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## Formulaic Sequences in L2 Legal Writing


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# FORMULAIC SEQUENCES IN L2 LEGAL WRITING



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# IMPETUS FOR STUDY



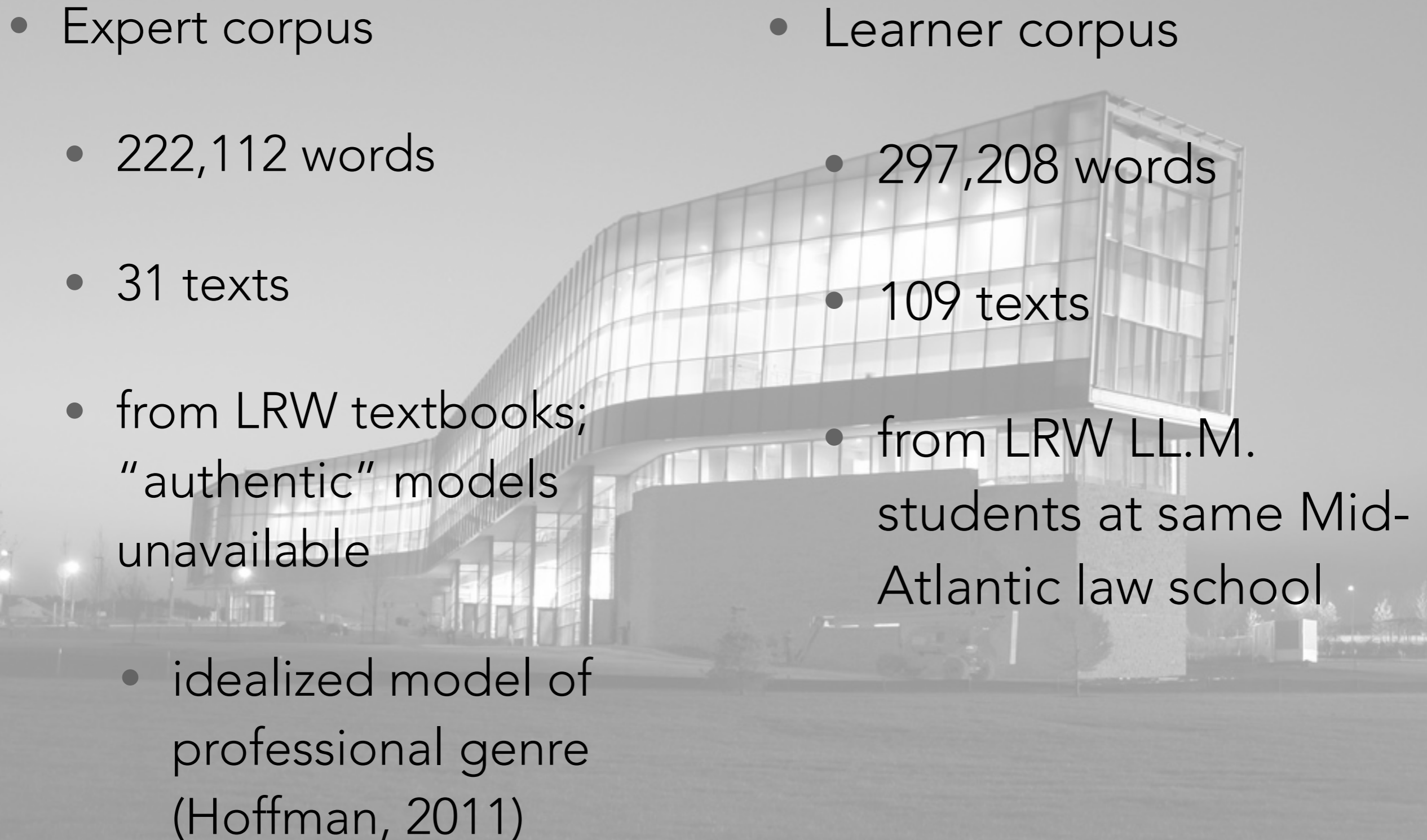
- Applied Linguistics GAs in the law school
  - Work with international LL.M. students
    - One-year Masters of Law program for “foreign-trained lawyers”
  - Individual work, front of classroom instruction
- Legal writing style ‘rules’
  - e.g., avoid passive voice, nominalization
  - LW often said to be highly formulaic, but little research available on types of formulaic sequences (Breeze, 2013)
- Linguistics analysis of legal texts useful when advice & models conflict
  - Use of passive, not frequency difference in high-scoring, low-scoring novice memos (Hartig & Lu, 2014)
- **What is pedagogically useful for working with L2 legal writers?**

# MEMO ASSIGNMENT

- Typical assignment in first-semester LW course
- Imitates assignment a new associate would receive in practice
- Assigning memo from “supervising attorney”/professor to “junior associate”/student requests research on, analysis of a (fictitious) client problem
- Focus on analysis of case law to predict likely outcome
- Evaluated in terms of legal reasoning, structural organization, grammar, and citation form

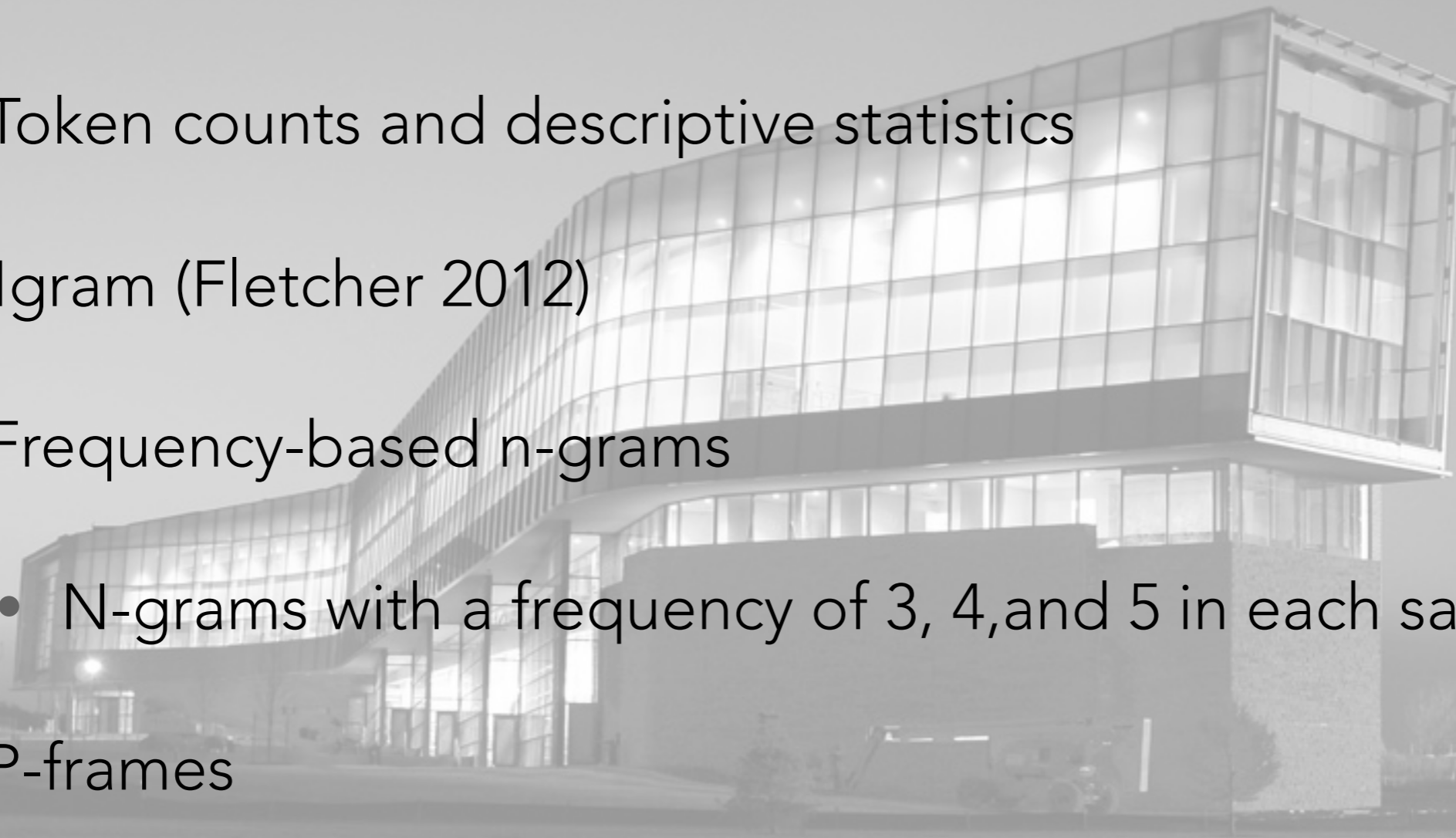
(Hartig 2016; Hoffman 2011; Bannai, Enquist, Maier, & McLellan 1999)

# METHODOLOGY: OUR CORPORA

- Expert corpus
    - 222,112 words
    - 31 texts
    - from LRW textbooks; “authentic” models unavailable
    - idealized model of professional genre (Hoffman, 2011)
  - Learner corpus
    - 297,208 words
    - 109 texts
    - from LRW LL.M. students at same Mid-Atlantic law school
- 

# METHODOLOGY: TOOLS

- WordSmith Tools 6.0 (Scott 2014)
  - Token counts and descriptive statistics
- kfNgram (Fletcher 2012)
  - Frequency-based n-grams
    - N-grams with a frequency of 3, 4, and 5 in each sample
  - P-frames
    - P-frames with a frequency of 3, 4, and 5 in each sample



# ANALYSIS

- “pedagogically useful” p-frames of length 4 and 5
- Many 3-grams “general academic writing”
- Ignored topic-specific and problem-specific FSs
  - e.g., *\* or great bodily harm; knowingly or recklessly \**;  
*bona fide offering \**; *mrs fishkin and jimmy \**
- Ignored FSs referencing case law
  - e.g., *\* id at ###; ### pa super \**; *under the acpa \**

# ANALYSIS — P-FRAMES (4) & (5)

Expert	Learner
the * of the	the * of the
the court * that	the court * that
* court held that	the element of *
court * that the	the court held *
the * held that	* court held that
* be able to	the * held that
court held that *	* the element of
be able to *	court held that *
in the * of	court * that the
the * of his	use of the *
* held that the	* the court held
the * of a	* confusingly similar to
that he was *	the court reasoned *
it is * that	confusingly similar to *
* be convicted of	* court reasoned that
be convicted of *	in the * of
at the time *	for the * of
the * did not	* our client s
able to * that	in the * case
as a * of	court reasoned that *

Expert	Learner
the court * that the	the court held that *
the court held that *	the court * that the
be able to * that	* the court held that
* the court held that	the court reasoned that *
* be able to prove	* the court reasoned that
be able to prove *	the * held that the
* should be able to	in * client s case
the court reasoned that *	* our client s case
should be able to *	in our * s case
able to prove that *	in our client s *
the court * that a	in which the other *
* be held liable for	to the * of the
* within the scope of	our client s case *
be held liable for *	in the * of the
court held that the *	* in a manner which
on the * of the	court held that the *
* not be able to	the element of * is
be able to establish *	* court reasoned that the
it is unlikely that *	as to the * of



# ANALYSIS — SIMILAR P-FRAMES

Expert	Learner
the * of the	the * of the
the court * that	the court * that
* court held that	the element of *
court * that the	the court held *
the * held that	* court held that
* be able to	the * held that
court held that *	* the element of
be able to *	court held that *
in the * of	court * that the
the * of his	use of the *
* held that the	* the court held
the * of a	* confusingly similar to
that he was *	the court reasoned *
it is * that	confusingly similar to *
* be convicted of	* court reasoned that
be convicted of *	in the * of
at the time *	for the * of
the * did not	* our client s
able to * that	in the * case
as a * of	court reasoned that *

Expert	Learner
the court * that the	the court held that *
the court held that *	the court * that the
be able to * that	* the court held that
* the court held that	the court reasoned that *
* be able to prove	* the court reasoned that
be able to prove *	the * held that the
* should be able to	in * client s case
the court reasoned that *	* our client s case
should be able to *	in our * s case
able to prove that *	in our client s *
the court * that a	in which the other *
* be held liable for	to the * of the
* within the scope of	our client s case *
be held liable for *	in the * of the
court held that the *	* in a manner which
on the * of the	court held that the *
* not be able to	the element of * is
be able to establish *	* court reasoned that the
it is unlikely that *	as to the * of

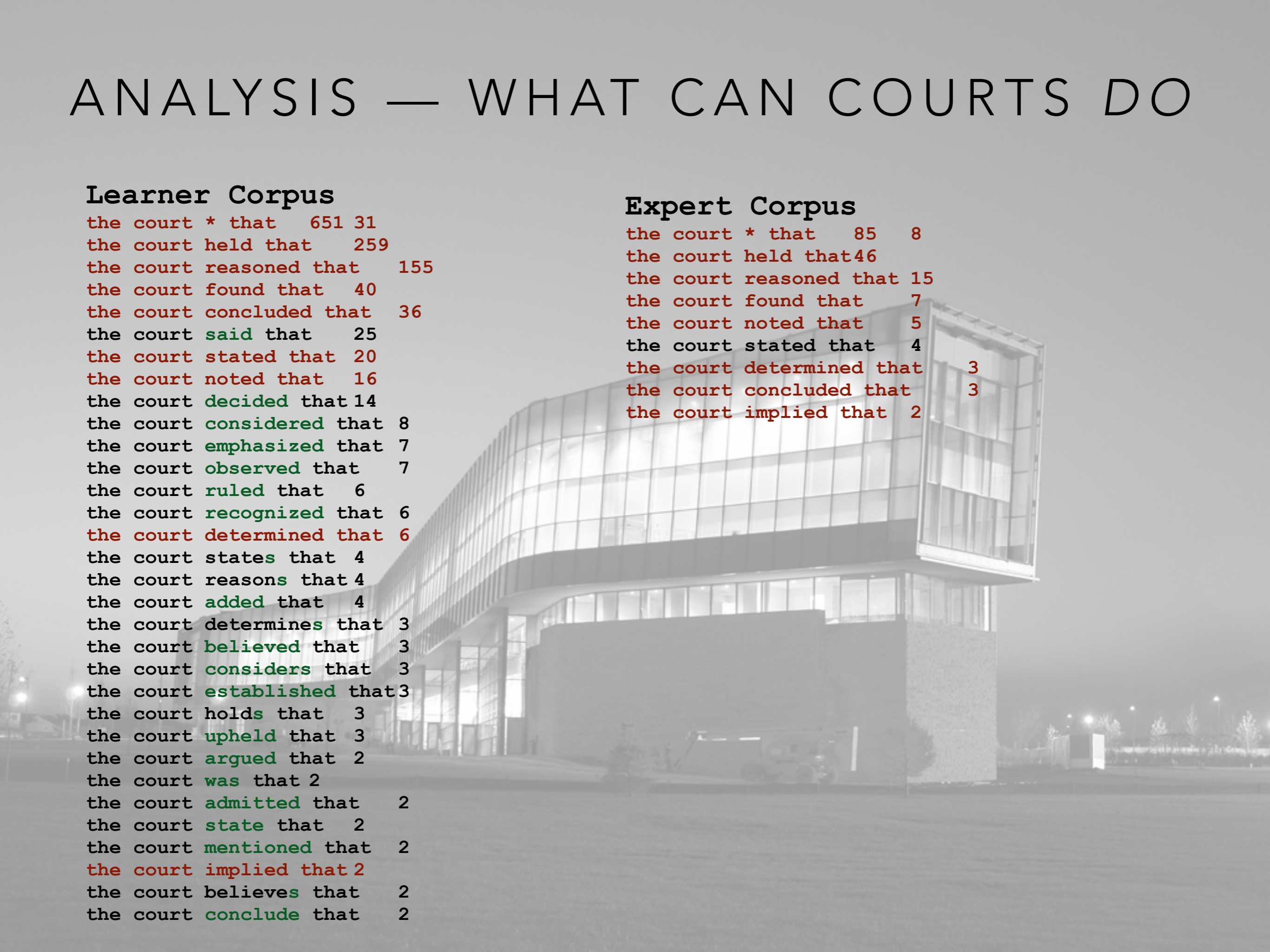
# ANALYSIS — WHAT CAN COURTS DO

## Learner Corpus

the court \* that 651 31  
the court held that 259  
the court reasoned that 155  
the court found that 40  
the court concluded that 36  
the court said that 25  
the court stated that 20  
the court noted that 16  
the court decided that 14  
the court considered that 8  
the court emphasized that 7  
the court observed that 7  
the court ruled that 6  
the court recognized that 6  
the court determined that 6  
the court states that 4  
the court reasons that 4  
the court added that 4  
the court determines that 3  
the court believed that 3  
the court considers that 3  
the court established that 3  
the court holds that 3  
the court upheld that 3  
the court argued that 2  
the court was that 2  
the court admitted that 2  
the court state that 2  
the court mentioned that 2  
the court implied that 2  
the court believes that 2  
the court conclude that 2

## Expert Corpus

the court \* that 85 8  
the court held that 46  
the court reasoned that 15  
the court found that 7  
the court noted that 5  
the court stated that 4  
the court determined that 3  
the court concluded that 3  
the court implied that 2



# ANALYSIS — DIFFERENT P-FRAMES

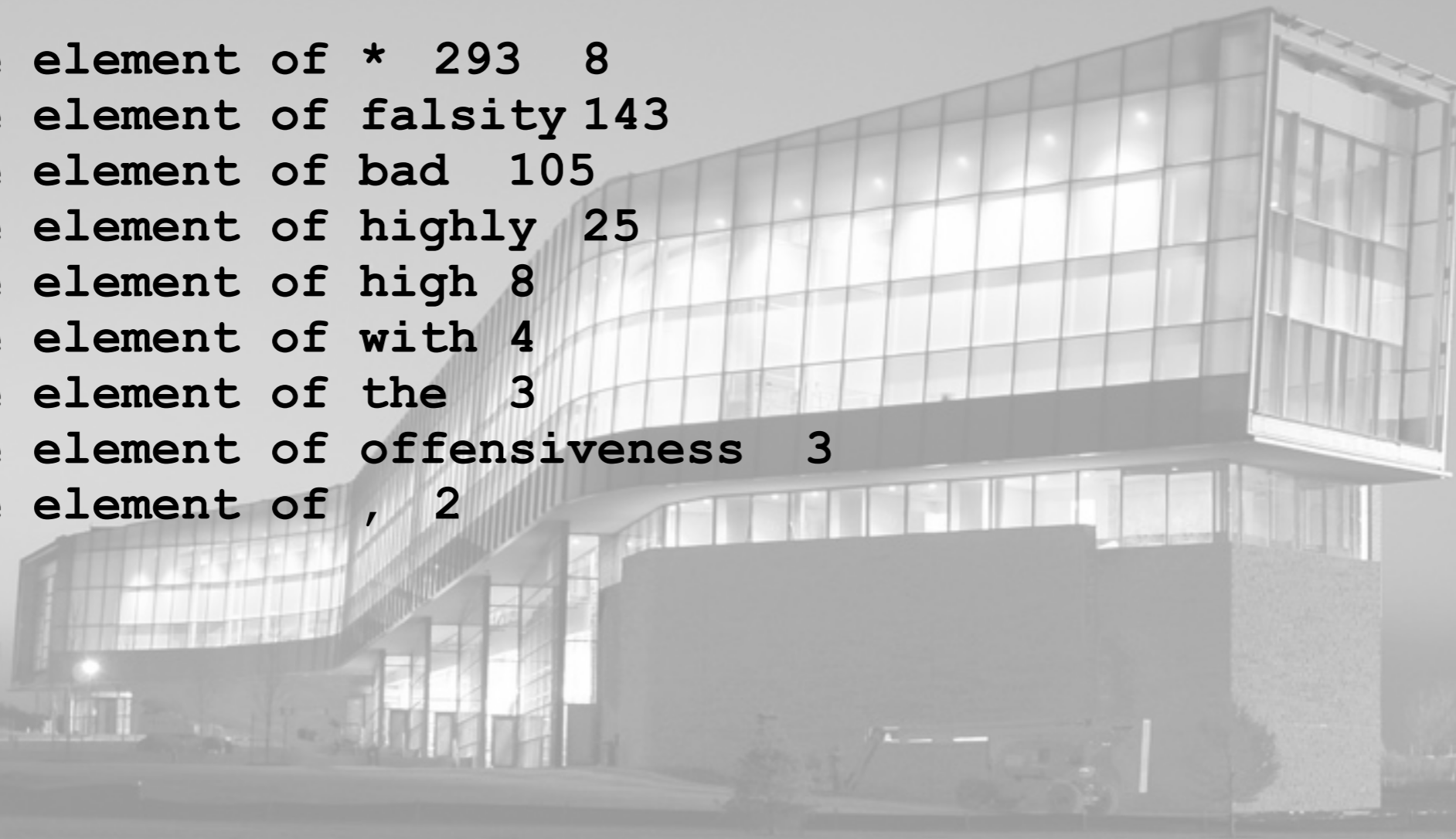
Expert	Learner
the * of the	the * of the
the court * that	the court * that
* court held that	<b>the element of *</b>
court * that the	the court held *
the * held that	* court held that
* be able to	the * held that
court held that *	<b>* the element of</b>
<b>be able to *</b>	court held that *
in the * of	court * that the
the * of his	use of the *
* held that the	* the court held
the * of a	* confusingly similar to
that he was *	the court reasoned *
it is * that	confusingly similar to *
* be convicted of	* court reasoned that
be convicted of *	in the * of
at the time *	for the * of
the * did not	<b>* our client s</b>
<b>able to * that</b>	<b>in the * case</b>
as a * of	court reasoned that *

Expert	Learner
the court * that the	the court held that *
the court held that *	the court * that the
<b>be able to * that</b>	* the court held that
* the court held that	the court reasoned that *
<b>* be able to prove</b>	* the court reasoned that
<b>be able to prove *</b>	the * held that the
<b>* should be able to</b>	<b>in * client s case</b>
the court reasoned that *	<b>* our client s case</b>
<b>should be able to *</b>	<b>in our * s case</b>
<b>able to prove that *</b>	<b>in our client s *</b>
the court * that a	in which the other *
* be held liable for	to the * of the
* within the scope of	<b>our client s case *</b>
be held liable for *	in the * of the
court held that the *	* in a manner which
on the * of the	court held that the *
* not be able to	<b>the element of * is</b>
<b>be able to establish *</b>	* court reasoned that the
it is unlikely that *	as to the * of

# LEARNERS' EXPLICIT SIGNALING

- Elements of a rule

the element of *	293	8
the element of falsity	143	
the element of bad	105	
the element of highly	25	
the element of high	8	
the element of with	4	
the element of the	3	
the element of offensiveness	3	
the element of ,	2	



# LEARNERS' EXPLICIT SIGNALING

- Client problem

our client s \* 141 16  
our client s case 96  
our client s situation 7  
our client s conduct 4  
our client s income 4  
our client s purpose 3  
our client s domain 3  
our client s factual 3  
our client s behavior 3  
our client s character 3  
our client s claim 3  
our client s advertising 2  
our client s website 2  
our client s specific 2  
our client s cases 2  
our client s legal 2  
our client s registration 2

# LEARNERS' EXPLICIT SIGNALING

- Analogical reasoning

like the \* in 49 11  
like the defendant in 20  
like the situation in 9  
like the plaintiff in 4  
like the plaintiffs in 2  
like the school in 2  
like the publication in 2  
like the case in 2  
like the caldwells in 2  
like the court in 2  
like the newspapers in 2  
like the fact in 2

like the defendant in \* 19 3  
like the defendant in mayflower 11  
like the defendant in shields 5  
like the defendant in the 3

# LEARNERS' EXPLICIT SIGNALING

## *Unlike + noun*

Unlike the tools in *Jackson* — the sawed-off shotgun, extra shells, masks, and fake license plate — the items found on Danny Defendant when he was arrested should not be sufficient to show a substantial step toward committing robbery.

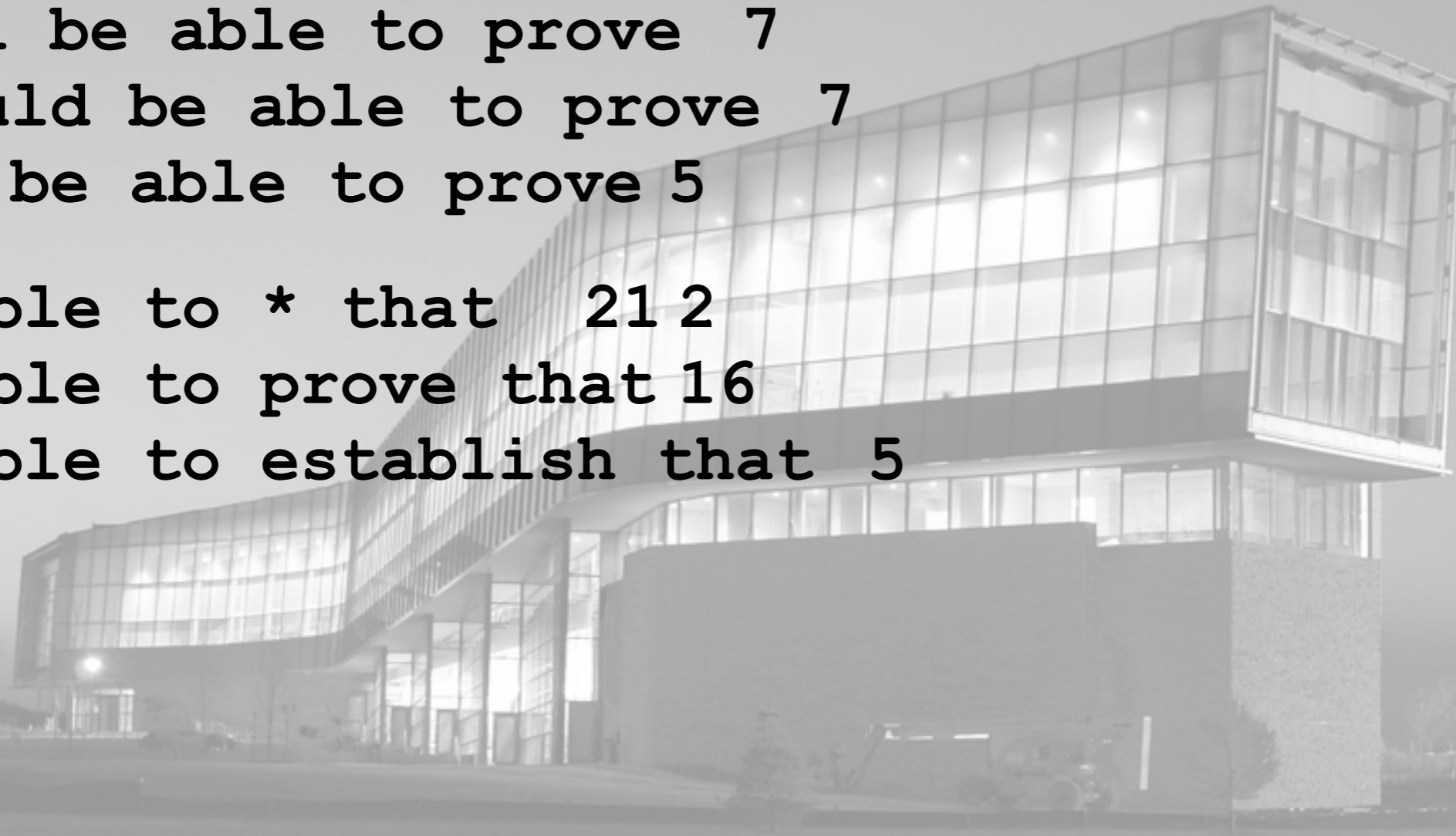
## *Just as + clause (noun + verb)*

Just as the possession of the sawed-off shotgun, extra shells, masks, and fake license plate was sufficient to show a substantial step toward committing robbery in *Jackson*, Danny Defendant's possession of the ski mask and robbery note demonstrates that he had taken a substantial step toward robbing Sparkles Jewelry Store.

# ANALYSIS — MEMO AS PREDICTIVE WRITING

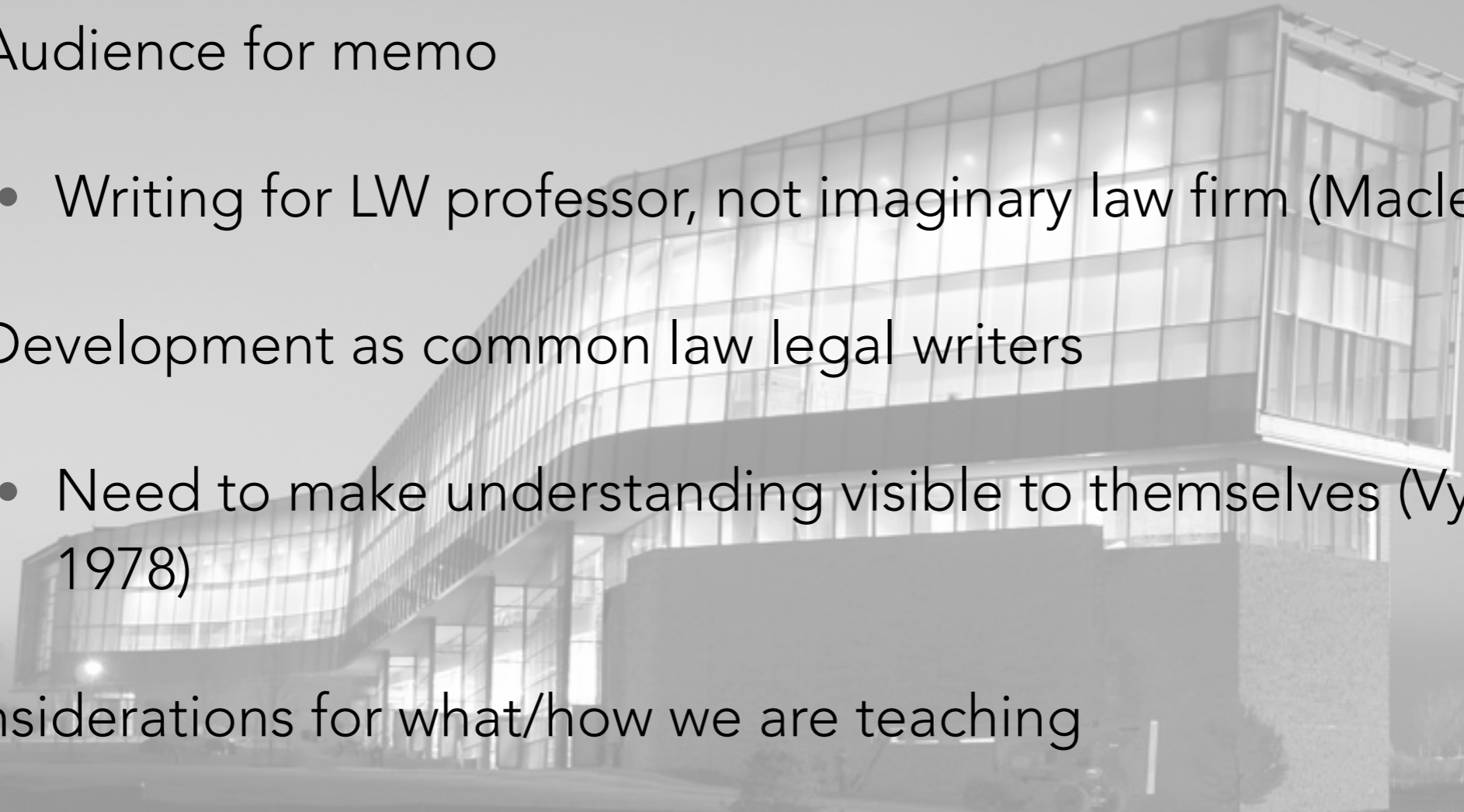
\* be able to prove 19 3  
will be able to prove 7  
should be able to prove 7  
not be able to prove 5

be able to \* that 21 2  
be able to prove that 16  
be able to establish that 5





# IMPLICATIONS/NEW QUESTIONS

- Explicit signaling in learner corpus
    - Audience for memo
      - Writing for LW professor, not imaginary law firm (Maclean 2010)
  - Development as common law legal writers
    - Need to make understanding visible to themselves (Vygotsky 1978)
  - Considerations for what/how we are teaching
    - Analogical reasoning instruction & models in conflict?
- 

# THANK YOU

- Questions & comments appreciated
- For further discussion
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