his privilege should he choose to exercise it.

Miranda, 384 U.S. at 468 (citations omitted).

82. See examples provided in this Part.

83. Here is an example of causative conjunction:

> We agree that the interviewing agent must exercise his judgment in determining whether the individual waives his right to counsel. Because of the constitutional basis of the right, however, the standard for waiver is necessarily high.

Miranda, 384 U.S. at 486 n.55 (emphasis added).

84. The following is an example of temporal conjunction:

> The question in *Bram* was whether a confession, obtained during custodial interrogation, had been compelled, and if such interrogation was to be deemed inherently vulnerable the Court's inquiry could have ended there. After examining the English and American authorities, however, the Court declared
> . . .

Miranda, 384 U.S. at 527 (emphasis added).

85. For a discussion of linking adverbials, see BIBER ET AL., *supra* note 63, at 133. Biber explains that linking adverbials are more "peripheral" in the structure of the clause, and they are

The following is a simple example of the adversative conjunction, *however*, illustrating to a reader that the second clause provides an exception to the first—a contrasting premise:

> The defendant may waive effectuation of these rights, provided the waiver is made voluntarily, knowingly and intelligently. If, <u>however</u>, he indicates in any manner and at any stage of the process that he wishes to consult with an attorney before speaking there can be no questioning.[86]

In the above example, *however* simply clarifies for the reader that a contrastive relationship exists between the two sentences; notably, readers could probably make this deduction on their own—without an explicit connector. The *Miranda* Court probably added the conjunction to emphasize or highlight that the second sentence contained an important exception.

Conjunctions, however, can have much more significant power for guiding and constraining interpretation. The following example, taken from one of Sperber and Wilson's studies in Relevance theory (a theory discussed more deeply in the next Part), shows how dramatically the same conjunction, *however*, can affect a reader's interpretation when bridging between sentences:

> I prefer Edinburgh to London. I hate the snowy winters. [100% of readers surveyed found *London* the antecedent of snowy winters.][87]

> I prefer Edinburgh to London. <u>However</u>, I hate the snowy winters. [100% of readers surveyed found *Edinburgh* the antecedent of snowy winters.][88]

Here, the addition of the adversative conjunction completely alters the possibilities for interpretation; in fact, it changes the referent of *snowy winters*—from *London* to *Edinburgh*.

Notably, in a study of the academic English writing of native speakers of English, higher rated essays used *conjunctive ties* over three times as often as lower ranked essays.[89] At the same time, linguists repeatedly

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not part of the predicate. *Id.* Biber notes that linking adverbial should be distinguished from coordinators and they can be "particularly dense" in academic writing. *Id.* Coordinators are fixed in a clause boundary; linking adverbials are more flexible. *Id.* at 80.

    86.   *Miranda*, 384 U.S. at 444–45.

    87.   WILSON & SPERBER, *supra* note 27, at 204.

    88.   Example from *id.*

    89.   Witte & Faigley, *supra* note 56, at 196.

warn that these conjunctions do not necessarily give rise to the unity of the text or the interconnectedness of the ideas; instead, they can only *signal* connectedness that presumably already exists in the content.[90] If they are used without this unity of content and ideas, conjunctions do not create connectedness, and they can cause extra work and effort for readers.

Again, these connections are particularly important in U.S. legal writing because of the expectation for clarity. As Bryan Garner emphasizes, guiding words such as conjunctions and phrasal transitions "are essential,"[91] and most good legal writing texts dedicate some discussion to the importance of dovetailing and using transitional words and phrases to illustrate intended logical connections.[92]

3. Lexical Cohesion

Since Halliday and Hasan's taxonomy, several studies in linguistics have suggested that lexical cohesion, specifically *reiteration* and *collocation*,[93] may be the *most important* cohesive feature contributing to overall coherence in persuasive academic writing.[94] Reiteration concerns the repetition of a lexical item for reference.[95] It may include an exact repetition, a synonym, a near-synonym, a superordinate,[96] or a general

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90. Hinkel, *supra* note 38, at 117; Witte & Faigley, *supra* note 56, at 196; Zamel, *supra* note 19, at 28.

91. ANTONIN SCALIA & BRYAN A. GARNER, MAKING YOUR CASE: THE ART OF PERSUADING JUDGES 110 (2008).

92. *See, e.g.,* OATES & ENQUIST, *supra* note 32, §§ 23, 27.1.6; NADIA E. NEDZEL, LEGAL REASONING, RESEARCH, AND WRITING FOR INTERNATIONAL GRADUATE STUDENTS 296 (3d ed. 2012).

93. While grammatical items are members of a "closed system," lexical items (or vocabulary items) function as members of "open sets." HALLIDAY & HASAN, *supra* note 46, at 274.

94. For example, Witte and Faigley observed that about two-thirds of all ties found in their study writing by native speakers of English, in both the low and high rated categories, stemmed from *lexical cohesion.* Witte & Faigley, *supra* note 56, at 196–97. Nevertheless, there remained significant differences between the ways the two groups used lexical cohesion: the higher rated essays used lexical ties more often; further, the majority of the lexical ties in the lower ranked essays derived from repetition of the same item, whereas the higher rated essays achieved much more variation, including an abundance of collocation. *Id.* Ultimately, Witte and Faigley concluded that "[t]he relative frequency of lexical cohesion gives another indication that the writers of high-rated essays are better able to expand and connect their ideas than the writers of the low-rated essays." *Id.* These findings were later confirmed by George McCulley who found that synonyms, hyponyms, and collocation were the "specific cohesive features in writing that contribute most to judgments of writing quality and coherence." McCulley, *supra* note 60, at 278.

95. HALLIDAY & HASAN, *supra* note 46, at 278.

96. A superordinate is a lexical item that names a general class of more specific nouns, such as in the following example in which *weapons* is the superordinate of *guns, knives, and various explosives. Id.* Again, legal writers concerned with clarity and explicitness should note

noun.[97] The following is an example of reiteration from *Brown v. Board of Education*.[98] Here the lexical item, *interest*, enters the text a second time, accompanied by a demonstrative, *this*, which clarifies that the *interest* in the second sentence is the same one described in the first:

> At stake is the personal <u>interest</u> of the plaintiffs in admission to public schools as soon as practicable on a nondiscriminatory basis. To effectuate this <u>interest</u> may call for elimination of a variety of obstacles in making the transition to school systems operated in accordance with the constitutional principles set forth in our May 17, 1954, decision.[99]

U.S. legal writing texts tend to encourage this type of repetition, especially for legal terminology.[100] These texts typically explain that consistency of terms helps a reader see connections between different parts of a text, whether between successive sentences or throughout a whole document.

Reiteration also includes a host of abstract nouns that appear to have important significance to persuasive academic English writing,[101] and by extension to U.S. legal writing. In general, abstract nouns derive their full meaning from the accompanying text, serving to "encapsulate earlier propositions" or label discourse, organizing the text and indicating to the reader how information should be interpreted.[102] These nouns have been called by different names, and scholars have distinguished them in subtle ways: carrier nouns;[103] enumerative and resultative (or summative)

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the presence, once again, of the demonstrative, *these*, which helps direct readers to the items in the first sentence:

> The defendant had *guns, knives, and various explosives* in the trunk of his vehicle. He had these <u>weapons</u> despite the fact that he had previously been convicted of a felony.

97. *Id.* at 274.
98. Brown v. Bd. of Educ. of Topeka, Kan., 349 U.S. 294 (1955).
99. *Id.* at 300.
100. *See, e.g.*, OATES & ENQUIST, *supra* note 32, at 560.
101. Maggie Charles, *'This Mystery': A Corpus-Based Study of the Use of Nouns to Construct Stance in Theses from Two Contrasting Disciplines*, 2 J. ENGLISH FOR ACADEMIC PURPOSES 313, 313 (2003) [hereinafter Charles, *'This Mystery'*]; *see also* Maggie Charles, *Argument or Evidence? Disciplinary Variation in the Use of the Noun that Pattern in Stance Construction*, 26 ENGLISH FOR SPECIFIC PURPOSES, 203, 204 (2007).
102. *Id.*
103. Roz Ivanic, *Nouns in Search of a Context*, 29 INT'L REV. APPLIED LINGUISTICS 93 (1991).

nouns;[104] shell nouns;[105] labeling nouns;[106] and signaling nouns.[107]

In general, these nouns can be used to set up new ideas, restate information, classify, expand, or categorize, among other abstract and variable purposes.[108] When used with a demonstrative like "this," these nouns have been found particularly important to thesis writing in academic discourse—especially in political science—because they constitute "a valuable resource for the construction of convincing arguments and the expression of appropriate stance."[109]

For example, using nouns as retrospective labels affects how readers perceive propositions, as well as the meaning and organization that a writer intends.[110] In this regard, these nouns facilitate argument and persuasion, in part, because in order to process the meaning of the text, a reader must at least preliminarily accept the label that the writer assigns.[111] Further, if writers successfully encapsulate information as their text progresses, they create a better sense of organization and structure throughout, and they appear competent in their disciplines.[112]

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104. Angele Tadros, *Predictive Categories in Expository Text, in* ADVANCES IN WRITTEN TEXT ANALYSIS 69 (Malcolm Coulthard ed.); Hinkel, *supra* note 38, at 115.

105. SUSAN HUNSTON & GILL FRANCIS, PATTERN GRAMMAR 185 (1999); Rahime Nur Aktas & Viviana Cortes, *Shell Nouns as Cohesive Devices in Published and ESL Student Writing,* J. ENGLISH FOR ACADEMIC PURPOSES 3 (2008).

106. Gill Francis, *Labeling Discourse: an Aspect of Nominal-Group Lexical Cohesion, in* ADVANCES IN WRITTEN TEXT ANALYSIS 83 (Malcolm Coulthard ed., 1994); Charles, *'This Mystery,' supra* note 101, at 313.

107. John Flowerdew, *Signalling Nouns in Discourse,* 22 ENGLISH FOR SPECIFIC PURPOSES 329, 330 (2003).

108. *See* Hinkel, *supra* note 38, at 115. Notably, Tadros found that resultative nouns are relatively infrequent in academic prose, referring to the completion of an event, activity, or process. *Id.* (citing Tadros, *supra* note 104).

109. Charles, *'This Mystery,' supra* note 101, at 313. Francis found that retrospective labels are more common than advance labels and are almost always preceded by a deictic marker such as a demonstrative determiner or pronoun. Francis, *supra* note 106, at 85, 89. By extension, they have an important role to play in U.S. legal writing as well, despite the lack of genre-specific linguistic data.

110. Charles, *'This Mystery,' supra* note 101, at 318 (examining two corpora of graduate theses, 200,000 words in politics/international relations and 300,000 words in materials science).

111. *Id.*

112. *Id.* Charles states the following about the cohesive value of labeling nouns:

> The use of a retrospective label involves two important choices made by the writer: first, which information to encapsulate and second, the way in which it is labelled. These choices reflect the writer's perceptions, either of real world events or actions (using non-metalinguistic head nouns) or of the text itself (using meta- linguistic head nouns). By choosing which information to label, writers organise the text and by choosing the label itself, they incorporate their meaning therein.

Id.

In general, legal writing pedagogy discourages the use of abstract nouns and nominalizations;[113] however, when they are used to improve cohesion and emphasis or categorize information, even legal writing scholars agree that they are undeniably effective tools of persuasion, organization, and clarity.[114] In fact, similar to Bryan Garner's recommendation for using "pointing words" with "echo links," Anne Enquist and Laurel Oates recommend using summarizing nouns or noun phrases with demonstrative determiners to create what they call "substantive transitions."[115]

The example below illustrates how this kind of cohesion manifests in legal English. Here, the Court in *Miranda* references a quote in the preceding sentence and directs the reader to view it as articulating *principles*. In this way, the Court uses the abstract noun *principles* (assisted by the demonstrative cohesive device, *such*) to limit the reader's interpretation and characterization of the information given in the preceding sentence.

> It has been said, for example, that an admissible confession must be made by the suspect "in the unfettered exercise of his own will," and that "a prisoner is not 'to be made the deluded instrument of his own conviction.'" Though often repeated, such principles are rarely observed in full measure.[116]

Distinct from reiteration, *collocation* describes "lexical items that regularly co-occur," and the cohesion is expressed when those items are used in successive sentences[117] (*e.g.*, enforce→judgment; above→the law; interpret→statute; and phrases like "the letter of the law."). In the following example, sentences are clearly connected because a reader

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113. ENQUIST & OATES, *supra* note 24, § 5.2; *see also* EUGENE VOLOKH, ACADEMIC LEGAL WRITING: LAW REVIEW ARTICLES, STUDENT NOTES, SEMINAR PAPERS, AND GETTING ON LAW REVIEW 123 (4th ed. 2010).

114. In their text, *Style: Lessons in Clarity and Grace* (which is often used in advanced legal writing courses), Joseph Williams and Gregory Colomb instruct writers to keep nominalizations (1) that are used as short subjects to refer to previous sentences (*e.g.*, "This decision can lead to positive outcomes"); (2) that replace awkward "the fact that"-type phrases (*e.g.*, "The fact that she acknowledged the problem . . ." →"Her acknowledgement of the problem . . ."); (3) that name what would otherwise be the object of the verb (*e.g.*, "I accepted what she requested"→ "I accepted her request"); and (4) that refer to a concept familiar to the reader (*e.g.*, "Taxation without representation did not spark the American Revolution."). WILLIAMS & COLOMB, *supra* note 36, at 42–43. *See also* Sarah B. Duncan, *Pursuing Quality: Writing A Helpful Brief*, 30 ST. MARY'S L.J. 1093, 1133 (1999); ENQUIST & OATES, *supra* note 24, § 6.2.10 (cautioning against over-editing for conciseness, "which can ruin writing by packing it too tightly and by creating overly long and overly complicated sentences).

115. ENQUIST & OATES, *supra* note 24, § 4.3.

116. *Miranda*, 384 U.S. at 509 (citations omitted).

117. HALLIDAY & HASAN, *supra* note 46, at 284.

expects *statutes* to be *interpreted*: those words are collocated.

> The <u>statute's</u> language is ambiguous. And the Agency's <u>interpretation</u> is reasonable.[118]

While the above observations from text analysis and legal writing scholarship help identify the meaning and mechanics of cohesive devices, they do little for explaining how and when writers choose to use those features—the cognitive processes underlying the choice to explicitly connect and constrain interpretation,[119] instead of using other cohesive strategies (like going old to new or using consistent topic strings). These cognitive processes are better described by views from pragmatics.[120] Among these views, Sperber and Wilson's *Relevance theory* may be the most instructive for understanding writer decisions and reader interpretations.[121] Relevance theory may also give insight into why professors and U.S. legal audiences may experience such frustration when attempting to read or critique the writing of NNS lawyers.

B. *Relevance Theory & Understanding When and Whether to Use Cohesive Devices*

Good legal writers, like other good writers, consider the needs and expectations of the target audience. When U.S. legal writing curriculum invokes the idea of audience, however, it usually focuses on the top-down structures and patterns that satisfy the U.S. legal writing discourse community's expectations for rhetorical style, analytical patterns, and

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118. Barnhart v. Walton, 535 U.S. 212, 225 (2002).

119. *See* Williams, *supra* note 9, at 771 (positing that considerations from pragmatics and Relevance theory may help English language learners determine whether an explicit connector is needed).

120. *See id.*; WILSON & SPERBER, *supra* note 27, at 1.

121. Deirdre Wilson & Dan Sperber, *Relevance Theory, in* THE HANDBOOK OF PRAGMATICS 607 (Laurence R. Horn & Gregory Ward eds., 2004) [hereinafter Wilson & Sperber, *Relevance Theory*]; DAN SPERBER & DEIRDRE WILSON, RELEVANCE: COMMUNICATION AND COGNITION (1986) [hereinafter SPERBER & WILSON, RELEVANCE]. Sperber and Wilson advanced Relevance theory in the 1980s, a theory of cognition-oriented pragmatics that attempts to describe how humans naturally interpret utterances. Much of Relevance theory responds directly to H.P. Grice's central claims about the Cooperative Principle. Grice's Principle stands for the idea that when people engage in conversation, they subscribe to certain pragmatic norms that maximize the effectiveness and efficiency of communication. Herbert Paul Grice, *Logic and Conversation, in* 3 SYNTAX AND SEMANTICS 41–58 (Peter Cole & Jerry L. Morgan eds., 1975). His maxims include Quality (truthfulness), Quantity (informativeness), Relation (relevance), and Manner (clarity). *Id.* at 41–58. While Sperber and Wilson accept Grice's perception that utterances create an expectation for relevance, they question the other maxims and the Cooperative Principle itself, recognizing that these norms are often violated and that humans regularly use implied content and figurative utterances. Wilson & Sperber, *Relevance Theory, supra*, at 607.

writing conventions. But as scholarship in pragmatics suggests, attention to audience also matters for satisfying bottom-up expectations and assumptions, which requires understanding the principles guiding interpretation of utterances.[122] Relevance theory attempts to provide these principles—offering helpful background for discussions about how bottom-up needs and expectations of audiences may also be affected by language and culture.

Relevance theory stands for the idea that humans are wired for communication, and that this disposition, combined with context, assumptions, and background knowledge, affects our choices for output and interpretation of input.[123] It builds on two basic principles: (1) that humans are driven to find maximum relevance; and (2) that any act of overt communication "conveys a presumption of its own optimal relevance."[124]

This conception of relevance is closely tied to an interlocutor's assumptions,[125] perceptions of truth, and expectations based on her background knowledge or what she has already interpreted from previous input in the discourse or text.[126] The more the input appears to be true— or comports with an interlocutor's expectations or assumptions—the more *relevant* the input will seem to her.[127] Further, interlocutors are driven to pick out the *most* relevant material from given input—as humans naturally seek whatever is optimally relevant.[128]

Finally, Relevance theory emphasizes that perceptions of relevance vary "inversely with effort."[129] When it takes interlocutors more effort to process information, they find the input less rewarding and, therefore, less relevant or less worthy of attention.[130] For example, when input requires effort-consuming computations, the computation process itself may prevent an interlocutor from perceiving the information as relevant.[131] By the same token, when an interlocutor finds input easy to interpret, that input has "an initial degree of plausibility."[132]

Therefore, Relevance theory describes a human disposition that

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122. *See* BLAKEMORE, *supra* note 55, at 86 (discussing discourse organization in the context of speech).

123. *See generally* WILSON & SPERBER, *supra* note 27, at 5–7.

124. *Id.* at 6. *See also* WILSON & SPERBER, RELEVANCE, *supra* note 121, at 608.

125. Linguists use the term, interlocutor to mean someone who participates in a dialogue or conversation. An interlocutor can also be a reader or writer.

126. Wilson & Sperber, *Relevance Theory*, *supra* note 121, at 608.

127. *Id.*

128. Optimal relevance is when an interlocutor perceives input as being "worthy of processing effort." WILSON & SPERBER, *supra* note 27, at 201.

129. Wilson & Sperber, *Relevance Theory*, *supra* note 121, at 614.

130. *Id.* at 608.

131. *Id.*

132. *Id.* at 614.

prefers a path of least effort to acquire the most plausible input that comports with one's background knowledge and assumptions.[133] Both sides of the discourse share this disposition and expect it of the other, and they naturally make choices and assumptions based on that expectation.[134] As such, interlocutors expect that there will be a connection from one sentence to the next, and they look for those connections regardless of whether there is a signal to do so in a particular way.[135]

These ideas have important implications for teaching students to use explicit cohesive devices. When two sentences appear in sequence, readers assume that the writer expects the reader to find a relationship between them. In addition, a writer usually expects a reader to use his or her background knowledge to derive the most reasonable, plausible interpretation with the least effort. The reader, in turn, interprets in a way that seems most optimally relevant: the way that (1) comports with the reader's knowledge and assumptions; (2) seems the most plausible; and (3) takes the least effort to compute.

As writers then, we must anticipate these dispositions. If we can create an experience of ease and familiarity, we will likely increase a reader's perception that the information we offer is relevant. In effective English writing, this ease is usually achieved by using cohesive strategies, like arranging content from old and familiar ideas to new and complex ideas.[136] Again, this is the established practice of offering the reader information she understands before requiring her to process something new and difficult. Appropriate and customary use of cohesive devices can also facilitate this ease, particularly when combined with understanding of and sensitivity to a reader's background knowledge and the ways a reader might expect cohesive devices to be used in a given genre of writing. However, if those devices are used in a way that readers do not anticipate or expect, conflicting with a reader's perception about what interpretation or connection would optimize relevance, readers may become frustrated by the effort required, *and they may dismiss the input as irrelevant or incoherent.*

It follows that when NNSs misuse, overuse, or underuse cohesive devices, they risk causing readers this extra effort, annoyance, or frustration, which can result in a reader's assessment that the writing is irrelevant, unnecessarily time consuming, or even illogical. To illustrate

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133. *Id.* at 608; *see also* BLAKEMORE, *supra* note 55, at 87 (discussing the meaning of *context*, as the background knowledge a reader brings to interpretation of utterances or the assumptions she derives from interpreting previous utterances).

134. WILSON & SPERBER, *supra* note 27, at 6. *See also* Wilson & Sperber, *Relevance Theory*, *supra* note 121, at 608.

135. Williams, *supra* note 9, at 772.

136. WILLIAMS & COLOMB, *supra* note 36, at 69–70.

this idea, let us return to the example given in the Introduction to this Article:

> While <u>on one hand</u> Afghanistan has experienced many constitutions in the last 90 years, <u>on the other hand</u>, its constitutional history has been consistently riddled with conflict, power struggles, and popular uprising.

Again, readers in a U.S. legal discourse community would normally expect *on one hand/on the other hand* to signal a contrastive relationship; however, from a U.S. point of view, multiple constitutions would usually signal political instability. Therefore, a U.S. reader would likely be confused by the use of the contrastive connector, and that reader would re-read the clauses to be sure that he arrived at the most optimally relevant interpretation.

Applying principles of Relevance theory, however, a professor might ask whether background knowledge about Afghanistan or assumptions about government might lead an Afghan writer to see a contradiction between the experience of multiple constitutions and political instability. In other words, from an Afghan writer's perspective, there might actually be a contradiction to draw—if political instability itself would normally prevent the introduction of any constitutions at all. This view may or may not have motivated the choice of this particular student; what matters is that the student may have *intended* to contrast the clauses.

At the same time, there could be background knowledge or training about writing conventions or linguistic properties that could have affected this writer's choice to use *on one hand/on the other hand.* Many— although not all—Afghan lawyers speak and use academic Arabic, having studied the Quran through their elementary and secondary education and sometimes as part of their legal training. As explained below in the next section, students with this kind of training tend to prefer additive, parallel constructions.[137] *On one hand/on the other hand* not only enables a parallel construction, but also is not inherently adversative or contrastive on its face through direct translation. Therefore, it is easy to see how an Afghan student might choose *on one hand/on the other hand* for additive elaboration, instead of for the contrastive relationship it usually signals for native speakers of English.[138]

Most importantly, the idea this student presents is completely logical,

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137. *See, e.g.*, Sa'adeddin, *supra* note 21, at 36; Reid, *supra* note 21, at 80; Mohamed-Sayidina, *supra* note 21, at 254.

138. Notably, while conducting the same kind of contrastive analysis recommended in this Article, several of the Author's Afghan students have explained that Dari has an ostensibly similar conjunctive tie translated into English as "on one side/on the other side." Remarkably, the students report that this connector is used for addition, not contrast.

but the choice of this connector makes it feel confusing without further clarification about the writer's assumptions. For many U.S. legal readers, the underlying idea may be lost to the confusion and exhaustion it caused the reader. In this way, *misuse of cohesive devices can detract from existing coherence, interfering with the structure and flow of ideas that might otherwise conform to expectations and satisfy readers in the relevant legal discourse community.*[139]

The same can be said of NNS writing in which cohesive devices are overused or underused. Written by a different student, the next example illustrates a similar misconception of the meaning and use of *on the other hand*, as well as overuse and underuse of other connectors. While this student's English proficiency is particularly low in comparison to the writer of the previous example and most other UW international LL.M. students, his example is helpful because it throws the complexity of cohesion into sharper relief:

> Second, many Afghan police are uneducated. Their behavior with people is not good enough. On the other hand, most of them are not familiar with Afghan laws. Therefore, they are not able to differentiate legal from illegal behavior. Moreover, they do not recognize scientific evidence, for instance, fingerprints, blood graphs, DNA evidence, and so on. So, criminals easily commit administrative and other crimes . . . .[140]

In this example, readers must endure through various instances of misuse, overuse, and underuse of cohesive devices to arrive at an optimally relevant interpretation. These errors distract a reader from the otherwise coherent idea—that the lack of education among the Afghan police fuels corruption and results in ineffective law enforcement practices.

Regarding the first two sentences, most readers can probably assume a connection between lack of education and bad behavior toward the people, although this connection might be more obvious to people who live in Afghanistan. For U.S. audiences, a cause and effect connector would have been helpful; without such a connector, U.S. readers may feel forced to make the judgment that lack of education invariably leads to bad behavior, a conclusion many U.S. readers may be reluctant to make. Driven to find optimal relevance, most readers would, however, continue on, hoping to construct relevance through interpretation of the third

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139.   Indeed, while Jill Ramsfield cautions against focusing our critiques on lexical concerns, she acknowledges that "[p]robably paramount for the novice will be comments on coherence, for these reveal the writer's progress in understanding analytical paradigms." Ramsfield, "Logic," *supra* note 3, at 201.

140.   This sample has been edited for grammar, spelling, and punctuation.

sentence. Still, the flow is immediately interrupted by misuse of *on the other hand*; again, the relationship between sentence two and three is one of explication or addition—not contrast.

Finally, in the fourth and fifth sentences, the writer offers semantically correct cohesive devices, *therefore, moreover*, and *for instance*, although arguably *therefore* would not have been needed had the writer made a stronger connection between lack of education and bad behavior at the beginning of the paragraph (in a more complete topic sentence). The remaining connections could have been made more simply through additive connectors that carry less jarring semantic weight (*moreover→in addition; for instance →like* or *such as*). The last connector, *so*, draws an appropriate cause and effect relationship from the bottom up, but the content of the statement needs further support from a top-down view.

Again, Relevance theory suggests that understanding why this writer made these choices would require some understanding of the assumptions and background knowledge he brought to the task of writing—as well as assumptions he holds about his readers. These assumptions could derive from cultural perceptions of flow, education or training, linguistic properties, or expectations and conventions related to practice in his home country. Corrections for meaning and use will do little to prevent future errors if there is no understanding or acknowledgment of the nuances of the assumptions guiding his choice to connect in a certain way.

To begin to see patterns in linguistic communities and anticipate how culture and language affect choices to connect, it makes sense to engage in contrastive analysis about how and when writers create explicit interclausal relationships across languages and cultures.

C. *Contrasting Meaning and Use of Cohesive Features Across Languages and Legal Writing Cultures*

Importantly, law professors who teach NNS lawyers need not memorize the various ways writers use cohesive devices across languages and cultures; instead familiarity with the nature of these variations can help professors facilitate contrastive analysis. Once prompted, students can carry the discussion by invoking their own knowledge of their native languages and legal discourse communities.[141] Therefore, the following discussion is meant only to illustrate and emphasize some of the ways that NNS writers use cohesive devices differently than NS writers. And for the most part, the available literature focuses on contrasting frequency of use, so that is also reflected in this Part.

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141. *Compare* Ramsfield, "Logic," *supra* note 3, at 192 (stating that for top-down skills, we need not know "everything about other disciplines and legal cultures—students will provide the comparisons.").

In the following discussion, I describe typical issues NNS students have using cohesive features in English.[142] When possible, I account for cultural, linguistic, or educational explanations for use patterns exhibited by a particular group and I attempt to contrast those findings with use patterns found among effective NS writers.

1. Demonstrative Reference

Research shows significant differences between NNS and NS use of demonstrative reference.[143] In 2001, Eli Hinkel made a significant contribution to our understanding of these differences with her influential study comparing the frequency of cohesive devices in NNS and NS academic English writing.[144] She found that Japanese, Korean, and Arabic writers used demonstratives at a significantly higher rate than NS

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142. A note about genre: Since the initial wave of scholarship in text-analysis of coherence and cohesion, many scholars have added to and developed understandings of the way writers use cohesive ties in academic English. *See, e.g.*, Hinkel, *supra* note 38, at 111–32; Flowerdew, *supra* note 107, at 330; John Flowerdew, *Use of Signalling Nouns in a Learner Corpus*, 11 INT'L J. CORPUS LINGUISTICS 345–62 (2006); Ivanic, *supra* note 103, at 93–114; Tadros, *supra* note 104; Witte & Faigley, *supra* note 56, at 189–204; DOUGLAS BIBER, VARIATION ACROSS SPEECH AND WRITING (1988); Aktas & Cortes, *supra* note 105, at 7. Unfortunately, at this time, there is little text analysis of the use of cohesive ties in analytical and persuasive U.S. legal writing. As such, the discussion in this and other sections is limited to the findings of text analysis of other genres of English writing, mainly how various academic disciplines use cohesive devices in academic English writing. The Author justifies using this research on academic English writing to inform her discussion of cohesive ties in U.S. legal writing because legal writing in English shares many characteristics with other forms of writing in English. *See* ENQUIST & OATES, *supra* note 24, at 1. In addition, much of what NNS international graduate students must write closely resembles that of other academic writing genres. For example, many law schools require NNS graduate students to write final research papers or theses, in which students state and defend an academic claim about a legal issue and support that claim by synthesizing and applying a wide range of research materials, including both primary and secondary sources. Furthermore, U.S. legal writing likely shares substantial linguistic features with U.S. academic writing from various disciplines, including materials science and political science, in which academics present factual evidence and findings and make arguments based on that evidence. *See* Charles, *'This Mystery,' supra* note 101, at 317 (investigating and contrasting the construction of stance through nouns in two corpora of graduate theses in politics/international relations and materials science). While a linguist would likely find some variation as to the frequency of cohesive devices among the legal writing genres and these other disciplines, this number probably has more significance to linguists than it does to individuals learning to write cohesively in a "proximate" genre. Regardless, the Author merely hopes to stimulate comparative discussion about what cohesive devices do and different ways different languages and cultures use them; the Author does not advocate for identification or memorization of exact, scientifically proven differences. Therefore, the research that is currently available can provide sufficient ground for a productive discussion, and students are also fully equipped to provide perspective based on experience.

143. *See generally* Hinkel, *supra* note 38; *see also* HALLIDAY & HASAN, *supra* note 46, at 59 (explaining that many languages "have a set of three demonstratives," including various distinctions that they do not have in English, *e.g.*, Japanese).

144. Hinkel, *supra* note 38, at 124.

writers.[145] Specifically, her data showed that native speakers of Japanese or Arabic used demonstratives at twice the rate of NS writers, and native speakers of Korean used them at three times the rate of NS writers.[146]

Hinkel also found that these NNS writers often used demonstrative pronouns in ways that made the text vague or confusing,[147] observing that in the NNS texts, the demonstrative pronouns did not necessarily refer to specific nouns, phrases, or clauses, "but possibly to broader contexts and textual ideas that may not even be explicitly stated but implied."[148] In contrast, NS writers used demonstrative pronouns less frequently; and when they did use demonstratives, they had "specific and identifiable referents," creating referential cohesive constructions.[149]

Finally, the high frequency rates that Hinkel found suggested transference from the students' first languages, as demonstratives in Japanese, Korean, and Arabic all have distinctive textual properties that differ from those in English.[150] Specifically, her data suggested that the NNS writers may be assigning "text-referential properties that demonstratives do not have in English."[151]

The following example from one of my Indonesian graduate student's writing illustrates how this kind of overbroad reference can cause a reader extra work, or even misinterpretation.

> Thirdly, the Corruption Eradication Commission's <u>transparency</u> and <u>performance</u> has gained <u>public trust</u>. <u>This</u> led to support from the international community.[152]

While far from fatal in this example, a U.S. reader may hesitate or feel compelled to re-read this passage to determine whether *this* modifies *transparency* and *performance* or *public trust*. For example, the reader

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145. *Id.* (comparing use of cohesive devices in English by native speakers of English, Japanese, Korean, and Indonesian).

146. *Id.*

147. *Id.* at 125.

148. *Id.* Hinkel also notes that demonstrative nouns have received "comparatively little attention in textbooks and guides for academic writers." *Id.* at 114.

149. *Id.* at 125–26.

150. *See id.* at 124. Jennifer Yusun Kang found that the Korean writers relied on specific Korean writing strategies, transferring common Korean linguistic practices like frequent use of demonstrative determiners. Jennifer Yusun Kang, *Written Narratives as an Index of L2 Competence in Korean EFL Learners*, 14/4 J. SECOND LANGUAGE WRITING 259, 263 (2005). Notably, a dissertation examining the L2 English writing of university students in Algeria (NNS students) also reported that students inappropriately used the demonstrative "that" and the personal reference "it." Besma Azzouz, A Discourse Analysis of Grammatical Cohesion in Student's Writing: A Case Study of Second Year Students (2009) (unpublished thesis, Mentouri University-Constantine), *available at* http://bu.umc.edu.dz/theses/anglais/AZZ1086.pdf.

151. Hinkel, *supra* note 38, at 128–29.

152. This sample has been edited.

may wonder whether the *transparency* and *performance* or the result of *public trust* led to the international support—or both; the use of *this* is simply overbroad and frustrating to read. Combining *these* with an abstract noun, such as *improvements*,[153] would have helped readers identify and characterize *transparency* and *performance* (*e.g.*, "*These improvements* [have also] led . . .")*. Improvements*, in particular, directs the reader how to interpret the preceding information, while the plural demonstrative—*these*—directs the reader to include both *transparency* and *performance* in the calculus.

A professor versed in Relevance theory and contrastive analysis might encourage this Indonesian student to think about whether Bahasa Indonesia (the official language of Indonesia) allows for more broad reference and use of demonstratives without abstract nouns, especially in the context of legal writing. Contrastive discussions like these, combined with productive exercises, can bring to light differences and similarities in perceptions about proper use of demonstratives, including what constitutes an overbroad demonstrative reference in different legal discourse communities.[154] The attention required by the contrastive inquiry itself is likely to stimulate learning—even if the construction would be similarly overbroad in Bahasa Indonesia.

2. Conjunction

NNSs have significant difficulty learning to use conjunctive ties effectively in English writing.[155] This difficulty may stem from a restricted repertoire of linking words and knowledge of the relationships they signal.[156] In addition, differences in NNS use of coordinating or phrase-level conjunctions in English writing may be greatly influenced by transfer of meanings from a writer's first language, rhetorical preferences, and educational background.[157] For example, Mauri and van der Auwera explain that in many languages, contrast is communicated through conjunctive strategies, and some languages lack overt

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153. Halliday and Hasan would consider *action*, in this instance, to be a *general noun*—an example of *lexical cohesion* or *reiteration*.

154. *Infra* Part III.

155. *See* Andrew Cohen et al., *Reading English for Specialized Purposes: Discourse Analysis and the Use of Student Informants*, 13 TESOL Q. 551–64 (1979); Nola S. Bacha et al., *Difficulty in Learning and Effectiveness of Teaching Transitional Words: a Study on Arabic-Speaking University Students*, 14 TESOL Q. 251 (1980) (finding that this restricted repertoire, instead of Kaplan's theory of differences in logic, likely explained the apparent difficulty).

156. *See* Hinkel, *supra* note 38, at 128–30.

157. *See, e.g.*, Yvette Field & Yip Lee Mee Oi, *A Comparison of Internal Conjunctive Cohesion in the English Essay Writing of Cantonese Speakers and Native Speakers*, 23 RELC J. 15–28 (1992); Mohamed-Sayidina, *supra* note 21, at 264.

adversative connectives.[158] This lack does not mean that speakers of these languages cannot communicate adversative connection; however, it does lend further detail to the observation that connective relationships are not necessarily expressed the same way language to language.[159]

As to variations in use, when comparing Arabic and English use of coordinating conjunctions, (*e.g.*, and, or, but, nor) and subordinating conjunctions, (*e.g.*, while, even though, because) studies have shown that Arabic texts use more coordination than subordination.[160] In English texts, however, subordinating conjunctions are more frequent than coordinating conjunctions.[161] Similarly, Arabic texts use more additive than adversative, temporal, or causal transition words and phrases; English texts, on the other hand, use more non-additive than additive transitions.[162]

Further, studies in second language acquisition have found that Arabic students appear to transfer these characteristically Arabic uses of conjunctions into their English writing, using additive transition words more often than adversative ones.[163] Aisha Mohamed-Sayidina suggested that this tendency may be attributable to Arabic educational practices that require students to memorize sections of the Quran, which exhibits an abundance of additive coordinating conjunction.[164] She also surmised that the lack of adversative conjunctions may be attributable to what she called "the collectivist nature" of Arab culture, a culture that she described as historically discouraging political and social dissent.[165]

Other studies have found that the English writing of native speakers of Spanish exhibited a similar frequency of coordinating conjunctions

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158. Caterina Mauri & Johan van der Auwera, *Connectives*, *in* THE CAMBRIDGE HANDBOOK OF PRAGMATICS 400 (Keith Allen & Kasia M. Jaszczolt, eds., 2012).

159. *Id.*

160. Ayisha Mohamed & M.R. Omer, *Texture and Culture: Cohesion as a Marker of Rhetorical Organization in Arabic and English Narrative Texts*, 31 RELC J. 45–75 (2000); Mohamed-Sayidina, *supra* note 21, at 254–55.

161. Mohamed & Omer, *supra* note 160, at 45–75; Mohamed-Sayidina, *supra* note 21, at 254–55.

162. *See* Shirley E. Oslter, *English in Parallels: A Comparison of English and Arabic Prose*, *in* WRITING ACROSS LANGUAGES: ANALYSIS OF L2 TEXT 169–85 (Ulla Connor & R Kaplan eds., 1987) (reporting that Arabic writers included more coordinating conjunctions, such as "and," and more parallel structures than writers in English); Mohamed & Omer, *supra* note 160, at 45–75; Mohamed-Sayidina, *supra* note 21, at 254–55.

163. *See* Sa'adeddin, *supra* note 21, at 36–51 (finding transfer from common writing patterns in Arabic, in which coordinate and parallel constructions are common); Hinkel, *supra* note 38, at 121; Mohamed-Sayidina, *supra* note 21, at 263.

164. Mohamed-Sayidina, *supra* note 21, at 264 (noting that the Quran has an oral history, and it uses many linguistic strategies common to oral text—including an abundance of additive coordinating conjunction).

165. *Id.* at 264–65. In her study, Hinkel observed this same abundance, and she noted that it contributed to a sense of emphasis, conviction, or elaboration. Hinkel, *supra* note 38, at 120.

(particularly "and") in comparison to writing by native speakers of English.[166] Joy Reid suggested that this tendency may be related to the Arabic influence by the Moors in Spain.[167] Reid also warned that this abundance may be perceived as "overuse," and it could inhibit a perception of flow for readers who are native speakers of English.[168] In contrast, Hinkel found that native speakers of Bahasa Indonesia used coordinating or phrase-level conjunctions less often than NS writers, often resulting in shorter sentences that lacked elaboration.[169]

Hinkel also found that native speakers of Japanese and Korean, used sentence or phrase transitions three times as often as native speakers of English; similarly, native speakers of Bahasa Indonesia used them twice as often as native speakers of English.[170] She observed that in many of the NNS essays in her sample, "sentence transitions represent[ed] the most prevalent overt means of tying portions of text together, even when the ideas in discourse seem[ed] to be somewhat disjointed."[171]

In addition to influences of first languages and writing cultures, NNS overuse of conjunctive elements may also be compounded by misleading EFL and ESL training on the function, mechanics, and use of conjunctions and sentence transitions.[172] NNS graduate students of law typically come to law school programs having spent many years in EFL classrooms abroad, and some have gone through extensive preparation for tests like the TOEFL, IELTS, and other tests of English proficiency. Often these kinds of classes teach conjunctives from categorical lists inspired by Halliday and Hasan's taxonomy. Through these classes, students are taught to memorize these lists and to use them often to create a sense of coherence in their essays; there is little discussion about the expectations of audiences or alternative cohesive strategies (*e.g.*, arranging content to create ease of reading by going old and familiar to new and complex). Instead, the emphasis is on creating explicit interclausal relationships, which may be misleading students into thinking they must create an explicit connection each time a connection

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166.   Reid, *supra* note 21, at 99. *See also* Maria S. Montano-Harmon, *Discourse Features of Written Mexican Spanish: Current Research in Contrastive Rhetoric and its Implications*, 74 HISPANIA 417–25 (1991).

167.   Reid, *supra* note 21, at 99. *See also* Montano-Harmon, *supra* note 166, at 417–25.

168.   Reid, *supra* note 21, at 99.

169.   Hinkel, *supra* note 38, at 121.

170.   *Id.* at 122

171.   *Id.*

172.   Hinkel explains that "the teaching of explicit cohesive devices, such as coordinators and sentence transitions, is common because ESL writers often employ various cohesion conventions differently than native speakers (NSs) of English do and that L2 texts may sometimes appear incoherent to native readers." Hinkel, *supra* note 38, at 112–13 (citing JOY REID, TEACHING ESL WRITING (1993)). She also explains that overuse of connectors may be attributable to the intense focus on connectors in typical ESL or EFL classes. *Id.*

can be made, encouraging students to insert cohesive devices wherever and whenever they seem to fit.[173]

Again, through contrastive analysis and exercises, students can explore differences in meaning and use of conjuncts across languages and writing cultures, including preferences for using certain types of connectors over others and assumptions of readers in different legal audiences.[174]

3. Lexical Cohesion

Lexical cohesion in English may be troublesome for NNS for various reasons, including linguistic nuances in the meanings of translated lexical items, as well as expectations for how and when lexical cohesion should be used in different writing cultures and genres. For example, repetition of the same noun is the most common cohesive device in Arabic texts; whereas English texts use grammatical cohesion more frequently (reference, conjunction, substitution, and ellipsis).[175] And when English texts use lexical cohesion, they use synonyms more than repetition.[176]

Aziz Khalil found that native speakers of Arabic also tend to use an abundance of repetition in academic English writing, attributing this tendency to first language transfer.[177] In contrast, an abundance of repetition in English text can appear "ideationally redundant."[178]

Notably, native speakers of Persian have also been found to have a tendency toward the use of repetition and synonymy in English writing.[179] Another study found Singaporean students writing in English tended to use advance and retrospective labeling nouns less frequently than native speakers of English; furthermore, they used a smaller range of items, used less modification, and exhibited some other unconventional use.[180]

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173. An Indonesian student once told the Author that it was her impression that she could gain more points on the TOEFL writing sections if she used *more* logical, conjunctive ties like *however, nevertheless, consequently*. As such, she tended to overuse these features in her writing.

174. *See infra* Part III.

175. Mohamed & Omer, *supra* note 160, at 45–75; Mohamed-Sayidina, *supra* note 21, at 254–55.

176. Mohamed & Omer, *supra* note 160, at 45–75; Mohamed-Sayidina, *supra* note 21, at 254–55.

177. Khalil, *supra* note 19, at 359.

178. *Id.*

179. *See generally* Fatemeh Mirzapour & Maryam Ahmadi, *Study on Lexical Cohesion in English and Persian Research Articles (A Comparative Study)*, 4 ENGLISH LANGUAGE TEACHING 245 (2011), *available at* http://www.ccsenet.org/journal/index.php/elt/article/viewFile/13379/9258.

180. Flowerdew, *supra* note 107, at 331 (citing Gill Francis, *The Teaching of Techniques of Lexical Cohesion in an ESL Setting, in* LANGUAGE IN A BI-LINGUAL OR MULTI-LINGUAL SETTING (Verner Bickley ed., 1988)).

Similarly, one study found an abundance of repetition in the academic writing of Chinese undergraduates, showing very little use of synonyms, antonyms, or superordinates.[181] In that study, Liu and Braine observed that the Chinese writers also incorrectly attempted collocation, which the researchers attributed not to transference, but to the common Chinese practice of teaching vocabulary out of context.[182]

In contrast to these Chinese students, students trained in Mexico are often taught to rely heavily on synonyms to create a sense of unity in their writing.[183] In her study of the Spanish writing of Mexican students, Karen Smith found that the writers tended to "state an idea, place a comma, and then repeat the same idea using a synonym, the same word, or a semantically related word (collocation) to create a build-up effect."[184] She noted that an abundance of this practice would be considered repetitive or non-linear under typical English academic writing conventions.[185]

In her work comparing NNS and NS academic English writing, Eli Hinkel found that native speakers of Korean used abstract nouns to make general statements or vague descriptions, but they did not follow with the

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181. Liu & Braine, *supra* note 19, at 633.

182. *Id.* (citing Meisuo Zhang, *Cohesive Features in Exploratory Writing of Undergraduates in Two Chinese Universities*, 31 RELC J. 61 (2000)). *But see* Hinkel, *supra* note 38, at 126–27. As for other lexical cohesive devices, Hinkel's study found that neither enumerative nor resultative nouns were common in any of the student texts, for native or non-native speakers of English. *Id.* at 126. However, while still infrequent overall, speakers of Korean used enumerative nouns at a significantly higher frequency rates than native speakers of English; in addition, speakers of Indonesian and Arabic used resultative nouns more frequently than native speakers of English. *Id.* Also different from the native speakers of English, the native speakers of Korean used enumeratives to make general statements or vague descriptions, and they did not follow with the typical clarification or elaboration that native speakers of English usually expect after use of classification nouns like these. *Id.* at 127. *See also* Mirzapour & Ahmadi, *supra* note 179, at 249. Fatemeh Mirzapour and Maryam Ahmadi found that "[i]n English data the general tendency is towards the use of repetition and collocation, but Persian data shows the general tendency towards the use of repetition and synonymy." Flowerdew, *supra* note 107, at 331 (citing Francis, *supra* note 180).

183. Karen L. Smith, *Discourse Features of Written Mexican Spanish: Current Research in Contrastive Rhetoric and Its Implications*, 74 HISPANIA 417, 420–21 (1991).

184. *Id.* In their study comparing use of "shell nouns" in research articles written by NNS international graduate students and published academic articles, Rahime Nur Aktas and Viviana Cortes found that while the NNS students used shell nouns as often or more frequently than published writers, they nonetheless needed to be exposed to examples of how to use these nouns in "appropriate lexico-grammatical patterns to help them more efficiently organize the communicative purposes of their texts." Rahime Nur Aktas & Viviana Cortes, *Shell Nouns as Cohesive Devices in Published and ESL Student Writing*, 7 J. ENG. FOR ACAD. PURPOSES 3–14, 9 (2008). These were students of Art and Design, Biology, Computer Science, Economics, Environmental Engineering, Physics and Astronomy. The comparative published author corpora included writing from the same disciplines.

185. Smith, *supra* note 183, at 420–21.

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typical clarification or elaboration that native speakers of English usually expect.[186] Similarly, speakers of Indonesian and Arabic used resultative abstract nouns to make vague generalizations instead of engaging their summative, cohesive properties in English.[187]

In light of this research, professors can begin to anticipate and see patterns in student writing. Again, while professors need not memorize the particulars of variations between linguistic groups, having a sense of the tendencies of NNS writers will help them facilitate contrastive discussions and analysis. The next section presents a method for integrating contrastive analysis of cohesive devices into a writing exercise that engages receptive and productive modes of learning.

III. USING CONTRASTIVE ANALYSIS TO DEVELOP BOTTOM-UP FLOW

Scholars in second language acquisition agree that NNSs must be taught how to create bottom-up flow in English.[188] In fact, struggles with bottom-up flow will not likely resolve without deliberate efforts to build student repertoires of cohesive devices and help them learn when and whether to use those devices.[189] This Part attempts to offer professors a way to help NNS lawyers overcome this notorious challenge.

To maximize student learning, I recommend a four-step exercise that extends contrastive analysis beyond top-down rhetorical preferences and analytical patterns. This exercise uses research in linguistics to support students as they engage in meaningful opportunities to contrast approaches to flow from the bottom-up, distinguishing meaning and use

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186. Hinkel, *supra* note 38, at 127 (discussing abstract nouns of the enumerative type).

187. *Id. See also* Mirzapour & Ahmadi, *supra* note 179, at 249.

188. *See* Hinkel, *supra* note 38, at 123–24 (stating that "[a]cademically-bound NNS students need to be taught a greater range of cohesive devices, and lexical and syntactic means of constructing cohesive text rather than ubiquitous sentence transitions, which cannot make the L2 text appear unified when the ideas in discourse flow are disjointed"); Zamel, *supra* note 19, at 28 (explaining that the various ways we achieve cohesion need to be taught like we teach conjuncts); McCARTHY, *supra* note 70, at 64 (stressing the importance of vocabulary teaching overall, second language learning, and lexical cohesion as being part of that study of vocabulary in "context" and "co-text").

189. Mirzapour & Ahmadi, *supra* note 179, at 249 (confirming that teaching sub-types of lexical cohesion to foreign language learners will improve the quality of their reading and writing); Khalil, *supra* note 19, at 366 (stating that professors should pay more attention to the teaching of other lexical cohesive ties such as synonymity and collocation); Hinkel, *supra* note 38, at 113 (stating that "text cohesion and issues in the coherence of ideas need to be taught to provide learners linguistic means of developing unified text") (citing JOY REID, TEACHING ESL WRITING (1993). *See also* Zamel, *supra* note 19, at 28 (explaining that the various ways we achieve cohesion need to be taught like we teach conjuncts); McCARTHY, *supra* note 70, at 64; Williams, *supra* note 9, at 776 (explaining that advanced language learners need not only direction on *when* to use a connector, but also a rationale for deciding *whether* a connection is needed).

of cohesive ties in legal writing across languages and legal writing cultures.[190] Studies in second language acquisition show that these opportunities should capitalize on both receptive and productive modes of learning, increasing student comprehension and retention of the skills they are learning,[191] and this exercise aims to achieve that balance.

In particular, this exercise involves (1) engaging in contrastive analysis to identify the meaning and use of cohesive devices in the context of a model five-paragraph, persuasive essay written by a native speaker of English; (2) writing a similar, research-free, five-paragraph essay responding to a prompt that asks the writer to defend a claim; (3) conducting peer review of cohesive ties, including both peer-critique and self-reflection; and (4) revising based on that peer review and self-reflection.

A. *Origins*

As background, I developed this four-step exercise in response to the needs of the Afghan and Indonesian LL.M. students taking my weekly

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190. For a helpful discussion of the effectiveness of graduate writing pedagogy that emphasizes both function and form, or top down and bottom up skills, see Maggie Charles, *Reconciling Top-Down and Bottom up Approaches to Graduate Writing: Using a Corpus to Teach Rhetorical Functions*, 6 J. ENGLISH FOR ACADEMIC PURPOSES 289–302 (2007), *available at* http://ac.els-cdn.com/S1475158507000537/1-s2.0-S1475158507000537-main.pdf?_tid=666150 b6-56fe-11e4-9a63-00000aacb35e&acdnat=1413661316_9d97e2661b9aec84e9a6808f85ed0e29 (arguing that it is the combination of top down and bottom up exercises that provides the "enriched input necessary for students to make the connection between general rhetorical purposes and specific lexico-grammatical choices"). *Compare* Carpenter & Hunter, *supra* note 19, at 427 (recommending exercises that help students (1) recognize specific rhetorical functions and coherent organizational processes in their writing; and (2) include the devices which signal them); Eli Hinkel, *Current Perspectives on Teaching the Four Skills*, 40 TESOL Q. 111 (2006) *available at* http://www.elihinkel.org/downloads/CurrentPerspectives.pdf (explaining that students need to develop top-down and bottom-up skills, stating that current research and pedagogy advocates for curricula and instruction that "strive to achieve a balance between the linguistic and the schematic aspects of learner language development").

191. Second language research shows that vocabulary itself should be understood as existing on a "continuum of several levels and dimensions of knowledge," and that passive/receptive knowledge of vocabulary does not necessarily translate into correct use of a word (which would be characteristic of active/productive knowledge). Batia Laufer & T. Sima Paribakht, *The Relationship Between Passive and Active Vocabularies: Effects of Language Learning Context*, 48 LANGUAGE LEARNING 365, 367 (1998). Accordingly, just because a NNS student understands a word, does not mean that student will be able to use it in context. By extension, memorization of rules and logical relationships and meanings expressed by the various conjuncts and lexical cohesive devices is limited in its ability to advance a student's production of cohesive text. Encouraging this contrastive analysis *and* engaging in both receptive and productive activities should help to broaden NNS student repertoire and command of cohesive devices; in turn, this development should improve their ability to relate complex and sophisticated ideas in the various U.S. legal writing and academic genres they are required to produce in graduate programming.

tutorial, English for Legal Writing.[192] When I first began teaching this course, I realized that the students needed more background in U.S. academic top-down skills, such as how to write assertive content-driven thesis statements and topic sentences and how to support those assertions with concrete facts, examples, and reasons. In effect, these students needed, more than anything else, instruction on coherence—how to "stick to the point" and "show their work" in the linear style consistent with U.S. rhetorical preferences and analytical paradigms.

I decided to use a research-free, classic five-paragraph essay exercise as a strategy for quickly teaching those more global, top-down rhetorical skills and conventions without adding an unnecessary legal research and synthesis burden.[193] For this exercise, I asked students to defend a claim in response to simple prompts like the following:[194]

> Should your country (Indonesia or Afghanistan) ban smoking in public buildings? Why or why not?

> Should prison inmates be provided with educational classes for which they can earn college credit (inside the prison facility)?

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192. English for Legal Writing meets for three hours a week, covering two general topic areas: (1) Grammar and Mechanics for legal writing (ESL grammar issues; punctuation; vocabulary development); and (2) Effective Writing (rhetorical style, writing conventions, concision).

193. The utility of legal writing exercises that eliminate this additional logistical and cognitive burden has been well recognized by scholars like Charles R. Calleros and Mark Wojcik. *See, e.g.*, Charles R. Calleros, *Introducing Civil Law Students to Common Law Legal Method Through Contract Law*, 60 J. LEGAL EDUC. 641, 647 (2011) (describing his popular exercise on common law rule induction, Rules for Lena, observing that "[i]f all goes well, . . . exercises and illustrations in non-legal contexts should pique students' interest and help them secure a working knowledge of fundamental concepts of legal method."); MARK E. WOJCIK, INTRODUCTION TO LEGAL ENGLISH: AN INTRODUCTION TO LEGAL TERMINOLOGY, REASONING, AND WRITING IN PLAIN ENGLISH 286–94 (1998) (offering writing exercises on legal topics that require no special knowledge or additional research).

194. There are many simple 5-paragraph essay prompts online. *See* Kristina Bjoran, *20 Essay Writing Prompts for 5 Paragraph Essays*, PERSPECTIVES ON EDUCATION, https://suite.io/kristina-bjoran/29h72t6 (last visited Sept. 21, 2014) (inspiring the Author's prompt on prison education). *See also* WOJCIK *supra* note 193, at 285–94. His essay questions are accompanied by one or more paragraphs of text meant to set the stage or give background sufficient to answer the question. *See id.* at 286–94. The titles for Wojcik's prompts are as follows: (1) Are there too many lawyers?; (2) Should we elect judges?; (3) Have electronic sources replaced the law library?; (4) What did Gandhi think about the practice of law?; (5) Interpreting a Warranty (asking students to interpret a warranty provided in an accompanying text); (6) The Death Penalty (asking students for summary and views on *Republic of Paraguay v. Gilmore*); and (7) Defining "Justice" (asking students to select one of several sub-questions about the meaning of *justice*). *Id.* These are excellent writing exercises; however, the Author prefers to give her students as little accompanying text as she can to avoid any copying and allow the text to flow directly from them.

> Explain why or why not?
>
> Should customary dispute resolution (e.g., jirgas and shuras in Afghanistan) be incorporated into the formal justice system of your country? Why or why not?
>
> How should your country be focusing its efforts to fight corruption, and why?

Over the years, that exercise has not only proven to be an effective tool for discussing rhetorical preferences and cultural perspectives on what constitutes good legal writing, but it has also provided a useful platform for conducting contrastive analysis on how effective legal writers use cohesive devices in context, enabling students to see the variety of ways cohesive devices work together in a longer piece of persuasive writing in English, not only between words and sentences, but also among all five paragraphs.[195] Specifically, it strikes a balance between (1) typical legal writing assignments that may be long, legally complex, and cumbersome, and (2) shorter two to three-sentence exercises that illustrate interclausal relationships, but do not help students learn to see and use more complex cohesive ties, like lexical cohesion and other cohesive strategies, in a longer piece.

Indeed, short, two to three-sentence exercises can be helpful for teaching nuances between the meanings of transition words and phrases (*i.e.*, conjunctions and sentence transitions), and they can help students overcome some difficulties with pronoun reference;[196] however, they are limited in their ability to illustrate the variation and relative infrequency of sentence transitions and conjunctions characteristic of good English writing. They also do not present the same level of complexity that students may face when making determinations about more difficult

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195. Notably, Vivian Zamel observes that exercises for teaching cohesive devices "should not be limited to sequences of pairs of discourse sentences. Students should learn to work with longer units of discourse." Zamel, *supra* note 19, at 27.

196. Anne Enquist and Laurel Currie Oates provide excellent shorter exercises on transition words and phrases in the online exercises included with *Just Writing: Grammar Punctuation and Style for the Legal Writer* and among the exercises included in *The Legal Writing Handbook: Practice Book* (they call these transitions generic, orienting, and substantive transitions). These exercises can be used in combination with a longer essay exercise, like the one the Author recommends, or as a supplemental assignment for students who struggle to understand the logical relationships conveyed by different transition words and phrases. A wonderful ESL text by Linda Bates combines top-down and bottom-up exercises—dedicating a whole book to the aim of "transitions." LINDA BATES, TRANSITIONS (2d ed. 1998). While Bates emphasizes that "the most important factor in building coherence is continuity in the developing train of ideas," she nonetheless dedicates substantial portions of her book to explorations in and shorter exercises on how writers use surface signals and logical connectors. *Id.* at 117, 122, and scattered throughout.

choices involving connection—like using lexical cohesion to constrain the interpretation of multiple clauses or assessing the expectations of a particular audience. Given that overall coherence relies heavily on the flow of ideas and content and the logical or organizational scheme, a five-paragraph essay enables a more authentic experience of creating writing that is both coherent and cohesive, in which a student's choice of cohesive tie can work to develop connections far beyond two sentences, taking all five paragraphs and all lexical items into consideration.

The exercise I recommend can be used in an LL.M. legal research, analysis, and writing course; as part of a tutorial or seminar in Legal English; or as an independent study assignment from a writing advisor or ESL specialist. One can also adapt this exercise as a memo re-write and editing assignment—opting out of the five-paragraph essay component; however, part of the utility of the five-paragraph essay is that it removes the research burden and allows students to focus on the skills being taught.[197] If one adapts the exercise for memos or briefs, it makes sense to limit the contrastive analysis to one section of the memo, ideally five to eight paragraphs that include analysis or argument.[198]

B. *The Exercise*

Students begin by examining cohesive devices in a model five-paragraph essay.[199] From the top-down, students can compare rhetorical expectations from their legal writing communities abroad with the rhetorical expectations, organizational schemas, and style illustrated by the model. For example, students will notice that a typical, model five-paragraph position essay includes an introduction and conclusion; a content-based, assertive thesis statement, usually positioned at the beginning or end of the first paragraph; content-based topic sentences that develop and support the thesis, leading and constraining each body paragraph; and sufficient facts, examples, or reasons to support and justify each topic sentence. They will also see that conclusions, in general, present no new arguments or facts.

From the bottom-up, the same model essay can be used to examine the meaning and use of cohesive devices—of particular interest here—as

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197. *See, e.g.*, Calleros, *supra* note 193, at 647; WOJCIK, *supra* note 193, at 285–94.

198. One of the difficulties with using sections of larger works is that they do not neatly model the simple, overt organizational schemes and expectations of a five-paragraph essay, including introduction, body, and conclusion.

199. Professors can write their own essays, or they can adapt one. In the past, the Author has adapted a model essay from Susan Reid's book, *Legal Writing for International Students* 89 (2005) (using Essay A to present the advantages of living in a small town). The new edition offers slightly edited and altered versions of this same essay, some extending to 8 paragraphs. *See* SUSAN REID, LEGAL WRITING IN THE U.S. FOR STUDENTS AND PRACTITIONERS OF LAW app. B (2d ed., 2011) (offering four sample essays modeling structure, reaction, comparison, and persuasion).

well as other cohesive strategies. As a practical matter, and depending on the educational backgrounds in the group, students may need some initial, basic review of the terminology *demonstrative, conjunction,* and *lexical cohesion,* to assist with clear discussion of bottom-up connections they see. The previous section of this Article covers most, if not all, of what students would need to know for this exercise. However, once the basic terminology is known, students should engage in inductive reasoning to derive the meanings and principles that appear to be guiding the use of these features in context.[200] Next, they should contrast this use with how successful writers use similar features in their own legal writing communities. The students themselves can provide this kind of linguistic and cultural input,[201] but professors can more easily facilitate such discussion if they know something about the kinds of differences one might anticipate from different linguistic and cultural groups.

The logistics of this exercise can be complicated without a good method for notation. Bryan Garner offers a basic method for drawing connections in one of his exercises in *Legal Writing in Plain English.*[202] In that exercise, Garner asks students to identify the "bridging words" at the beginning of each paragraph in a piece of published writing, drawing boxes around the connectors and connecting those boxes with arrows to their referents in the previous paragraph.[203] The exercise I recommend builds from there, asking students to find examples of demonstrative reference, conjunction, and lexical cohesion throughout the sample and between all sentences, not just at the beginning of paragraphs. It also adds the contrastive analysis piece. A combination of marking the essay the way Garner recommends and simple notes on the review sheet (offered below) can help students organize their thoughts and reflections on the devices they find. Professors can tailor the level of detail to the time available.

This part of the exercise can be done in small or large groups. If in small groups, students can join with others from their own linguistic and cultural backgrounds and present their findings for a contrastive discussion with the rest of the class. In the alternative, students can form groups with others from different linguistic and cultural backgrounds to engage in contrastive analysis as a small group. The point is not to

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200. Flowerdew, *supra* note 107, at 343 (recommending that learners use inductive reasoning to identify cohesive signals and how they function in context "and then be presented with the rules for reinforcement and systematization").

201. Jill Ramsfield also acknowledges the role students can play in contrastive analysis. Ramsfield, "Logic," *supra* note 3, at 192 (explaining that "[t]o use contrastive techniques, we do not need to know everything about other disciplines and legal cultures-students will provide the comparisons-but we can incorporate references regularly").

202. GARNER, *supra* note 75, at 68–70.

203. *Id.*

determine right or wrong use of cohesive devices, but to develop awareness of how the cohesive devices are being used by an effective NS writer. This helps students build a baseline understanding of proper use in English.

As students do this work, they should discuss the following types of questions that incorporate contrastive analysis:

ANALYSIS OF A MODEL FIVE-PARAGRAPH ESSAY

- DEMONSTRATIVES (*e.g.*, this, that, these, those):
  - Does the writer use demonstratives?
    - Under what circumstances?
    - What is the writer trying to achieve by using these devices?
  - Do writers in your legal writing community use demonstratives this same way?
  - Are there ways that this writer uses demonstratives differently from writers in your legal writing community?
    - More or less frequently?
    - With or without accompanying abstract nouns?

- CONJUNCTIONS (*e.g.*, because, however, therefore, since, for example, in addition, and):
  - What kinds of conjunction does the writer use?
  - Look at each connector individually and ask the following:
    - If I deleted this connector, would I derive the same inference the writer must have intended, or do I need the connector to interpret the sentences correctly?
    - Does removing the connector change the most plausible inference?
    - What kind of prior knowledge do I need to make an appropriate inference, with or without the connectors?
  - Does your legal writing community use the same kinds of conjunctives this model writer uses?
    - Does each of these conjunctions exist in your native language (i.e., can you simply translate the English into your native language, or is the same conjunctive relationship achieved in a different way)?
    - Do these same conjunctives have different meanings and uses in your native language?

- LEXICAL COHESION (*e.g.*, repetition, synonym, superordinate, abstract noun, collocation)
    - Does the writer use repetition and synonym to create a sense of flow and connection?
        - Does she use one device more than the other?
    - Does the writer use superordinates or abstract nouns to label, characterize, or summarize preceding information?
        - Are these nouns helpful to your understanding of the writer's point, and do they help you draw appropriate connections and inferences?
    - Can you find instances of collocation?
    - How do writers in your legal writing community use these same kinds of lexical items?
        - Are you encouraged to use one more than the other?
        - Are you discouraged from using one type, and why?

Effective contrastive analysis of bottom-up features, however, cannot end with abstract discussions of native speaker writing: students must also produce their own analytical and persuasive writing to learn to write cohesively in English. Thus, after analyzing the model essay, students should write a similar position essay. I recommend using simple prompts like those presented at the beginning of this section. These prompts should be tailored specifically to legal issues the group has studied together or larger policy issues that allow students to draw from their own background knowledge and understanding.

Once students have written the essay, in class or at home, they can exchange these essays with other students, ideally from different linguistic groups.[204] I recommend that students write answers to the peer review questions as homework and bring the answers to class. Then students can discuss their findings with their partners and share interesting findings and comments with the larger group.

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204. This peer review exercise adapts and builds on the third lesson from Ann Johns' peer review exercise for coherence. Johns, *supra* note 9, at 257–59. *See also* Ramsfield, "Logic," *supra* note 3, at 201–02 (adapting Johns' lesson 3 for examining surface structures related to cohesion, but choosing not to incorporate considerations from Relevance theory and bottom-up structures) (citing Johns, *supra* note 9, at 247–65). *See also* Kirsten K. David, *Designing and Using Peer Review in a First-Year Legal Research and Writing Course*, 9 LEGAL WRITING 1 (2003) (providing insight into the effective design and implementation of peer-review).

PEER REVIEW OF COHESION IN
THE FIVE-PARAGRAPH ESSAY

- DEMONSTRATIVES
  - Does your partner effectively use the demonstratives *this, that, these, and those* to help a reader see connections and draw conclusions?
  - Are these demonstratives used with abstract, general, or labeling nouns to help readers synthesize or organize details?
    - If demonstratives are used without a noun, do they feel overbroad and difficult to follow?
    - Can you identify the specific referent?
  - How does your partner's use of these demonstratives compare to the model essay? How does it compare to the way you used demonstratives?

- CONJUNCTION
  - What types of conjunctions are there?
  - What types of logical relationships do they signal?
  - Are they helpful, distracting, or inaccurate?
  - Are there some places where it is difficult to derive a plausible inference? Would a transition phrase or conjunctive tie have been helpful?
  - Does your partner use an abundance of one kind of conjunction (*e.g.*, and or however)?
  - Delete each connector (conjunctive adverbials and transitional phrases), one by one and ask the following:
    - Is the connector needed to derive the appropriate inference?[205]
    - What kind of background knowledge is needed to derive the appropriate inference—with or without the connector?
  - Next, try reversing the order of pairs of sentences— sentence one exchanged for sentence two. Will the reader derive the same inference despite the reordering (and the one intended by the author)? If the answer is "yes," then likely no connector was needed.[206]

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205.   The idea to delete connectors comes from Eli Hinkel's article: *Matters of Cohesion in L2 Academic Texts. See* Hinkel, *supra* note 38, at 129.

206.   This idea comes from Williams who recommends switching the order of sentences and paragraphs to see how the exchange affects possible inferences. *See* Williams, *supra* note 9, at 774.

- o If you reverse the order of a given set of paragraphs, does this affect the inference the reader derives—will the reader derive the same inference as before (and the one intended by the author)? If "no" or "maybe," then likely a connector between paragraphs is needed.[207]
- o How does your partner's use of conjunction compare to your own use of the same?
- o Do you suspect that some of the connectors have slightly different meanings in other languages, including your own? Why?
- o How does your partner's use compare to our model essay?
  - A greater or lesser frequency of conjunctions?
  - A wider or lesser array of conjunctions?

- **LEXICAL COHESION**
  - o Does your partner use lexical cohesion (*e.g.*, repetition, synonym, superordinates, abstract nouns, collocation)?
  - o Were these attempts at linking, constraining, or guiding interpretation successful? Do they help you follow the writer's point?
  - o Does your partner seem to use more of one linking strategy over the other (*e.g.*, more repetition than synonym or collocation)? Were these effective choices?
  - o Can you compare your partner's use of lexical cohesion with the model essay? Does your partner use a particular type of lexical cohesion more often or less often than the model?
  - o What about your own use of lexical cohesion? Do you see similarities and differences in your approach to using lexical cohesion?

After writing and peer review, students can go back and revise with the new knowledge and understanding they gained though the previous three steps. This revision can then be reviewed by the professor for further comments and assistance with writing in the U.S. legal writing style.

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207.   *Id.*

IV. CONCLUSION

Many international graduate students of law hope to develop skill at writing for U.S. legal audiences, especially those who aim to practice in the United States or transnationally, or who aspire to an international presence as legal scholars. Some find this goal elusive and challenging as they have to learn to write in the expected U.S. rhetorical style and emulate U.S. legal writing conventions—both of which tend to vary across languages, cultures, and genres. As such, legal writing pedagogy aimed at NNSs has begun to emphasize the importance of these variations, and some scholars have begun to encourage contrastive analysis for teaching international students how to organize legal analysis and argument in U.S. analytical and persuasive legal writing. However, despite these efforts, NNS students continue to struggle to create writing that flows for U.S. legal audiences. Students who struggle this way face a frustrating barrier to employment, publishing, and academic success in law school.

This phenomenon may be, at least in part, due to the difficult task of learning to use cohesive devices as a non-native speaker of English. Similar to rhetorical preferences and analytical patterns that affect perceptions of flow from the top down—language, culture, background knowledge, and educational experience affect choices about how to connect ideas from the bottom up. Incorporating contrastive analysis into longer, receptive and productive exercises, like the one presented in this Article, should help these NNS lawyers increase their commands of cohesive devices in English, broadening their repertoires and developing their understanding of how to use cohesive devices in the context of U.S. legal writing—helping them succeed at producing the clear, explicit, and writer-responsible writing that U.S. legal readers expect.