

## **Using discourse analysis in law cases**

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Language and Law, a developing area of applied linguistics. Law is mostly about language.

Linguistic tools: phonetics, morphology, syntax, semantics, pragmatics, speech acts, variability & change, discourse structure.

Criminal law cases (bribery, murder confessions, sex misconduct, fraud, perjury) tend to use all of the linguistic tools.

Civil law cases (contracts, advertisement, defamation, warning labels, trademarks, discrimination) tend to focus on the smaller language units.

Discourse analysis is of several types.

My sequential approach to discourse analysis—identify:

Speech event

Schemas

Agendas

Speech acts

Conversational strategies

Contextualize the above with smoking guns

Case example:

US v Kenneth McDonald

### **Business transaction speech event**

Phase	buyer	both	seller
<i>1. Problem</i>	states problem and need; asks about control; requests help		indicates interest; offers conditions; demonstrates ability and control
<i>2. Proposed negotiation</i>	suggests dimension of offer; outlines conditions		considers dimensions; may make further conditions
<i>3. Offer</i>	makes offer		negotiates offer; agrees or disagrees
<i>4. Completion</i>	finishes transaction	“It’s a deal” shake hands; sign contract; or reject deal	finishes transaction
<i>5. Optional extension</i>	offers other future deals relationships and		agrees or disagrees about future deals

### **Police Interview Speech Event**

- Phase 1, orientation
  - purpose of the interview stated
  - introduce participants
  - follow legal requirements (Miranda warning)
- Phase 2, listen
  - subject gives free recall account
- Phase 3, ask questions relating to phase 1 account
  - subject asked specific questions relating to phase 2
- Phase 4, make accusations, elicit confession
  - read through and sign statement
  - inform subject about further actions
  - terminate interview

### **Other Speech Events**

Business Evaluation, Image Repair, Doctor/Patient Interview, Courtroom, US v. Ken McDonald

Topic Erichetti Agent McDonald

greeting

*[McDonald walks over to window area]*

NYTimes article  
World is psychological  
New VA hospital

What you been doing?

You're supposed to  
solve problems

*[McDonald stays at window, then turns to men]*

Neat office. You live  
near here?

How far is Montauk?  
Ken's president of  
Easterbrook Pens

I'm surprised to see  
an airport near here

*[McDonald turns back to window]*

I've come up with the  
money for the future

There won't be  
a problem?

I'll take that and  
leave you this

You building industrial  
parks here?

Ken, I hope there  
won't be a problem

*[Erichetti picks up briefcase on desk]*

I just talked to him  
on the phone, You're  
in first place. The  
nominee has to pass  
the investigation

No problem with t's  
crossed, I's dotted?

Make sure nominee  
is clean

*[Erichetti points to briefcase]*

As long as we have  
no problems, okay Ken?

I'm sure you'll do alright  
if you're on the right team

and doing it the right way

