

The Lawyers Are Now in Session: Genres, Discourse Groups, and Multimodality in Law

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In this article, Allison Mool interviews two lawyers to talk about the writing processes in law. They speak about how different texts in law are used, why the language used can sound so foreign and stiff, and what it actually takes to make these documents.

It is the opinion of the ISU Writing Program that a party should look at the processes of the people that produce texts using ISU's PCHAT model, based on cultural-historical activity theory. Cultural-historical activity theory is defined as a flexible framework that can be used to explore a genre, or type, of text. Henceforth, the aforementioned term will be referred to as CHAT . . .

Actually, it might be best if we leave the law talk to the lawyers . . .

Recently, I sat down and talked about writing with two lawyers, Robert and Deanna Mool, who are coincidentally my parents. They both graduated from the University of Illinois Urbana-Champaign Law School and have been practicing law for over twenty-five years, so they have lots of knowledge to share! Robert is an attorney at the Illinois Department of Natural Resources, and Deanna works in the private sector.

Chances are, not everyone who reads this article is planning on becoming a lawyer. So, why should you read this article? Well, God forbid, you may need legal help one day, and it's good to know about the system of law. But also, this article will show you that some of these ideas that we talk

about in the writing program do stick around. They are actively playing a role in law and the real world in general. From clients to courtrooms, lawyers have many writing practices to talk about, so let's dive in:

Allison: First of all, would you say writing is a big part of law?

Deanna: Yes, huge! Reading and writing and thinking are basically what you do as a lawyer.

Robert: It's one of the two ways we communicate. We communicate verbally with clients and judges and juries, and the other side (the other lawyers). We also communicate in written form with judges and other lawyers as well as our client.

Allison: Can you name some different types of text that you produce and use as a lawyer?

Deanna: Well, we write contracts. If you are going to buy a company in a transaction, there is a whole series of documents that go through. You have a letter of intent that both parties negotiate and sign as to what they think they want to do, and then they actually do the hard negotiation of the contract. After that, you do all the schedules of the assets that you're buying. You have to do a bill of sale for anything that's not titled.

Even when I am just communicating with a client, I'm writing emails to them all the time. I have a lot of hospital clients that I draft employment contracts for or licenses for people to use their space part time, which is required by the law. So, there's a lot of different things in the non-litigation world.

Robert: Yup, lawyers write basically three kinds of documents for communication. There is communicating to and from your client and keeping them up to speed. Mom was talking about that a little bit. But what she does normally is the second kind of communication, and that is when you're making a deal with somebody. You're communicating and writing about how you are going to agree to do business together or do some sort of activity together. So, there are things that you agree on, and stuff that you negotiate but you agree on. Then the third kind is when you disagree with people. That's usually what people think of when they think of litigation, because then lawyers go to court and they are disagreeing with the other party, and there is a lot of writing in that style, too.

Deanna: Those are called pleadings, when you write for a court. It is not that different from a contract. But I would say that there is also government

writing, which your dad does, and not every lawyer does. He is writing administrative rules that become regulatory pronouncements that the agency enforces.

Robert: As a government attorney, we do regulations. We regulate everything from how many deer you can kill every year, to how you drill oil wells, as well as how many trees you can cut down in the state. That kind of writing is similar to what the General Assembly does when they create the laws. Regulations are similar to laws.

Deanna: And I think it's funny, that when the laws are written, the legislators don't write the legislation. There's an office called the Legislative Reference Bureau that drafts every bill and every amendment so that the statutes are consistent. And when you use a term it's supposed to sound the same. Because if you had all fifty-nine senators and the 118 house members writing them, none of them would look the same. And I would say there's also a genre for courts because they set forth what type of font and margins it has to be in and whether it's double spaced or not.

Allison: What are the differences between those documents? Are there huge differences in how all of those texts are written and their goals? And why is it important as a lawyer to learn the difference?

Deanna: Well, the purpose of regulation is to control behavior. In some ways, when you do a pleading, you are asking for something most of the time. You are pleading your case. You are representing your client in the best way you know how in front of an innocent person—the judge—who is going to decide the case. When you do a contract, it is all about people coming together, agreeing, and negotiating.

Robert: Each of the kinds of writing that we do is based on tradition. Every complaint that you file to start a law suit is going to have the same framework.

Allison: Yeah, could you talk about any of the specific frameworks of these documents in comparison with one another?

Deanna: “Now comes” is written before every pleading. It's English tradition, I think.

Robert: Communication and writing in law is very traditional. That is why everyone goes to law school. They have to learn the same way to do things, because it's so much easier to do things when everyone is doing it the same way. That way you don't have to figure out what they're trying to accomplish.

Every complaint is going to start out the same: with “now comes, so-and-so, the plaintiff, represented by their attorney, and brings the following cause of action against so-and-so, the defendant.”

Deanna: “And its court thereof states the following: 1. . . .” And then you just start numbering paragraphs and you do different counts. Each count is a different cause of action—if it’s well-pleaded, anyway. Usually you incorporate by reference the paragraphs above. You have to establish that the court has jurisdiction, and that the parties are proper. So, you go through, and if it’s a corporation you give their address, or if it’s an individual you state where they live. You have to make sure you’re identifying the right person. Once you file that, then you actually have to have somebody serve the person you’re suing with that complaint. It’s called a summons.

Robert: You end it the same way for everyone: “Therefore, for the following reasons, the plaintiff requests the following relief.” And you list what you’re asking for. So, it is very traditional. All the lawyers use the same traditional way of speaking and the same traditional terms, usually. There are lots of terms of art in law. Those terms of art help out because if I say “the plaintiff,” it is the person who is bringing the lawsuit. So instead of saying, “Here is Joe, the guy who got hurt, has a cause of action, and is bringing a lawsuit,” I can say plaintiff, which has those meanings wrapped up in it.

Deanna: You always end any motion that you are filing in front of the court with something like, “with any and for all just and proper relief in the premises.” That gives the judge a way to order something else if he wants to. But if you file a complaint and you didn’t put a prayer for relief at the bottom, then the judge would just dismiss it and say that you didn’t ask for anything. It would just be facts that you gave them. So, a lot of law involves technical writing.

Allison: So, when you speak of these terms that lawyers use, such as a “cause of action,” these are terms that others often wouldn’t understand. But a **discourse group** is a group of people who have the same **literacies** and can communicate the things that people outside the group wouldn’t understand. Lawyers sound like a large discourse group.

Deanna: Yes, they are a huge discourse group.

Robert: And it’s intentionally that way.

Allison: So, could you talk a little bit about why or how that plays into your daily work? How the jargon you use connects you to others?

Deanna: We use it so much; I don't think we notice when we use it. I bet that you guys, as our kids, know more legal jargon than the average person. Your dad and I will be doing something, and someone will say something suddenly and I'll be like, "Yeah, that was *suespante*." Which means that it's spontaneous. It's Latin. There's a lot of Latin. And I sometimes butcher it; I use it however I think about it.

Robert: But it is Latin, and that's that tradition that goes back to the middle ages, actually.

Allison: When you say you "butcher it," do you mean as a group?

Deanna: No, I mean that sometimes I stretch the meaning to make a joke—when you know this code, and then you use that code to make a joke.

Allison: So, people in your discourse group would understand that joke.

Robert: Yeah, and lawyers have an entire dictionary for lawyers called *Black's Law Dictionary*. Black was a guy who was from England and wrote down all the meanings of all the legal terms that most lawyers use. Every lawyer has that dictionary. And that's what you learn in law school. So, everybody has that common vocabulary to use, making it efficient and allowing everybody to communicate effectively.

Deanna: I still have the book that I bought in law school in my office. It's not completely updated, but if I really need something . . . like, if I get a term like "*replevin*." I don't remember what that was, that was in property class twenty-five years ago. So, if someone asks if we have this, then we look it up so we can help our client.

Robert: What's interesting about communication is that you can pick up stuff that was written 100 years ago. They wrote much more formal back then, but the same vocabulary is used. It's based on old Latin words. The terms and concepts of the law has new stuff, but the old stuff comes up time and time again.

Allison: Because our system is based on England's, right?

Robert: Yes, we adopted English common law. Common law is when you keep track of cases. And how the courts have ruled on a fact pattern. That's why when you go into a lawyer's office or a law library, you see all of the books that are compilations of the cases that have been decided over the years. And then to argue your case, you figure out what your facts are and go back and find a case with the same facts. Then you say to the judge: "Here's

a case with the same facts that was decided thirty years ago. Here's what the court did, so you should do the same thing.”

Allison: So, you use other people's writing as tools for your writing.

Deanna: That's right. We use precedent.

Robert: It builds on itself. That's why it is so helpful that everybody is writing in the same consistent way.

Allison: So, you said that you used Black's dictionary and previous cases. Why are those important and what other tools do you use?

Robert: We use case law. We use statutes, which are laws. We use administrative rules or regulations, which are similar to laws and are written by an executive branch of the government has. We also use journals that law schools put out, which talk about the law. Some concepts that are discussed there can be used as precedent.

Deanna: And many articles will compile multitude cases on one subject and then discuss them. You can pull cases out of there to get yourself started on your research.

Robert: There are also forms that you can buy from legal publishers that tell you how to plead a particular case for a cause of action or how to write a letter about a property issue or something. You can get overwhelmed by the amount of information out there.

Deanna: The other tool that you will use if you are in court are exhibits. For example, if you're suing on a contract, you would have to have the original contract. If you were suing for a personal injury action, you might have a video about what a day in the life of the plaintiff would look like.

Allison: Who do you communicate with, and how do you communicate when producing a text? For example, do you communicate with other lawyers or your clients when producing a text? Could you talk a little bit about that?

Deanna: Well, when you write something, you always send it to your client first and get their feedback, then you send it to the other side in a negotiation before you file it. Sometimes in a court case, such as an insurance defense case, you call the client and get authority to appear and answer the complaint. The client doesn't usually have to check that stuff, but if you are representing a business and you are negotiating a contract, you are constantly checking in with them. It's a back-and-forth.

Allison: Yeah, and would you also associate with the people in your discourse group?

Deanna: See, a lot of times what you are doing is explaining the law to your client. You're saying, "Okay, they wrote this in the contract, but the reason that we should ask for something else is this, because if you sign it with this in it, that means that they want to hold back \$200,000 out of the deal in case you have taxes to pay on your business. So let's give them your tax returns and we'll do a \$20,000 holdback." So a lot of that communication is explaining to your client the legalese that you are looking at.

Robert: And you don't have to do that when you are talking to another lawyer. It's almost like you translate the written communication for your client because they're not used to speaking in legal terms.

Allison: They don't have those literacies.

Robert: Right. And that's a big part of your job. The other part of your job is the opposite translation. You listen to your client really hard, take what they want to accomplish, and turn it into legalese. We tell them what legalese means.

Allison: Legalese? Like lawyer words?

Deanna: Yeah, it's actually called legalese if it's not plain English. I don't know why.

Robert: Yeah, but that type of communication is part of what we do.

Allison: So, once you've produced a text and you've talked to your client, say you're going to court, or something like that. How is that text used? Like, earlier, you talked about how it could be used in law school one day. What could happen to it after you produce it?

Robert: For documents, if a court writes an order or a ruling, in posterity, they keep track of it and put it in law books to look up for precedent in the future. So, a hundred years later, what a court does will be in books that are specifically put together for people later to use as precedent. They are meant to be the basis of the whole legal system, which is cool if you think about it. But the stuff that lawyers do on a day-to-day basis—like if you file a document in a court case—those documents will be fought about or used to try to win the case for the entirety of the case until the decision. So, you have to be very careful and accurate when you file a case in litigation—or you can mess it up. When it comes to contracts like Mom does, for the whole term of that contract, that document will be used by both parties for their relationship on whatever that contract is about going forward. So, if it's a contract to buy a property, then until the property is sold, that contract is going to be their reference every day to make sure things happen by the terms. When you are

a lawyer, getting the document correct is extremely important. These are the basis of either court cases or the relationship between parties going forward.

Deanna: Everybody relies on that document. That's the basis for discussion thereon out. Whether it's a discussion in front of court or whether it's a negotiation.

Robert: And it doesn't matter what people were thinking—

Deanna: —or what they intended, or what they thought they said.

Robert: It's what is written on that piece of paper.

Allison: That's a lot of pressure. What other tools would you use in court?

Deanna: Before you go to trial, you create exhibits that you want the jury to see.

Allison: What kinds of things would be those exhibits?

Deanna: Well, in a medical malpractice case, they could be pictures or drawings of anatomy. For the plaintiff, they might show how miserable this person is all day because of their injury and what they can and can't do. If the plaintiff says they can't do anything, the defense might have a "got ya" video of the plaintiff working in their front yard raking leaves or something. That is all stuff that the jury sees.

Robert: Photographs of the scene of an accident, diagrams of a product that you are saying isn't designed properly—all sorts of stuff.

Allison: Yeah, that's interesting. Thank you!

This interview illustrates that lawyers have very specific texts to produce. These texts follow rules and have conventions, which makes them specific **genres**. When producing these texts, lawyers communicate very specifically. They are trained to speak in the **literacy** of law, which is referred to as legalese. This allows them to communicate easily with people who share the literacy. A group that shares a literacy is a **discourse group**. This includes lawyers, judges, clerks, secretaries, and anyone else who interacts using this literacy as a part of their life. We also touched on **CHAT**, when speaking about how lawyers produce these texts. They use certain tools for the **production** of these documents. They participate in **socialization** with other lawyers and clients. They think about **distribution** because the documents must be handled in very clear ways.

As you can see, Illinois State University's Writing Program concepts can easily be applied to the world outside of academia. Lawyers specifically are taught to think about these things in order to do their jobs. Though they may not be given the same specific term names, these concepts are important to them and us. For example, as you go out in the world, understanding discourse groups and how to communicate within them versus communicating with people outside your discourse group may give you an advantage. Being conscious of what tools you should be using at your job through production could enable you to make a better product. You never know how these terms could apply to in your future, so it's important to be as aware and as knowledgeable as possible.



Allison Mool is currently a sophomore molecular and cellular biology major and theatre minor at Illinois State University. She is interested in going to medical school in the future. She is usually doing homework, but when she catches a break, she might be watching a Marvel movie or hanging out with friends.