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Determining Intent: A Quantitative and Qualitative Linguistic Analysis of Holographic and Professional Wills

Bonnie Osborn Briggs

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DETERMINING INTENT: A QUANTITATIVE AND QUALITATIVE LINGUISTIC

ANALYSIS OF HOLOGRAPHIC AND PROFESSIONAL WILLS

by

Bonnie Osborn Briggs

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Dedication

For my very patient husband, Bobby, with love,

Bonnie

Lastly, but definitely not least, I thank my family for their love and support. They have always been there, even when I wasn't on my best behavior. Thank you for everything, you are the reason that I was able to accomplish this goal.

Abstract

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My dissertation focuses on the language of wills. More specifically, I am interested in how the language of holographic wills (i.e., handwritten wills) differs from the language of professional wills. My research question is "Do linguistic differences between professional wills and holographic wills have the potential to affect the interpretation of the wills, subsequently influencing the outcome of the probate process?" In order to address this question, I conduct a quantitative and qualitative contrastive corpus analysis of holographic and professionally-prepared wills. My hypothesis is that the discourse of holographic wills will tend to be more narrative-like, reflecting personal experiences and emotions. By contrast, the language of professional wills is more formal and rule-driven than the language of holographic wills. By using computational analysis tools such as the Gramulator, my dissertation identifies specific language differences between these two text types that support my hypothesis. These differences are assessed through a variety of statistical methods. Additionally, I perform a qualitative assessment of three case studies on individual wills using discourse analysis approaches to provide insight into *why* and *how* the meaning of the text may be determined. Although both types of discourse have their differences, their main goal is the same: to convey the testator's intent. The purpose of my dissertation is to facilitate this goal by demonstrating to the legal community how non-professionals write their wills so that when a controversy over a holographic will arises, the legal community can apply the methods

and techniques presented here and determine the testator's intent, since by law, this is

what is required.

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Chapter 1: Introduction

Theme and Focus of the Study

My dissertation focuses on the language of wills. More specifically, I am interested in how the language of holographic wills (i.e., handwritten wills) differs from the language of professional wills. Professional wills are drafted by lawyers using legal language while holographic wills are written by lay people with no help from a lawyer or other member of the legal community. Although both are legal, holographic wills often are contested on points of language and law. As Bove (2000) notes only a small percent of wills are contested. However, although contested wills are not typical, the process of contesting is expensive and can be lengthy. In addition to the high monetary expense of contesting a will, Jackson (2011) notes that people need to consider the potential cost regarding personal and family relationships.

Regarding the language of wills, many lawyers feel that wills not written in legal language are not valid (Danet, 1980). Although this opinion may be viewed as an extreme point of view by some it is one that is often held by the legal community. For example, Bove advocates that "handwritten wills" be avoided if at all possible. He further notes that holographic wills do not follow the formal structure of a professional will and often require the court's interpretation. Given this attitude of the legal profession toward holographic wills, the purpose of my dissertation is to determine what differences exist between holographic wills and professional wills by analyzing the language used in each type of will to see if these differences might affect the probate process.

Professional wills. Legal language is written by a particular group for a particular audience with a defined goal and purpose. Simply put, lawyers write for other lawyers

and the court system. Their goal is to create documents that are both legal and will hold up in court. However, this process often excludes the average person from understanding exactly how the process works and what the language means. In spite of the efforts of the proponents of the Plain Language movement in the legal community, traditionally, legal language is noted as being vague, pompous, and many times unclear (Mellinkoff, 1963). Lawyers have their own approach to creating these documents since most were trained by other lawyers in law school. This approach may often include the use of a template or form to build these documents, including wills. Lawyers draft wills using the training that they have received in law school since it is part of their job. However, when non-lawyers (*lay people*) try to draft a legal document, such as a will, without the knowledge of this process and the language that the legal system is looking for, their will may wind up in litigation.

Non-professional wills. Not all non-professional wills are the same. Some are pre-printed forms that require the testator to fill in blanks to complete. Usually these forms are generic in format with the specifics supplied by the person completing the form. Another type of non-professional will is one generated by a computer program. Although these computerized wills are promoted as having been developed by attorneys, they still require that the testator enter specific facts regarding their heirs, how their belongings are to be divided, and in general, how their estate should be handled. Another type of non-professional will is a totally handwritten will known as a *holographic will*. In Tennessee, the criteria for a holographic will are that it is totally handwritten and dated by the testator.

A holographic will is usually drafted by an individual with no help from a lawyer or other member of the legal community. Holographic wills are written in the person's own words, with their intentions on how their property should be divided, and with the least amount of influence from legal sources. As such, this type of will represents the least professional type of will. In this dissertation, I focus on this type of will because they represent the most non-professional type of will to analyze against wills written by lawyers. These wills represent a lay person's attempt to write their own will, with no help from a lawyer, a computer program, or even a legal form. Essentially, the individual begins with a blank piece of paper and drafts the document according to how the person feels it should be formatted and worded. In this manner, they are telling their own story.

Although holographic wills are considered to be completely valid they often are the subject of litigation. Many times the stories in these wills may hold our attention but may not necessarily adhere to the aspects of jurisprudence that deal with the probate process. This process involves the court's validation of a will as well as handling any disputes that may arise with the will (Bove, 2000). Also, holographic wills usually do not contain the legal language that would normally be found in a professional will. Given that a holographic will may not look or read like a professional will, these wills often causes problems with the court's interpretation of what the testator meant and how the will should be probated. Baron (1992) notes that the narrative format of a holographic will often creates a problem when the court must interpret the testator's intention.

The narrative is a personal account that often includes personal details. These details often represent what the author was trying to communicate (Graesser, Olde, & Klettke, 2002). Most narratives are informative to whoever may read them. However, as

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in the case of holographic wills, the downside to a narrative text is that although the writer may compose the text with specific communication goals in mind, the reader may not always interpret the text as intended by the writer. When the reader's constructed meaning differs from the writer's intended meaning, discord and problems can occur. Many times these problems can only be resolved through litigation, leaving doubt if the writer's meaning was ever interpreted as it was meant.

The reason that people may choose to draft a holographic will is that they feel that they can handle their own affairs without the help of a lawyer. Often, when it comes to drafting their will, these people will forego the cost of a lawyer and write their own. In essence, they deem that they can dispose of their belongings without the benefit of legal advice. Professional wills are drafted by professionals with no emotional ties or bonds to the testator. These documents are drafted for a fee according to the laws of jurisprudence. Although the overall goal of the two types of wills is the same, to appropriately disperse of the testator's estate, the documents often vary greatly.

Purpose

The purpose of my dissertation is to examine the language of wills to address the *problem that wills written by everyday people are often contested. More specifically, I* propose to study how the language of wills is used to convey the aspects of hopes, intentions, and the wishes of the testator and how these aspects are represented (or not represented) by the language used in the two types of wills, holographic and professional. Overall, my goal is to study how the language of the documents differ, see if patterns exit, and determine how these patterns are used to meet the intended goal. In summation,

I am looking for any differences between the two types of wills and if these differences have any commonality.

Experiment

My research question is "Do linguistic differences between professional wills and holographic wills have the potential to affect the interpretation of the wills, subsequently influencing the outcome of the probate process?" My hypothesis is that the discourse of holographic wills, when compared to professional wills, will tend to be less expository-like, and more narrative-like, reflecting personal experiences and emotions (Schiffrin, 1996). Whether knowingly or not, most people tell a story when writing their will: giving directions, revealing emotions, and trying to connect to their intended audience are all techniques accomplished through their use of language. They want to tell a story. Also, it appears that most people feel that if they tell their story, from their perspective, then their wishes will be carried out and that their estate will be divided as they instructed (Baron, 1992).

Procedure

In order to address this question, I conduct quantitative and qualitative contrastive corpus analyses (McCarthy, Watanabe, & Lamkin, 2012) of holographic and professionally-prepared wills. Both the quantitative and qualitative parts of this study are centered on a corpus composed of holographic wills and a corpus composed of professional wills. A corpus is a structured collection of electronic texts that can be analyzed by textual analysis software to determine linguistic usage patterns within the individual texts (Chen, 2010). Corpus-based research allows computer analysis of the

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corpora texts while providing the researcher the ability to analyze the natural language and the grammar of the texts (Biber & Conrad, 2001).

Contrastive Corpus Analysis (CCA) is the method I use to analyze lexical features, within context, between two contrastive corpora. Cobb (2003) notes that CCA is the comparison of two corpora, through which, what is present and what is not present can be derived. Using CCA allows the researcher to determine the similarities and the differences between the corpora by analyzing the lexical features between the corpora. Using contrastive corpora allows researchers to determine patterns of language use, within their context, that may not readily be apparent. This study uses CCA to analyze specific linguistic features of holographic and professional wills to determine how these features differed between the two text types. In order to perform this analysis, a corpus was developed containing two groups of each type of will, holographic and professional. Comparisons are made between the corpora to identify linguistic features such as personal pronouns, gender and kinship terms, emotion words, prepositions, archaic words, and relative clauses.

Quantitative overview. In the quantitative section, I use computational analysis tools such as the Gramulator (McCarthy et al., 2012), Genre Purity Analysis Tool (GPAT: McCarthy, 2010), Linguistic Inquiry and Word Count (LIWC: Pennebaker, Francis, & Booth, 2001), and the Measure of Textual Lexical Diversity (MTLD: McCarthy & Jarvis, 2010) to analyze the corpus of holographic and professional wills for specific linguistic features. These features include, but are not limited to, *personal pronouns*, *gender and kinship terms*, *emotion words*, *prepositions*, *archaic words*, and *relative clauses*. The data results from these analyses are used to determine the major

differences in the usage patterns of these features between holographic and professional wills. As will be discussed in Chapter 4, some of the differences found suggest that holographic wills contain higher values of personal pronouns, a higher usage of gender and kinship terms as well as emotion words, and are more lexically diverse than the professional wills. The professional wills contain longer sentences, have higher usage of terms associated with legal language such as doublets and triplets as well as archaic words, and tend to have a template format.

Qualitative overview. In the qualitative section, I present two case studies. These case studies will provide a detailed study into the perspective of the two types of wills examined. Myers (2000) notes that one of the strong suits of a qualitative approach is "the richness and depth of explorations and descriptions" (para.16). Also, Denzin and Lincoln (2005) note that qualitative research is used to study things, in this case language, in their natural settings. With this notion in mind, the main purpose of the case studies is to study the meaning of the text within context and examine the more human side to these documents.

One case study concentrates on the linguistic features of a holographic will and how these may or may not affect the meaning of the will. The second case study closely mirrors the first but is based around the text of a professional will. In both case studies, semantics, pragmatics, and linguistic theory are used to analyze the texts and present linguistic evidence of intent of meaning. The semantic roles of nouns and pronouns are analyzed as well as linguistic and legal theory. Applicable theories include theories of meaning, Speech Act Theory, legal realism, and case precedence. The methodology of

the case studies follows a more interpretive and naturalistic approach than the quantitative analysis.

Corpus analysis. In this dissertation the data analyzed is a contrastive corpus of two groups of wills. One group of texts is holographic wills and the other group is professional wills. All of the wills in this corpora were probated (presented to the court to be legally processed) in the state of Tennessee and have been contested; that means that each of them is "flawed" in some way, allowing for a legal dispute of the testator's intention. Of the total number, 36 wills are holographic and 36 are professionally written wills. As previously noted, holographic wills are entirely handwritten by lay people who either cannot or do not wish to pay an attorney for their preparation. In many of the states, including Tennessee, holographic wills are considered legal documents. Professional wills are drafted by attorneys.

Analytical tools. I use computational analysis tools in this study to analyze the corpora of holographic and professional wills. These tools can provide a variety of quantitative data regarding certain linguistic features of the texts. For example, computational analysis tools are capable of analyzing the vocabulary and structure of individual texts and provide data not only about the specific text but also about the text as it relates to the entire corpora. Measures of linguistic features such as use and frequency of personal pronouns, use of active or passive verbs, number of relative clauses, and sentence length can be conducted to show similarities or differences between the corpora texts.

By using computational analysis tools such as the Gramulator (McCarthy et al., 2012), Genre Purity Analysis Tool (GPAT: McCarthy, 2010), Linguistic Inquiry and

Word Count (LIWC: Pennebaker et al., 2001), and the Measure of Textual Lexical

Diversity (MTLD: McCarthy & Jarvis, 2010) my dissertation attempts to reveal evidence

of specific language differences between the corpora of holographic and professional

wills that support my hypothesis. These tools are capable of finding and categorizing

language features that can then be analyzed quantitatively and qualitatively (McCarthy et

al., 2012).

     Each tool mentioned above provides a specific type of analysis. The Gramulator

is able to find key phrases that set the corpora apart as well as phrases that the corpora

share. GPAT is an application designed to determine whether a text is more narrative or

more scientific. LWIC is capable of providing quantitative results based on running the

corpora against its many dictionaries of various types of words. These word dictionaries

range from function words like personal pronouns and prepositions to words that convey

certain emotions and feelings. The application MTLD measures the lexical diversity of

corpora corpus by identifying textual differences that suggest that one of the corpora may

contain lexical features that set it apart from the other corpora.

Quantitative Analysis

     Creswell (2003) defines quantitative research involves the process of "collecting,

analyzing, interpreting, and writing the results" of the study using specific methods to

analyze specific variables to answer specific questions. Creswell further notes that

quantitative analysis has traditional been referred to as "scientific" research but in recent

times, much of this type of research uses a postpositivism approach. This type of

approach tends to concentrate on causes that affect outcomes. This research is typically

conducted using careful measurement and observation of data using computational

analysis tools to analyze the data and provide statistical results. This study uses a more descriptive approach that shows relationships or patterns between variables that occur within a population.

In the case of language, this approach creates a scenario where any part of natural language can be studied quantitatively. Natural language is what people use to communicate with each other on a daily basis. By using computational analysis tools to determine lexical differences and similarities, a quantitative analysis can be performed to that may point to differences in language features between the texts. These differences may help determine language patterns particular to a specific group of texts. The analysis can also point to phrases that may show a common relationship between the texts. By determining possible language patterns and relationships between holographic wills and professional wills, we may get a better idea of how the corpora differ and what language patterns cause them to differ.

Statistical methods. The statistical methods used in this study are the Student t-test (or simple *t-tests*) and Fisher's exact test. The t-test is considered a common statistical test and is typically used to evaluate the differences in means between two groups. Often t-tests are used to determine the effect of a given variable of the corpora. This variable selected for analysis might be any linguistic feature, such as the use of gender terms, use of personal pronouns, or the use of action verbs. The t-test results show whether there is a difference in usage of the selected variable between the corpora. The t-test results are used to determine the p-value, to determine significance, as well as the mean average and standard deviation. The t-tests conducted in this study were

comparisons of the frequency results produced when the computational analysis tools were used to exam features from the corpora of holographic and professional wills.

Fisher's exact test is used when investigating predictions regarding the probability of two known category variables. Fisher's exact test is often used on smaller corpora, rather than the more familiar chi-square test, and is useful for determining not only the probability of the results but also the expected frequency of the data being analyzed. By entering the known numbers of the variables for each group or corpora in the table, Fisher's exact provides a value that describes the probability of a result being attributed to chance. Also, Fisher's exact assumes that the variables are all frequencies and that there are no missing values. Fisher's exact test is an exact calculation of the probability rather than an approximation.

Once the statistical analyses are conducted, the results are assessed through a variety of statistical methods to determine if difference exists and if so, it they are significant or not. In statistical analysis, significance typically means that the results are probably not due to chance. Significance also means that a difference exists between the representative samples taken of the larger population. At this point, the conclusion is made that there is a statistically significant difference in the population means and the null hypothesis (the idea that there is no difference between the two samples) is rejected because the two samples are different. In this study, I use the p-value of $<.05$ to attribute "significance" to any assessment.

The p-value assessment shows the relationship between the variables studied in the population and the reliability of the test. Because I use the p-value of $<.05$ to designate significance, this value means that replicating the test will provide the same

results 95% of the time and points to the reliability of the test results. Although p-value represents reliability in testing, the effect size represents how powerful the results are. In this study, Cohen's d is used to show the effect size. The effect size is tied to the size of the sample used in the study. Typically, the larger the sample, the lower the effect size is and the more powerful the results are.

Qualitative Analysis

Maxwell (1996) suggests that qualitative analysis is used by researchers to understand the meaning of particular events, situations, information, and actions given their specific context. Creswell (2003) notes that qualitative research differs from quantitative research in that it is typically open-ended, utilizing methods such as grounded theory, case studies, and ethnographies to analyze data taken from participant observation, interviews, and surveys. The results of these methods are analyzed using theoretical framework rather than statistical analysis. Qualitative research is often used when the data collected represents a small group. As previously noted, for the qualitative part of my study, I perform two case studies on individual wills.

The case studies are conducted using discourse analysis techniques as well as linguistic theory. My goal is to provide insight into *why* and *how* the meaning of the wills may be determined. Studies performed by other linguists are presented to provide prior research in the field and serve as a spring board to further my own research. Some of those whose work is reviewed include D. A. Cruse, Peter Tiersma, Walter Chafe, Edward Finegan, Jane Baron, Lawrence Solum, Byran Garner, David Mellinkoff, and Dennis Klinck. All of these have performed linguistics studies that are useful in this research. The case studies examine one holographic will and one professional will. Various

linguistic analyses are performed on each will including the analysis of pragmatics and semantics to help show how the individual meaning of each will can be determined by studying the language used to draft the will.

Theoretical Framework

As a core part of this study, I review a theoretical framework that is significant to my study and provides an overview of what has been studied previously. My goal is to provide studies that will give insight to the specific language features that help define these text types. For example, this study focuses on the nature of holographic wills as narrative texts written by lay people; and Ong (2002) specifically discusses how people use language to create narratives with a definite purpose. The overall framework includes theory of narrative and meaning (Ong, 2002; Graesser, Olde, & Klettke, 2002; Fairclough, 2003) and theory of textuality (Bakhtin, 1981; Kent & McCarthy, 2012). This theoretical review helps to lay the foundation for the scope of this study as well as guide the processes and methods used to analyze the data.

Theories of narrative and meaning. Narratives are how people tell their stories and how people also try to pass on their histories. Ong (2002) observes that narrative underlies all other forms of discourse and through discourse helps relate language to the human experience. Given Ong's observation of how people use language to create their stories, narrative becomes a text-centered approach to interpretation. Again, this approach is different from the more formal, rule-driven approach to interpretation as used by the legal community. As Broekman (1985) notes, legal documents are based more on dogma and legal rules than words and expression. Goodrich (1984) further supports this with the statement that legal language is "an intricate and exclusive system of disciplinary or

dogmatic tools". The narrative approach used in holographic wills is more open and free form since it does not follow such a specific structure or template. Although both types of wills are valid, when contested, the problem centers around determining the testator's true intent, what the text means. The court is responsible for determining the testator's intent by analyzing the language used to draft the will.

My study of holographic and professional wills analyzes the will texts in order to help determine the meaning of the wills. Fairclough (2003) suggests that there are three key elements in determining the meaning of text: 1) producing the text, 2) the text itself, and 3) the reception of the text. Determining the meaning of the texts requires the application of these three elements as well as some background knowledge. This application leads into a more complex scenario that Fairclough refers to as "meaning-making". This "meaning-making" concept is based on the premise that the interpretation of a text to determine meaning is often influenced by other, often abstract, entities such as background knowledge, personal relationships (including family and friends), intentions, and desires that may all factor into the writer's story. Fairclough's point is that meaning for the reader of the text can be determined not just from what is explicit to the text but what is implicit. The implicit may tie back to assumptions or ideas held by the writer, but that the writer may not have shared with anyone else. To this end, Fairclough advises that we look not only at the words and sentences used but also the intention of the writer.

The determination of the intention of the writer may be the most difficult task, particularly in the case of a holographic will. In trying to determine the intended meaning, we move to the next phase of Fairclough's method for determining meaning. After reviewing these three elements: producing the text, the text itself, and the reception

of the text, Fairclough (2003) suggests building a framework within the text to analyze the text. This framework is based on the context of the text being analyzed as well as the possible interpretations of the text. Essentially, this type of analysis helps to show how the interpretation of a specific text may be impacted by various areas of everyday life. These areas include social parameters, relationships, interests, values, and desires. In the framework proposed by Fairclough, interpretation also includes reviewing who produced the text, who will be reading the text, and the text itself. This interpretation is in contrast to that of a more formal, rule-driven approach, like legal interpretation, that is based on jurisprudence and is presented in a formal order.

The observations made by Ong (2002) and Fairclough (2003) complement Graesser's (2002) suggestion of using a *situation model* to represent a mental model of the text when analyzing narratives (Graesser et al., 2002). The situation model helps to determine the setting and the order of the text. The situation model, similar to the framework analysis proposed by Fairclough, provides a mental image of key elements noted in the text such as people, events, settings, and actions (Graesser et al.). Included in the situation model is explicit and inferred information to help guide the reader through the text, providing information that may not actually be written but is necessary to understand the text. In this way, the model helps the reader better understand the narrative by providing background information that the reader may not otherwise have had. This approach is useful in determining *what* the testator meant and *how* their text should be interpreted.

Theory dealing with textuality. The textuality of the texts analyzed in this study is worthy of mention at this point. Textuality covers not only the actual written words but

their context and possible interpretation. I will use textuality as a means to distinguish the texts and determine differences in how they are constructed. As noted previously, the premise of this study is that holographic wills tend to be more narrative and the professional wills are more formal and rule-driven. The analysis of this difference is based on Bakhtin's theory of dialogic vice monologic text (1981). Bakhtin's definition of dialogic is "a two-sided act" while monologic is "single-voiced". In contrasting the two theories, Bakhtin notes that dialogic text carries on a dialogue with other writers, other works, and often other people. It does not merely answer the reader's questions but also informs since it often appears as the voice of the author. Monologic text acknowledges only itself and its topic and does not include any other "voices."

Bakhtin's (1981) position regarding monologic text is that it is usually authoritative. His theory is that this discourse builds on a privileged, often exclusionary language, usually associated with power and authority. Monologic text acknowledges only itself and its topic and does not inform but rather instructs the reader. It is not driven by dialogue but rather by power. Professional wills, which are typically written for the courts, are more monologic. They are written from a legal perspective where the audience will be other lawyers and judges, in essence, other members of the legal community. The professional wills are also written in legal language, considered to be the language of the court.

In contrast, Bakhtin's (1981) theory regarding dialogic text is that it is often internal discourse spoken or written in "one's own words". Bakhtin's definition of dialogic means that it is not only the individual's words but their point of view, and conceptual system. Much of this discourse builds on the person's response to what they

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have read and heard previously. Because we do not use language in a vacuum, we are influenced by others and this influence affects the language that we use. Holographic wills tend to be dialogic. Goodall (2000) supports this notion with the observation that people tend to use a dialogic approach when they want to promote personal relationships, using their individual voices. Dialogic text does not lend itself to a formula or template; it is the voice of the author who applies his or her own intentions to the words used. Given the multidimensional aspect of dialogic, we see that not only the language but the context of the language help derive the meaning of the text.

Bakhtin's (1981) theory assumes that meaning is generated through the domination of context over text. This generation of meaning by emphasizing context is one of several techniques that allow the writer of the text to create a path for the reader to follow. Bakhtin further notes that authoritative discourse is the opposite of narrative discourse and that a constant struggle exists between these two discourses. The struggle is concerned with the two very different natures of the two types of discourses, monologic and dialogic. It is this struggle that creates another point of conflict between the holographic and professional wills and adds to the problem of not only determining meaning but how these wills are interpreted in court.

At this point we need to make evaluations to determine the "why" part used to determine meaning. These evaluations follow the observation by Kent and McCarthy (2012) that, "it is not just *what* was not said, but *why* it was not said" (p. 34) that may hold the key to determining why lay people constructed the text as they did. Kent and McCarthy's position is that this determination helps us understand what the authors mean by analyzing why authors wrote the text as they did. Fairclough (2003) and Graesser

(2002) note that the determination of the *why* part of textual analysis is key to the comprehension of any text. Some of the questions that must be answered to move forward with this determination include "What is the immediate effect of the text on the reader?" "What prior experiences influenced the words and sentences that make up the text?" "Why did the author of the text choose those specific words?"

Theory Summation

The theories reviewed show how individuals and groups use language to accomplish specific goals. Building on this framework, I show how these theories support the hypothesis that holographic wills tend to be more narrative and professional wills more formal and expository. These theories are also used to explain how various linguistic features such as pronoun usage, gender and kinship terms, archaic words, and redundancy can help determine the type of texts and how they can be analyzed for meaning.

Making the hypothesis that holographic wills are more narrative-like and professional wills are more scientific in nature, I hold that although both types of wills have their differences, it would appear in this particular scenario that their main objective is the same. This objective is to divest property to either heirs or beneficiaries after the testator's death. The aim of my analysis is to better understand how the features of the text (i.e., what the reader might infer from the text) are supported through the language used. To arrive at this understanding, linguistic analysis of various language features is conducted to verify the narrative nature of the holographic wills and the scientific nature of the professional wills.

Holographic wills as narratives. Lay people seem to think that they know how they want their estate divided and that they, better than anyone, are best able to leave adequate instructions regarding this task (Baron, 1992). In a holographic will, the testator typically gives instructions as to who is supposed to get various belongings and possibly monetary disbursements. In some cases, if the testator feels that a relative has slighted them in some way, the offender and offense are named with instructions concerning what they are *not* supposed to receive. The following is an example of who is being slighted and why: *I give my three daughters Hazel Sanker Bishop, Mary Ruth Sanker Luther Wilma Jean Sanker Larkin one $1.00 apiece at my death because you didn't come to see me or call very often and did not stay but a few minutes at a time*. This example helps highlight that these documents are written in a narrative format with the language not aimed at lawyers or courts but the heirs and beneficiaries of the testator's estate.

To understand how holographic wills tend to be narrative, it is useful to review narrative texts and how they are developed. Narratives use language in an attempt to portray personal information on certain life events that hold particular importance to an individual or group of individuals (Schiffrin, 1996). Narratives tend to reflect everyday experiences and provide a mental image that most people can identify with and use as a point of reference. Narratives are used not only to retell past experiences, but to foretell what will happen in the future. The stories told in narratives represent a life accounting, both personal and detailed.

Overall, narratives have a definite purpose and intent (Graesser et al., 2002). Although narratives are stories, these stories are usually presented with a purpose. In the case of holographic wills, this purpose is to divide an estate among surviving heirs or

named beneficiaries. This type of narrative does not follow the formal structure of legal language and may not follow legal jurisprudence (the science of the law). However, the holographic will is still legal. Since the requirement of the court is to determine the testator's meaning, this determination can be done using textual analysis.

Characteristics of professional wills. Turning to the composition of professional wills, I hypothesize that these texts will tend to be more formal with specialized language not generally used by those outside the legal profession. Lawyers approach a legal scenario with facts and jurisprudence. From their perspective, the narrative is of little consequence, they are interested in how the court will interpret the language of the will (Baron, 1992). Jurisprudence requires that the court consider "the four corners of the document." The definition of this phrase is that only the language of the will can be taken into consideration. Lawyers tend to draft wills that follow a model or template. Part of the rationale for using a template is that this approach will provide the court with all of the pertinent information in the format that is expected (Bove, 2000).

The language of professional wills, typically referred to as *legal language*, is much more formal and rule-driven than the language of holographic wills. Johnstone (2008) notes that the qualities that differentiate legal language are the same qualities that often make understanding legal language difficult for laypeople. Johnstone observes, legal language exhibits key linguistic features that set legal language apart, giving it its own register. These features include, at a minimum, the use of archaic language as well as complex sentence structure that often incorporates multiple relative clauses. These features are discussed in greater detail in Chapter 3, *Review of the Gramulator*. Garner (2002) and Mellinkoff (1963) note that other features of legal language include

wordiness, use of multiple prepositional phrases, and use of doublets and triplets (i.e., a phrase of two or three words with similar, if not the same, meaning). Mellinkoff notes that some of these phrases evolved from the time when only oral wills were valid, as evidenced in the phrase, *will and testament* where *testament* was the term used for an oral will. Although oral wills are no longer used, much of the terminology used with oral wills has been retained and is used concurrently with the more modern terms that evolved with written wills. The retention of these old terms shows the legal community's reluctance to change and evolve as a profession. Rather than use the more modern term, both terms are used to create a sort of legacy. This legacy has left a trail of redundancy.

Some legal terms have evolved because of the legal profession's goal to be precise. An example is the phrase *rest, residue, and remainder*. Any of the three words could be used individually to provide the desired meaning but Mellikoff (1963) maintains that the legal community views this redundancy as a means of being precise. However, Mellinkoff notes that this usage is more from habit than a true reflection of precision. He further notes that for many lawyers, after years of using these phrases, this habit becomes a conviction. Mellinkoff's point is that it is this conviction that has helped to perpetuate the continued use of these forms over the years. The use of redundant words and phrases, archaic language, and boilerplate forms set legal language apart. Rather than telling a story, as in a narrative text, professional wills are drafted with a language that not only represents the legal profession but is founded on years of tradition.

In order for the will of a testator to accomplish its objective, to divest property to specific heirs, the meaning of the will must be determined. The determination of the meaning can only be accomplished by reviewing the language used to draft the will. The

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purpose of my study is to better understand how the features of the text (i.e., what the reader might infer from the text) are supported through the language used. To arrive at this understanding, my study analyzes a corpus of holographic and professional wills, looking for language patterns to support my hypothesis.

Relevance of the Study

The purpose of this study is to analyze and discuss how the language of holographic wills differs from the language of professional wills. A part of the study examines whether narrative language is ambiguous and may serve as a point of conflict. An example of possible ambiguity is a reference from one of the holographic wills to the benefactors that states "articles I bequeath to other relations and friends". The reader is left to wonder exactly who the other relations and friends are since this statement could entail many people.

Another point that is examined is whether legal language tends to be exclusionary. An example of this type of exclusionary language is this reference to how property is to be divested and to whom it needs to be given, "to make divisions, allocations, distributions and conveyances of principal to legatees, beneficiaries, distributees and remaindermen wholly or partly in cash or kind". This use of legal terms that are wordy and technical can exclude those who are not trained in the use of legal language from understanding exactly what the phrase means. The reader is left wondering how these transactions will be done and who makes up the group targeted to receive the conveyances. This type of information is important to members of the legal community as well as a person who has decided to draft their own will. It is important to

know the differences between narrative language and legal language so that these conflicts can be avoided.

Also, since a key element in deciding court cases involving contested wills, is to determine the meaning of the testator, I show how linguistic analysis can be used to determine meaning. The intent of my research is to demonstrate to the legal community how non-professionals write their wills. Given this knowledge, when a controversy over a holographic will arises, the legal community can apply the results of this study and determine the testator's intent, because by law, this intent is what is required.

This study is important to probate lawyers who are responsible for probating or finalizing a person's will and making sure that the requests of the will are fulfilled. These lawyers are not only the ones who would typically draft a professional will, but are also the ones who would normally represent an heir or heirs in a legal dispute over the meaning of a will. Because these attorneys are schooled in developing wills using a given format, in the language that they use on a daily basis with other lawyers and in the courts, these lawyers are often at a disadvantage in determining meaning in a holographic will. In determining the meaning of a professional will, it may be that conflicts exists or that the will is seen as misrepresentative by one heir or group of heirs.

This study is also important to probate court judges because they have the ultimate authority to determine the final outcome of the probate process and to decide on a controversy regarding a will. This group must make sure that the law is upheld, that the will is interpreted as closely as possible, and the dispute is resolved. With no prior knowledge of the parties involved and no possibility of getting clarification from the testator, this task may be daunting.

Part of the irony of this scenario is that although probate law is the area of expertise for these lawyers, they are handicapped by their lack of knowledge in dealing with language rather than the law. Although Mellinkoff (1963) notes that the law is a profession based on words, these words form a vocabulary that is particular to those involved with the law. A key point to consider is that some of the text is both inclusionary and exclusionary, e.i., including a person or group of people in the will while excluding another. This act in itself can serve as a point of conflict. It is this conflict that must be resolved in order to determine the testator's true meaning and divest the property covered by the will accurately.

The objective of this study is to not only show how conflict between different types of languages such as narrative and professional language can occur, it is also to show how these conflicts can be resolved. My purpose is to show how the application of linguistics can be applied to resolve the conflict and determine meaning.

Chapter 2: Literature Review

Overview of the Study

This study investigates the language of holographic and professional wills. My research question is "Do linguistic differences between professional wills and holographic wills have the potential to affect the interpretation of the wills, subsequently influencing the outcome of the probate process?" My hypothesis is that the discourse of holographic wills tends to be more narrative-like, reflecting personal experiences and emotions. To address my research question and hypothesis, I perform a linguistic and computational analysis on a contrastive corpus of contested holographic and professional wills. Currently, the research for the topic of probate law appears to be rather limited. Although there is research on the legal probate process itself, there is very little that ties this work together with linguistic research and computational textual analysis so as to form a comparative analysis of legal language to everyday language. For the purposes of this study, the term legal probate process includes the drafting of a will. In this chapter, I provide an overview of the literature that focuses on these three areas, legal probate process, linguistic research, and computational textual analysis.

Legal Probate Process

One of the primary discussion topics regarding the legal probate process is the use of legal language. The use of legal language permeates all facets of legal processes, including probate. First, I review the work that addresses specific legal language features, then I move to work that addresses the use of legal language in drafting wills, probating wills, and resolving contested wills.

Characteristics of legal language. One of the most recognized authors on legal language is David Mellinkoff, particularly his landmark work, *The Language of the Law* (1963). Although the work may appear dated, the importance of Mellinkoff's work is that he was the first to address the characteristics of legal language in a realistic way, including the problems often encountered with the use of legal language. Similarly, Mellinkoff's work presents some of the flaws with legal language that, in turn, affected the legal process.

Several of the features of legal language that Mellinkoff (1963) addressed are relevant to any study of legal language. In an extensive historical overview of legal language, Mellinkoff describes the use of *archaic words*, *doublets and triplets*, as well as *template* or *boilerplate* material, which are all aspects of legal language. Mellinkoff makes the argument that legal language frequently adopts common words but gives them a specific legal meaning that non-lawyers may not know. In his discussion of legal language, Mellinkoff also reviews specific legal processes such as the probate process, particularly the drafting of wills. Mellinkoff's work in the field of legal language has been expanded by other researchers such as Brenda Danet, Peter Tiersma, and Bryan Garner, who will be covered in more depth later in this section.

Archaic words. A key topic that Mellinkoff (1963) investigates is the use of archaic words. He points out that the use of words such as *hereby, heretofore, thereof,* and *whosoever* are obsolete in all but the legal profession. Partly, this obsolescence is because of the historical evolution of archaic words. Many of the archaic words that are still used in legal documents were used in Old and Middle English. For the most part, as the English language evolved, use of these words became rare. Mellinkoff's position is

that these words serve no real purpose other than to flag a text as being written in legal language. Mellinkoff's position is that these features provide neither clarity nor conciseness and do not help the reader derive meaning from a legal document.

Doublets and triplets. Doublets and triplets are typically two or three word phrases in which all of the words have highly similar meaning. As Mellinkoff (1963) notes, phrases such as *last will and testamen*t and *give, devise, and bequeath* result in "worthless doubling" (p. 349). The doublet *will and testament* developed from the time when only oral wills were valid. During that time, *testament* was the term used for an oral will. When society came to be literate, the word *will* was used to describe the written document. However, rather than just using the word will, the legal community held on to both words. In contrast, the triplet, *give, devise, and bequeath* is a combination of Old English and Old French terms. In everyday language, these phrases are no longer used but they are still part of legal language. Although some lawyers argue that the use of doublets and triplets makes legal writing more precise, Mellinkoff counters that the usage is not related to precision but rather to habit and that the usage has outlived its functionality.

Template material. Template or boilerplate material is another feature of legal writing. Mellinkoff (1963) discusses the use of this material, noting that template text was developed to help lawyers draft many different kinds of legal documents. However, Mellinkoff also notes that the use of template material has helped perpetuate bad writing and ambiguous language. Therefore, rather than writing for a specific client and purpose and choosing their words carefully, many lawyers depend on template material to quickly draft legal documents, including wills.

Summary. In addition to his review of legal language features such as archaic words, doublets and triplets, and template or boilerplate material, Mellinkoff (1963) notes that legal language and many legal processes have transitioned from an oral tradition to a written tradition. The key point of Mellinkoff's argument is that lawyers use this language more from habit than necessity. Accordingly, this habit has become a conviction that legal language must contain these characteristics. Over the years, rather than changing the language and the process to keep up with the way society as a whole communicates, the legal community has tried to maintain the status quo. In this respect, the language is often difficult to understand and has created a scenario that may be considered exclusionary. Mellinkoff notes the length and complexity of legal texts serve as defining characteristics of this problem, rather than as markers of clear, unambiguous text that can be read and understood by lawyers and non-lawyers.

Multi-faceted Perspectives

Peter Tiersma. As a linguist turned lawyer, Peter Tiersma is able to provide a multi-faceted perspective into the history, structure, and interpretation of legal language. Tiersma has written extensively on legal language traits such as archaic words, lengthy sentences, wordiness, and redundancy from a legal and a linguistic perspective. Additionally, Tiersma notes that that although these language traits may give the law an aurora of authority and respect, they make the text difficult to read and understand. The core of Tiersma's argument is that these traits cause legal language to differ from everyday language (Tiersma, 1999).

Because much of the research Tiersma (1999) has conducted, revolves around his detailed historical analysis of legal language, he also provides perspectives as to how

legal language has evolved. Much of Tiersma's historical analysis follows Mellinkoff's work but goes into greater detail. Specifically, he traces some language back to Old English and Latin phrases, some of which have survived and are still in use today. Additionally, Tiersma notes the influence of French terms, used extensively in English common law and partially in the American legal system.

Regarding the overall structure of legal language, Tiersma (1999) observes that even with efforts to reform legal language, it remains ritualistic, archaic, and difficult for non-lawyers to understand. Tiersma attributes the use of template material to the perpetuation of legal language as it currently exists. Also, this practice suggests that lawyers know that they are writing for other lawyers and judges, so they use the language that their audience will recognize, rather than their clients. As such, legal language is inherently woven into the speech community that it serves. It provides the legal community with a distinctive communicative style that can often be misinterpreted by those who are not a part of this speech community. Consequently, legal language, through its distinct features, tends to establish its own structure, vocabulary, and style.

Tiersma (1986) has also conducted analyses using Speech Act theory to determine intent in legal documents. By applying Speech Act theory, Tiersma notes that the meaning of a legal text, such as a will or contract, can be analyzed for intent. Specifically, he notes that the use of words such as *offer* and *accept* fall into the speech act category of commissives. As commissives, these words commit the speaker to an action and show, to some extent, intention. Tiersma's position is that this commitment may help the court situate the meaning of the text.

Brenda Danet. Brenda Danet (1980) reviews legal language traits and characteristics from a linguistic perspective. Specifically Danet reviews the pragmatics, lexical and syntax features and discourse features of legal language. Most notably, Danet argues that legal language needs to be considered a "dialect." This stand, appears to differentiate her work from that of David Mellinkoff and Peter Tiersma.

Although Danet (1980) focuses particularly on legal text, she provides a detailed overview of how legal language features can be analyzed using the named linguistic roles. This analysis helps to provide a starting point for comparing everyday language to legal language using specific linguistic roles. For example, from a pragmatic role, Danet's study of legal language allows that the contextual nature of the text will help determine the meaning of the text. Included in this pragmatic analysis is the use of Speech Act theory and conditionals. Because this form of pragmatic approach is a broad stroke attempt at analyzing meaning within a specific context, it provides a starting point to analyze legal language within a specific context such as wills.

In order to analyze legal language features linguistically, Danet 1980) proposed that the key legal language features must be identified. In identifying legal language, Danet identifies specific lexical and syntactic features that are symbolic of legal language, including archaic words, doublets and triplets, common terms with uncommon meanings, formality, conditionals, prepositional phrases, and sentence length and complexity. Accordingly, Danet looks to each of these features, analyzing the level of complexity and overall affect on comprehension. For example, she notes that the repeated use of *shall* adds to the formality of the text and the overuse of prepositional phrases is lengthy and often confusing. Danet notes that the most outstanding feature of legal

language is sentence length and complexity. These features make reading and comprehension difficult, particularly for the non-lawyer.

Danet (1980) addresses specific issues regarding legal language from a discourse perspective, including the complexity and formal nature of the texts. Danet's argument is that this complexity and formality often make legal language difficult to understand. With the Plain English movement (Garner, 2001), which is discussed in detail below, some changes have been implemented. However, Danet notes that these changes are slow in coming.

Plain English. The Plain English movement, sometimes referred to as the Plain Language movement is aimed at making legal documents clear and effective. The overall objective is to get lawyers to produce documents that their clients can read and understand. This approach is often presented as the solution to many of the problems created by legal language. Although some in the legal profession have resisted this movement, others are in full support. Peter Tiersma and Brenda Danet have acknowledged the movement but have expressed concerns that it may cause a whole new set of problems. However, others, like Bryan Garner, Joseph Kimble, and Steven Stark support the Plain English movement, noting that the legal profession needs to move away from its traditional style of legal writing toward a more direct, concise approach.

In summary, the Plain English movement represents a tremendous change for the legal community and with this change, a certain threat. Lawyers and judges understand the current language and process and to change may bring unknown issues. Danet (1980) suggests that experimental studies be conducted to assess the issue and determine if there

is true merit for all parties or if this change will serve as a determent to the legal profession.

Bryan Garner. As one of the supporters of the Plain English movement, Garner (2001) encourages the idea that in the modern world, lawyers and other legal professionals need to move toward the writing in clear language rather than the wordy, vague, jargon that their clients do not understand. Having taught legal writing courses and published numerous articles and books on Plain English writing, Garner continues to press his argument that clear, orderly writing is effective and efficient. The basic premise is that anyone, whether they have had any legal training or not, needs to be able to read and understand a legal text.

Following this notion, Garner (2001) advises lawyers to think about their writing, to avoid lengthy phrases and complex sentences. He also advises lawyers to select their words carefully, using plain English rather than archaic words. Further, Garner notes that the use of doublets and triplets are redundant and do not make the text more precise. On the contrary, Garner notes that the use of these phrases is a repetition that the reader must work through and then determine which word is most meaningful within the context.

Another feature of more effective writing that Garner (2001) urges lawyers to practice is the use of summaries and transition words to guide the reader through the text. Garner focus is on the reader, which, in many instances will be the lawyer's client. These clients want to be able to read and understand the document that they have paid the lawyer to draft. This point is where Garner tends to deviate from others who have written about legal language. His argument is that when lawyers make their writing clear and

meaningful, the reader's task becomes easier and the techniques that he proposes help to move the reader through the text and help with overall comprehension.

Theories of Meaning. A part of the qualitative analysis conducted in this dissertation (see Chapter 6) focuses on finding meaning in the text by using various *theories of meaning*. Three of the four theories of meaning identified for the qualitative analysis are used and recognized by the legal profession and are presented in this section. These three theories are *legal realism*, *originalism*, and *case precedence*. The fourth theory, deconstructionist theory, is more often used by linguistics, textualists, and literary critics and is presented in a later section.

Briefly, the *originalist theory*, often referred to as originalism, is typically used in issues regarding Constitutional meaning but can be applied to other legal texts. *Legal realism* is grounded in the concept that there is no definite right or wrong answer: intent or meaning must be determined by applying the law with consideration of current social norms rather than dated legal statues. *Case precedence* is used by the legal profession to present arguments and ground decisions based on prior decisions in similar cases

Lawrence Solum. As an advocate of originalism, Lawrence Solum (2009) notes that there has been a shift in originalist theory over the last two decades. This shift has focused less on the original meaning of the author and more on the original intent. This shift has taken into consideration that a document, particularly the constitution may have been drafted to be interpreted according to what was relevant to the public at that time in history. Further, Solum notes that the shift in originalism to focus on intent supports the notion that the semantic content of the text must be taken into consideration. Solum's position is that although the originalist theory may not hold all of the answers, it focuses

on the key issue, which is determining the intent of the author using the language of the text.

     Bryan Leiter. Legal realists, including Byran Leiter (2002) have focused on the legal process, arguing that without some form of social influence, the law is devoid of justice and operates in a vacuum. Leiter supports a legal realist approach to finding meaning in legal contests by not relying solely on the law, but also considering real life events as key factors in either presenting or deciding a case. Also, Leiter notes that legal realism is a descriptive theory that attempts to link the facts of a legal case with the governing law to help support the judicial decision in the case. Leiter argues that in order to determine meaning, the court needs to be guided by considerations of social, economic, and possibly ethical dynamics. These extra textual features can influence the determination of meaning according to legal realism. Wilkins (1990) supports Leiter by noting that lawyer can be more helpful to their clients if they are allowed to go outside of the limitations of the law. However, Wilkins acknowledges that this practice could lead to lawyers circumventing the laws that were established to maintain the public good and prevent fraud.

     Fred Schauer. As an expert on First Amendment law and the author of numerous articles on constitutional law and theory, legal reasoning and the philosophy of law, Fred Schauer (1987, 2007) is also recognized for his studies in the use of case precedence to determine meaning and help in deciding cases. My study will focus particularly on Schauer's work with case precedence. Case precedence is the application of an existing legal ruling to determine meaning and intent in another case. Schauer notes that precedent is the decision of a court with legal significance. This significance is that the court's

decision has a practical, authority regarding the law. Future courts faced with similar cases can turn to rulings in past cases for help with decisions. Lamond (2005) supports Schauer in his argument for case precedence. Further, Lamond notes that rather than help create legal rules, case precedence helps to aid in the decision-making process in a case of the same nature. The one limitation that Schauer and Lamond raise regarding the use of case precedence to determine meaning is that the determination regarding whether the facts for the cases under consideration are really similar is open for interpretation. There is no prescriptive formula to follow.

Patent and Latent Ambiguity. A second part of the qualitative analysis in my study focuses on reviewing and resolving *ambiguity* in the text. Resolving ambiguity is critical to determining the intent of the text. In the legal profession, ambiguity is defined as either *patent* or *latent*. Patent ambiguity occurs when the language in a legal document can be applied to more than one object or person. For example, the testator may leave one of two homes to an heir. If the testator does not specify which home the heir is to receive, the intent of the bequest is unclear, resulting in a patent ambiguity. In contrast, latent ambiguity arises when wording in the document, conflicts with other, associated facts related to the case. For example, there may be two or more persons or things that match the description in the text or the possibly no one or nothing matches the description in the text.

In the case of a patent ambiguity, external or extrinsic evidence is usually not allowed. The ambiguity of the text must be resolved using the language of the text. However, in the case of a latent ambiguity, which exists because of unclear, extrinsic facts related to the case, extrinsic evidence is usually required for the issue to be resolved.

Sanford Schane. Regarding ambiguity, Schane (2002) addresses what ambiguity means and how it can be identified and resolved. Also, Schane notes that ambiguity primarily means that the language of a text is not clear. That is, the meaning cannot be determined from the text as written without some analysis and, in the case of latent ambiguity, the presentation of extrinsic evidence to clarify the intent. In reviewing patent and latent ambiguities, Schane stresses that even if the language of the text creates an ambiguity, this language also presents the writer's perspective. For this reason, Schane urges that in order to determine meaning and resolve the ambiguity, the court needs to look exclusively at the words of the text.

Andrea Cornelison. In support of Schane's view of ambiguity, Cornelison (2001) notes that ambiguities can be found in wills. Specifically, the will's description of the testator's intention and the reality of the situation may conflict. In this case, Cornelison notes the court often tries to resolve the situation by either referring to case law (case precedence) or bringing in extrinsic evidence to resolve the ambiguity. Spaulding (2011) counters that some lawyers object to the use of extrinsic evidence citing that it may be unreliable or that it may constitute an attempt to commit fraud. However, in the case of a latent ambiguity, most courts are specific in the use of extrinsic evidence to resolve the ambiguity, citing that the extrinsic evidence cannot add or detract from the language of the will.

Other Supporting Legal Researchers. In reviewing the literature and analyzing my data, I found other supporting researchers whose studies clarify some gaps in the literature concerning legal language and the legal probate process. Some of these researchers overlap or touch on areas already covered such as the use of linguistics in

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analyzing texts, the effect of legal language, use of template material, ambiguity, and extra textual features. Overall, these researchers add to the understanding of the overall problem of determining intent.

Linguistic analysis of legal texts. The concept of determining intent has been considered in perspective studies. Baron (1992) argues that there are issues with interpreting holographic and professional wills. Holographic wills are often lacking in important legal details and specifics while professional wills may be so complex that the client does not understand the will.

Kaplan's (1998) research presents a more specific approach as to how to determine intent. Kaplan used syntax, discourse analysis, and pragmatics to analyze a contested holographic will. Kaplan used syntax and pragmatics to determine key subordinate clauses that provided a guide to the document as well as identifying pivotal phrases. By taking his sentence level analysis and then applying Grice's (1989) maxims to the whole discourse, Kaplan was able to determine that the testator intent.

Kaplan uses the maxims identified by Grice (1989) in his pragmatic analysis of a holographic will. Grice's maxims of quantity, quality, relevance, and manner apply to what is spoken, how much is spoken, and the context of what is spoken. The maxim of quantity addresses how much is spoken. According to Grice, the quantity needs to cover the topic adequately but not to excess. The maxim of quality notes that whatever is spoken needs to be true. The maxim of relevance stipulates that whatever is spoken needs to be relevant to the ongoing context. Lastly, the maxim of manner notes that whatever is spoken needs to be presented in an orderly fashion, void of ambiguity and vagueness.

Specifically, Kaplan (1998) applied Grice's (1989) maxims of quantity and relevance in his analysis noting that because the language in the will contained a specific quantifier, using the maxim of quantity, the testator deemed the inheritance to be that amount with no deviation. Kaplan supported his analysis with the maxim of manner, noting that given the language of the will overall, the language was not vague and that the testator intended his wishes to be carried out as written in the will.

Although Kaplan's (1998) research indicates that the determination of intent required the use of syntax, pragmatics, and discourse analysis, Jarboe (2002) argues that descriptive syntax is the most effective method of determining intent. However, Jarboe's writing is primarily historical with no practical application of descriptive syntax to a given text to support his argument.

Effect of legal language. In support of the argument that legal language is wordy, redundant, and often unclear, Broekman (1985) notes that legal documents are based more on dogma and legal rules than words and expression. Goodrich (1984) further supports Broekman in the claim that legal language is a complex, dogmatic and exclusionary. Additionally, Winn (1992) states that legal texts are based on legal ritual that help define the parameters used to determine intent. In a counter argument regarding legal language, particularly regarding the use of doublets and triplets as wordy and redundant, Klinck (1992) notes that many lawyers consider doublets and triplets to be precise terms.

Use of template material in wills. Lawyers tend to draft wills that follow a model or template (Bove, 2000). Further, Bove supports this practice, noting that the use of template material helps the lawyer to be consistent and provides the court with all of the

pertinent information in the format that is expected. In keeping with this argument, Bove (2000) advocates that holographic wills be avoided. He supports his stand by noting that holographic wills do not follow the formal format of a professional will and often require the court's interpretation. Bove's argument for the use of template material in legal documents, particularly wills, counters the arguments of David Mellinkoff, Peter Tiersma, Brenda Danet, and Jan Baron.

Effect of extra textual features. Regarding the affect of extra textual features in the probate process, Volkov (2012) notes that certain negative social dynamics such as greed, rivalry, and envy can create ill will and cause a law suit. Volkov also notes that these extra textual features can often create conflict in the determination of the testator's intent. This conflict is often the result of distrust among heirs who have created their own version of the testator's intent, regardless of what the will states. Ontario (2011) supports Volkov noting that in some probate cases, the greater the amount of the estate, the greater the amount of tension and rivalry that develops requiring that the estate be divided equally.

*Authoritative text***.** One of the common characteristics of legal language is that it is used to create texts that are *authoritative* in tone. Further, statues and wills are considered the most authoritative legal texts. Statues and wills tend to have language features indicative of authoritative texts, such as high occurrences of redundant words, long and complex sentences, and low occurrences of personal pronouns, gender terms, and kinship and emotion words. Writers such as Bakhtin (1981) argue that these kinds of variables tend to distance the reader from the text. More specifically, Bakhtin argues that discourse that distances itself from the reader is usually an *exclusionary language*,

representative of a particular group and associated with power and authority. Bakhtin (1981) describes this type of text as *monologic text*, noting that monologic text recognizes only itself, ignoring the reader. Professional wills are written from a legal perspective where the audience will be other lawyers, judges, and other members of the legal community. In keeping with Bakhtin's theory, legal texts are monologic and authoritative, serving only a select group.

Linguistic Research

Linguistic research is a broad topic. For the purposes of this dissertation, I review work that specifically addresses narrative text and how narrative texts can be identified and interpreted. I also review work that focuses on specific lexical features including pronouns, gender words, kinship terms, and emotion words. Lastly, I review works directed toward semantic analysis, pragmatic analysis, discourse analysis, and various theories of meaning and ambiguity.

Characteristics of narrative texts. As noted at the beginning of this chapter, my hypothesis is that the discourse of holographic wills tends to be more narrative-like, reflecting personal experiences and emotions. In order to analyze narrative text and the structure and language features that compose narratives, I first look to the work of Walter Ong. Analyzing narrative from a textual approach, Ong (2002) observes that narrative underlies all other forms of discourse and helps to relate the human experience. Ong proposes that narrative interpretation requires a text-center approach. People use language to create and tell their personal stories. Also, Ong supports the notion that narrative represents a personal story and notes that this story may reflect on memories of the author. Much of Ong's work focuses on the move from an oral culture to a literate

culture while still holding on to elements of oral narrative. As such, he provides an historical and discourse perspective of the progression of narrative.

Providing a more specific picture, Ong (2002) discusses how people use language to create narratives with a definite purpose. Narratives are more than stories. According to Ong, narratives build on experience and context, relaying observations rather than abstractions. Ong notes that the structure and organization of narratives represent the voice of the author. Further, Ong argues that these three elements help to provide a framework for determine meaning in the narrative.

Norman Fairclough. In support of Ong's (2002) argument, Fairclough (2003) notes that narrative shows a relationship between the voice of the author and the content of the text or speech. However, Fairclough goes further, noting that to determine meaning in a narrative, three key elements must be considered. These three elements are the production of the text, the text, and the reception of the text. Fairclough argues that all three elements (as well as background knowledge) are required to make meaning from the text. This meaning builds on what is explicit in the written text as well as what is implicit in the knowledge of the writer's background, personal relationships (including family and friends), intentions, and desires.

Arthur Graesser. Graesser, Singer, and Trabasso (1994) note that narrative tends to utilize everyday experiences and to provide a mental image that most people can identify with and use as a point of reference. As such, narrative has a definite purpose and meaning. A key part of Graesser's study on narrative is his use of a *situation model* to depict how a narrative is developed and how it can be interpreted. Graesser's situation model is a cognitive manifestation of the events and people involved, the timeframe of

the narrative, and any related objects or processes (Graesser et al., 2002). Thus, Graesser's situation model becomes the *who*, *what*, *where*, and *when* of narrative analysis. Graesser's situation model supports the previous arguments of Ong (2002) and Fairclough (2003) in analyzing narratives and their construct in that Ong and Fairclough each note that there needs to be a framework for narrative. Graesser's situation model fits this framework.

Textual and extra textual references. As described in my study, textual and extra textual references can be used to help determine the intent of a text (Graesser et al., 1994). Textual references, such as clauses and phrases, are explicit, supporting Fairclough's (2003) theory of explicit and implicit knowledge of the text. For example, a reference to a particular person in the text of the will is considered an explicit textual reference. However, the relationships and emotions that are not addressed in the text may imply issues not evident by simply reading the text. According to Fairclough, we need to look not only at the words and sentences used but also what the text implies. Fairclough's premise is that for the reader of a text, meaning can be derived from implicitness that may tie back to the intention of the writer of the text. In a complementary argument, Graesser states that the textual references connect to other portions of the text. The background knowledge of the extra textual references is not contained in the text but may be gleaned from the text.

Other Supporting Narrative Researchers. Other supporting researchers provide insight into the framework and content of narratives. Further, these researchers present ideas concerning how language is represented to tell the story of a narrative and how this language can be interpreted. In order to present their ideas, these researchers look at the

structure, language, and discourse of narrative text to determine the order of events, to see if a relationship between the text and the reader is developed, and whether the text reflects a particular identity. Each of these elements can be used to help determine the intent of the author.

Structure of the narrative. Narrative is often defined as a way of relaying past events (William LaBov 1972, 1981, 1997). On a deeper level, LaBov states that narrative is a means of sharing a personal experience in a report of a sequence of events. Using this definition, LaBov notes that the order that a narrative text is structured, including the temporal and emotional language, is critical in the interpretation of the narrative. Pratt (1977) supports LaBov's argument that the structure of a narrative helps make it a discourse of personal experience. Also, this narrative structure brings understanding and helps transfer the experience of the narrator to the narratee.

Relationship of the narrative. Regarding the relationship between the text and the reader in a narrative, Schiffrin (1996) points to the use of narrative as a basis for showing the relationship of self and identity to one another. Schiffrin argues that the structure and content of the narrative serve as means to understand identity, either social or cultural. The personal stories reflected in narratives provide us with an idea of the identity of the narrator and their relationship with the narratee. Each of these parts of identity is important in understanding the meaning of the narrative. Riessman (2002) supports Schiffrin's theory that narrative is an expression of identity. Further, Riessman notes that this expression of identity signifies a specific relationship.

Discourse in narrative. Johnstone (2008) defines discourse as the way that we talk. Specifically, discourse is how we use language to relate our knowledge of the world.

From a discourse perspective, Johnstone supports the positions of LaBov (1997) and

Schiffrin (1996), by noting that structure and language are important in a narrative. The

structure helps to sequence the events of the narrative and the language guides the reader.

From a discourse perspective, narrative can have a variety of functions. Narrative can

relate to an ongoing event but typically narratives reflect past events. The narrative

usually has an introduction, a series of events, and then the result or conclusion.

Johnstone notes that each of these steps plays a key role in understanding the narrative.

Further, Johnstone notes that narrative is an important resource for creating personal

identity as well as establishing a relationship to others. This last claim supports the

argument made by Schiffrin that narrative helps show a relationship between self and

others.

Lexical features. In this dissertation, I analyze narrative lexical features that

include (a) personal pronouns, (b) references to gender, (c) kinship terms, and (d)

emotion words. Each lexical feature is representative of narrative-like text. Investigating

these features and comparing to the features of legal language used in professional wills,

helps to identify if these two text types are more lexically diverse.

Personal pronouns. Narratives typically reference some personal relationship,

usually between the narrator and the narratee. Murphy (1988) and Johnstone (2008), note

that personal pronouns are often used to indicate a personal relationship between the

writer and the reader and are indicative of narrative. Graesser, Jeon, Cai, and McNamara

(2008) observe that pronouns typically require a shared understanding of the pronoun's

referent between the speaker and listener. In addition to a personal relationship between

the writer and reader, pronouns also serve as indicators of emotion and can emphasize

kinship. For example, Schneider and Homans (1955) note that references such as *my father* and *my brother* denote that, in America, kinship is usually a personal, individual reference. As a caution, Charrow, Charrow, and Erhardt (2001) state that in legal texts, misplaced pronouns can often cause ambiguity and confusion. They emphasize that there needs to be no question regarding the noun that a pronoun references.

First person personal pronouns. My study analyzes personal pronouns both collectively as well as from a first, second, and third person perspective. Regarding first person pronouns, Pennebaker, Mehl, and Niederhoffer (2003) supports the notion that a high occurrence of first person pronouns can reflect an elevated degree of self-focus and authority. Contrastively, Pennebaker et al. note that first person personal pronouns may also be indicators of depression and even suicidal thoughts. The focus of my dissertation concentrates on Pennebaker's claim of self-focus and authority to determine whether first person personal pronouns are used more in direct, formal text.

Second person personal pronouns. The use of the second person personal pronoun links the narrator to the narratee to the point of making the narratee a participant in the narrative (Graesser et al., 2002). Also, this framework serves to provide a higher level of involvement for the narratee. Fairclough (1989) supports Graesser's position by arguing that the use of the second person personal pronoun builds a cohesive relationship between the narrator and the narratee. The use of second person pronouns supports the argument that narratives are personal stories, often building on shared knowledge and experience. Note that in legal texts, the second person pronoun is extremely unusual, presumably because a will usually references numerous people who all need to be identified individually. Thus, the pronoun *you* would likely be highly confusing.

Third person personal pronouns. In contrast to first person personal pronouns, third person pronouns often indicate a focus on others rather than self (Pennebaker et al., 2003). Further, Pennebaker et al. state that third person pronouns often represent shared knowledge between the narrator and the narratee. This shared knowledge is a key concept in narrative text and helps to determine the intent of the writer.

Summary of pronouns. Personal pronouns are key lexical features of narrative texts. As function words, personal pronouns draw the attention of researchers from multiple disciplines. Linguists, cognitive psychologists, anthropologists and others find that the study of personal pronouns and the impact that these pronouns have on texts are an important part of unraveling the meaning of the texts. Personal pronouns help demonstrate the relationship between self and others that is a key part of narrative text.

Gender words. My dissertation does not focus on gender from a perspective of women's speech as opposed to men's speech. Neither do I look at gender from a stereo type role viewpoint. Rather, gender is typically used as an identifier. Nana and Weems (2010) note that gender can be thought of as the social, cultural, and psychological limits imposed by society. However, they argue that gender is a key part of social relationships, group identities, and the classification of kinship. Stone (2000) supports their claim by noting that there is a relationship between gender and kinship. This relationship is integral when studying probate issues. Rather than creating stereo types, this relationship helps to define who the testator is referencing in the will.

Kinship terms. Another element of narrative is kinship references. Stone (2000) notes that kinship represents a framework of human relationships. These relationships are usually biological, but not always. Further, she observes that kinship terms are based on

relationships evolving from birth or marriage. Although gender terms (discussed above) are changing and evolving, kinship terms are more established. From a cultural perspective, Schneider and Homans (1955) support Stone's argument adding that in American culture, a high value is placed on kinship. Schneider notes that one reason for this high regard is that kinship terms represent inheritance rights.

Emotion words. Narrative has been defined as the tool that enables us to bring content and emotion together to develop meaning. Looking to the emotional part of narrative texts, I turn to Pennebaker et al. (2003) and his analysis of emotion words within a text. Pennebaker et al. note that when people tell or write a narrative they use various techniques, including revealing their emotions. These emotions may be positive or negative but, regardless, these words set the tone of the text. Pennebaker et al. (2003) also tie the use of emotion words to the use of pronouns, demonstrating a relationship between the writer and reader. This relationship ties back to the framework of a narrative and how a story is told.

Danner, Snowdon, and Friesen (2001) support Pennebaker's (2003) argument by noting that in personal writings such as narrative, emotions experienced by the writer or others in a particular life event are often prevalent. These events often trigger memories of better or worse times. These memories are then acknowledged emotionally in the writer's text.

Pragmatics. Pragmatics is defined as the study of language usage (Levinson, 1983). Pragmatics also examines the kinds of speech acts that people use in writing and speech. This dissertation reviews pragmatics for a perspective of contribution of context to meaning using various pragmatic approaches such as Speech Act theory and discourse

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analysis. Pragmatics allows us find and analyze the contribution of context to meaning. This component is key in determining meaning.

   Speech Act Theory. Austin (1962) theorized that by uttering or writing specific types of speech, speech action occurs. Austin argued that making a promise or issue a declaration was the same as performing an action. For example, to say, "I promise to study tonight", is presents an act of commitment to keep the promise. These speech acts form the foundation of Speech Act theory. The core of Austin's theory is that speech is within itself an act and that speech acts are used to achieve goals. Austin argues that in order to determine the nature of a speech act and achieve the intended goal, whether spoken or written, two steps need to occur. The hearer or reader of the speech act must accomplish two steps. First, the meaning of the language used in the speech act needs to be considered. Second, the context in which the language is used must be considered. Taking the language of the speech act and the context of the speech act into consideration helps to clarify the intent of the speech act by providing contextual meaning rather than literal meaning.

   Austin identifies three parts of a speech act. The first part is the *locutionary act*: the act of speaking or writing a statement, asking a question, making a commitment, or providing a description. For example, the phrase *this Court finds* is the actual statement made. . The second part of a speech act is the *illocutionary act*. This part is defined as the effect or meaning behind the locutionary act. For example, *this Court finds*, taken in context, is a finding by the court. The third part of a speech act is the *perlocutionary act*. This act is the consequence of the locutionary act. For example, the consequence of the

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locutionary act *this Court finds,* is that the court has made a binding judgment in a effort to resolve a legal suit.

Others have taken and expanded Austin's original Speech Act theory. One of the most recognized in this area is John Searle. Searle (1976) uses the categories of speech acts defined by Austin but switches the focus to the verb of the speech act. This approach gives more depth to the categories and clarifies distinct syntactic implications regarding these categories. Searle's categories of speech acts include representatives, directives, commissives, expressives, and declaratives. For example, the speech act reviewed in the paragraph above, *this Court finds*, is, according to Searle's definition, a declarative speech act. Searle defines a declarative speech act as one that successfully alters the status or condition of an existing situation. Searle's categories of speech acts include representatives, directives, commissives, expressives, and declaratives. Searle justified the need for the redefinition of the categories developed by Austin (1962) citing the need for categories with more defined purpose, better fit with everyday language use, and that more adequately addressed the intent and focus of the speaker and the audience.

Having defined the basic speech act categories, Searle (1979) then categorizes the force of the illocutionary part of a speech act. Searle claims that the illocutionary act can be either direct or indirect depending on how the act is stated and how it is understood. Searle noted that the need for this delineation is that in various situations, what is said and what is understood, may differ. When this situation occurs, Searle defines this misunderstanding as an indirect speech act. To address this issue, Searle notes that often background information is needed to clarify an indirect speech act. Further, it is often

necessary to consider not only the meaning of the language used in the speech act, but also the speaker's conveyed meaning.

Pratt (1977) supports Austin (1962) and Searle (1976) by noting that analyzing the context of a speech act is essential. Pratt notes that the work of LaBov (1972) on narrative is dependent on context. Further, Pratt claims that analyzing language is complex and requires the rule oriented approach of Speech Act theory to determine intent.

Discourse analysis. Discourse can be defined as the source of information derived from language use and the impact of this information (Johnstone, 2008). Discourse provides an overview of language from a content and context viewpoint. Discourse considers communication, either written or verbal, from the perspective of the participants, the timeframe, the setting, and the intended goal of the communication. Johnstone notes that over time, various discourses develop *markers* or *identifiers*, making them easy to recognize. For example, narrative discourse typically reflects a personal story told using personal pronouns and various other lexical features that align them with other people. Personal pronouns and other lexical features are used to mark points in the narrative that are shared knowledge between the narrator and the narrative. One of the main purposes of these markers is to guide the narratee through the story and connect the narrate to the story.

By comparison, Johnstone notes that legal language also has markers and identifiers. Legal discourse is *marked* by its use of archaic words, doublets and triplets, and complex syntax. These features identify a text as part of legal discourse. Although one of the primary goals of the Plain English movement is to eliminate these markers,

Johnstone is not entirely in favor of this change. Although Johnstone mentions the Plain English movement, she also notes only partial success with this effort. In explanation, Johnstone claims that simplifying the language may, in some cases, change the intended meaning because its structure and language are indicative of that particular discourse.

In further review of legal discourse, Johnstone (2008) notes that it is direct and authoritative. Johnstone argues that through the use of specific linguistic features, such as archaic words and doublets and triplets, legal discourse has a unique style. This style supports a discourse of power and authority. Johnstone's observation regarding the tone of legal discourse is complemented by Bakhtin (1981) through his theory of monologic text. Specifically, Bakhtin attributes various features to monologic discourse including an internal authority that represents power and independence rather than just attention.

Semantics. As a core concept in linguistics, the study of semantics is concerned with how we communicate ideas, concepts, and information. Semantics concerns the meaning of words, which, in turn, affect the meaning of phrases and sentences (Finegan, 1994). The meaning of a sentence is usually dependent on the relationships of the words that make up the sentence. These relationships typically reflect the arrangement of words in a sentence. This arrangement is the syntactic structure and this structure helps provide the context in which a word is used. Notably, if a word can have two semantic roles, the role specified by the structure and context of the sentence will determine the meaning. For example, *dog bites man* and *man bites dog* are sentences composed of the same words, but the order of the words determines the meaning which, differs greatly between the two sentences (Lyons, 1977). Two of the leading names in this field as it relates to the theme of my dissertation are Finegan and Chafe (1994).

Finegan (1994) argues that semantics includes three types of meaning. These three types of meaning are *referential*, *social* and *affectiv*e. *Referential meaning* is considered the object, person, idea, or event that a specific word references. Finegan notes that these references or associations carry over to the sentence level providing specific meaning to a group of words. *Social meaning* is more subjective but also more contextual. Social meaning is usually connected to the speaker or writer and may reference social standing, gender, age and possibly demographic factors. *Affected meaning* is typically a conveyance of attitude and may depend on intonation, prior or shared knowledge, and address. Affected meaning usually portrays the speaker or writer's feelings and emotions. Of the three types of meaning, social and affected meaning are considered as part of narrative text. The determination of these meanings also helps determine the meaning of the surrounding text.

At the sentence level, Finegan (1994) approaches meaning from the viewpoint that the nouns and pronouns in sentences perform certain roles. These roles help define the referential meaning of the noun but also create a relationship between the noun and the sentence verb. Finegan defines nine specific semantic roles of nouns. These roles include the agent, patient, instrument, cause, experiencer, benefactive, recipient, locative, and temporal roles. Each role has a function and a noun and can be categorized in more than one role. These roles can help clarify the meaning of a sentence by determining what properties the noun holds and what actions relate the noun to the sentence verb. This type of meaning can be used to resolve ambiguity and show a specific intent by the writer.

Wallace Chafe (1994) supports Finegan's (1994) argument that there are three types of meaning. Chafe particularly focuses on affected and social meaning. In his work

with affected meaning, Chafe looks at multiple types of intonation, spoken and written. He notes that from a cognitive perspective, intonation flags words and phrases with markers that point to the reader or hearer's consciousness. Regarding social meaning, Chafe again supports Finegan's theory that social meaning often relies on shared knowledge. Specifically, Chafe notes that without this shared knowledge some readers or hearers may be excluded from the communication. Given the particular nature of legal discourse, those who are not part of the legal community can be excluded by this discourse because they may lack the shared knowledge necessary to understand the communication.

  Deconstructionist theory of meaning. Often attributed to Derrida (1976), one of the goals of the deconstructionist theory was to criticize the use of Speech Act theory (Austin, 1962 and Searle, 1976). Deconstructionism is an open approach to interpreting text and does not adhere to any rule driven approach to determining meaning (Halion, 1989). Deconstructionism proposes that a text has no stable meaning because words only refer to other words and meaning changes accordingly. Derrida argues that all that could be used to interpret the text was the text itself. This requirement negates the use of extrinsic features and shared knowledge. Balkin (1987) supports Derrida's position by noting that deconstructionism does not make a text meaningless but may point to multiple meanings. The approach of deconstructionism appears contrary to the requirement of resolving meaning in text. As such, as a "theory of meaning," deconstructionism is less useful than the previous discussed theories of originalism, legal realism, and case precedence.

Lexical Ambiguity. Lexical ambiguity occurs when there is the possibility of interpreting a phrase or sentence in two or more ways (Cruise, 1988). Small, Cottrell, and Tanenhaus (1988) divide lexical ambiguity into two main types, semantic and syntactic. Semantic ambiguity occurs when two words have the same or similar meaning and the context of the word does not provide a clear idea of the meaning (Bach, 1994). For ,the statement *He is near the bank* can be interpreted two different ways, depending on the context of the word *bank*. The word bank can refer to a financial institution or it can mean the side of a river or other waterway. By contrast, syntactic ambiguity occurs when the word order within a phrase or sentence creates two different meanings. For example, the phrase "I have a blue pen" can mean that the pen is blue or that the pen writes in blue. Cruse notes that in some cases the scope of this ambiguity is apparent and can be resolved. However, in other cases, the ambiguity may only be perceived.

Charrow et al. (2001) argue that misplaced words and phrases can often cause ambiguity in a legal text. Specifically, they note that the overuse of logical connectors such as *and*, *or*, and *if* as well as the misplacement of pronouns as antecedents, can create confusion for readers. Additionally, Charrow et al. note that lawyers often use the same word to infer different meanings. In particular, lawyers will use the word *shall* to mean *must* in some instances and to mean *will* in other instances. Charrow and colleagues note that neither the context nor the semantic relationship of the word to the rest of the sentence clarifies its interpretation.

Applied Natural Language Processing (ANLP)

ANLP research is primarily the use of computational analysis tools to analyze defined corpora. Specifically, these tools are used to identify lexical features and provide

statistical or probabilistic analysis. This process allows the researcher to conduct lexical, pragmatic, and discourse level analyses on corpora wide array of texts. For the purposes of this dissertation, I provide an overview of the ANLP field of study. I also review corpus development and use in ANLP research, particularly corpus linguistics analysis. Lastly, I review the various tools used in this study to analyze the corpus of contested wills, including their specific capabilities to analyze various lexical features and provide quantitative results.

Characteristics of ANLP. ANLP is an emerging field of study concerned with identifying and resolving language issues using computational textual analysis tools. As such, the focus of ANLP is to adapt technology to address real life language problems. For this approach to be successful, a broad range of natural language processing tools, systems, algorithms, models, theories, and techniques are needed. Currently a number of sophisticated processing tools exist that are capable of a broad range of topics linked to language usage in some form. For example, tools are available to measure semantic similarity, provide information extraction and data mining, examine psychological dimensions, investigate intelligent tutoring systems, conduct qualitative and quantitative computational textual analyses of corpora, and determine lexical diversity and lexical frequency. There are a number of other functions that computational tools can provide and the number of tools with varying capabilities grows continually (McCarthy & Boonthum-Denecke, 2012).

ANLP differs from Natural Language Processing (NLP) in that NLP is primarily dominated by computer scientists. The *applied* part of ANLP more often lends itself to linguists and cognitive psychologists, although numerous computer scientists who

develop tools for the broader community may also refer to their work as falling within the catchment of ANLP . As such, linguists and cognitive psychologists apply NLP to linguistic data in order to better understand how the human mind works, particularly in matters regarding language. How humans use language at every level, has a tremendous impact on how we see and understand the world. Although ANLP and NLP are similar in many ways, the focus of the two processes differs. The focus of ANLP research is less concerned with the development of the tools and more concerned with the identified issue, particularly the analysis of the problem as well as interpreting and applying the results (McCarthy & Boonthum-Denecke, 2012).

  Corpus. A key part of ANLP research is a corpus-based approach that allows computational analysis of text. Specifically, these corpora are collections of electronic files that are representative of some genre or specific lexical feature. These corpora typically have four basic characteristics. First, the corpora need to provide adequate sampling and be representative of a text type. Second, the collection needs to be a defined appropriate size to represent the text type. Third, in order to be processed using computational analysis tools, the texts in the corpora must be in electronic format. Fourth, the corpora need to either serve as a standard of reference or represent a corpus that is considered a standard such as the Brown Corpus or the TASA corpus (Hall, 2012). After the corpora have been analyzed using appropriate computational tools, the results are statistically or probabilistically analyzed with procedures such as student t-tests, factor analysis and descriptive statistics.

  The use of corpora to analyze specific language features has been used in linguistic research for some time. Biber (1988) notes that corpus linguistics looks at

language structure as it occurs naturally. This approach allows the researcher to investigate patterns of language usage and determine the frequency of these patterns within context. This type of research approach is well suited for ANLP studies. In order to accomplish this type of analysis, Biber and Conrad (2001) suggest that the corpus contain a large number of electronic texts. Biber provides an overview of corpus linguistic research, specifically ESL, touched by automated corpus analysis to support his argument. The key areas in these studies included but are not limited to grammatical patterns. Also considered were the patterns of use across registers, use of selective patterns in words for ESL learners, and patterns and frequencies of verb usage across various registers for ESL students. Cobb (2003) supports Biber's evaluation of the use of corpora in linguistics study, adding that corpora analysis allows the researcher to determine the similarities and the differences between the corpora by analyzing the lexical features between the corpora.

Natural language processing tools. From a linguistic perspective, natural language processing tools have typically been used to conduct studies using defined corpora. These studies focus on topics such as corpus linguistics, semantics, cohesion, lexical diversity, word features, lexical features, narrative, and grammar (McNamara & Graesser, 2012). As new tools are developed this perspective is broadening. Tools such as Coh-Metrix, Linguistic Inquiry and Word Count (LIWC), and the Gramulator are capable of providing a diverse approach to computational textual analysis. This approach includes analyzing the language from a functional, semantic, and contextual level. Tools such as Coh-Metrix, LIWC, and the Gramulator have been used in multiple studies and are currently being used by a growing number of researchers. Specifically, these tools are

used to conduct lexical, pragmatic, and discourse level analyses on defined corpora. From a linguistic perspective, these tools allow researchers to analyze corpora, look for language differences and similarities as well as to describe features of the texts given the language used. This type of analysis takes the ANLP approach to another level. This level of analysis allows the researcher to conduct discourse analysis on defined corpora. Using this approach, the researcher is interested not only in *what* is said, but *why* something is said (Kent & McCarthy, 2012).

This study looks at four key computational analysis tools used in natural language processing. First, the analysis draws on the resources of the Gramulator, which is capable of providing qualitative and quantitative analysis of identified lexical features. Second, Genre Purity Assessment Tool (GPAT) is used to assess the genre of texts as either narrative or expository. Third, Measure of Textual Lexical Diversity (MTLD) is used to analyze and measure lexical diversity. And fourth, LIWC is used to analyze various emotional, cognitive, and structural components of texts.

Gramulator. The *Gramulator* (McCarthy et al., 2012), is a natural language processing tool designed to look for specific words or word clusters, referred to as n-grams. Specifically, the Gramulator is designed to identify linguistic features that differentiate one text type from another text type. In order to accomplish this analysis, the Gramulator analyzes corpora to find specific n-grams. Next, by analyzing these n-grams, the Gramulator determines the lexical features that differentiate, distinguish, and identify the respective text type. Using this methodology, the Gramulator allows the researcher to review the Gramulator results within context. This contextual perspective allows the Gramulator to provide qualitative and quantitative analysis of select corpora. Overall, the

key feature of the Gramulator is identifying indicative features of specific text types. The Gramulator tool has featured in numerous studies including McCarthy et al. (2009); Min and McCarthy (2010); and Hullender and McCarthy (2011. The Gramulator approach was validated in McCarthy et al. (2012).

In this study, the Gramulator is used to analyze specific lexical features such as personal pronouns, gender and kinship terms, archaic words, doublets and triplets, relative clauses, and prepositional phrases. The results from these analyses will be used to determine if these particular lexical features vary between the corpora, and, if so, if the differences are significant.

Genre purity assessment tool (GPAT).The GPAT tool (McCarthy, 2010) is incorporated into the Gramulator. GPAT is capable of determining whether a text is scientific or narrative. Drawing on the Gramulator's n-gram unit of analysis, GPAT determines the frequency of the n-grams and whether the n-grams are narrative or scientific. In order to make the determination whether the n-grams are narrative or scientific, GPAT analyzes the n-grams against a series of indices. These indices are made up four character sequences taken from published narrative and scientific texts that were part of the Touchstone Applied Science Associates (TASA) corpus. Specifically, GPAT compares the n-grams of the corpora against the indices to determine if the individual corpora texts are more narrative or scientific. GPAT has been tested against other textual analysis tools such as Coh-Metrix and found to be at least as accurate. Also, various studies have used GPAT including Min and McCarthy (2010) and McCarthy and Hullender (2011).

In this study GPAT is is used to analyze the texts in each corpus to determine if the texts are narrative or scientific. Specifically, this analysis is to address my hypothesis that holographic wills are more narrative than professional wills.

Measure of Textual Lexical Diversity (MTLD). Another feature of the Gramulator is Measure of Textual Lexical Diversity (MTLD: McCarthy & Jarvis, 2010). MTLD was designed to assess lexical diversity. Lexical diversity is a value that represents the range of vocabulary deployment across a given text. MTLD assess lexical diversity by processing the texts within each corpus and determining the number of words that fall within set ratios of word types and word instances. In order to validate MTLD as an effective tool to measure lexical diversity, it has been compared with some of the primary lexical diversity assessment tools, which include vocd-D, TTR, Maas, Yule's K, and an HD-D (Jarvis, 2012; McCarthy & Jarvis, 2007, 2010). Studies using MTLD include Crossley and McNamara (2011); Crossley, Salsbury, and McNamara (2009); Duran, Crossley, Hall, McCarthy, and McNamara (2009); McNamara, Crossley, and McCarthy (2010) and Rus, Feng, Brandon, Crossley, and McNamara (2011).

In this study, MTLD is used for two key purposes. First, given the hypothesis that holographic will tend to be are more narrative in style than professional wills, the language of these documents is also likely to be more diverse. Conversely, the claim that professional wills have more template or boilerplate material points to the language of these texts being less diverse and more standardized.

Linguistic inquiry and word count (LIWC). LIWC was initially developed by Francis and Pennebaker (1993) and is primarily a word counting software tool used for quantitative textual analysis. Specifically, LIWC is capable of analyzing linguistic

features that are indicative of social and psychological conditions such as personality traits, emotions, and mental fitness (Pennebaker & King, 1999). LIWC studies indicate that people's emotions can be analyzed through their word choices. These word choices can serve as language markers to reflect a person's emotional or psychological state (Pennebaker et al., 2003). This capability is based on a core of dictionaries that cover a broad range of categories. These categories include but are not limited to grammatical words such as pronouns and verbs; psychological words, including emotion and social words; and content words covering topics like religion and death. Initially categories were based primarily on psychological topics, including emotion and cognitive functions. Over the years the word categories have expanded. This unique structure allows LIWC to analyze corpora and that can then be used in behavior analysis. This behavioral analysis can be based on occurrences and frequencies of emotion words, relationship words, social words, and other psychological characteristics. The initial validation of LIWC began with Pennebaker and Francis (1996). Since that time, the program has been validated and upgraded. A new version of LIWC was developed and released by Pennebaker et al. in 2001. LIWC has been used in many studies over the years, including Cohn, Mehl, and Pennebaker (2004); D'Mello and Graesser (2012); Hancock, Landrigan, and Silver (2007); and Kahn, Tobin, Massey, and Anderson (2007).

In this dissertation, LIWC is used to analyze the use of emotion words in the corpora. This output is used in further testing to determine if the use of emotion words in the holographic wills and professional wills significantly vary.

Chapter 3: The Gramulator

Design and Purpose of the Gramulator

The Gramulator was designed to bring an additional dimension of analysis to natural language processing and analysis (McCarthy et al., 2012 and Min & McCarthy, 2010). Previously, computational analysis tools provided mostly quantitative data; however, the Gramulator provides a means to qualitative analysis as well. In order to add a qualitative aspect to textual analysis, the Gramulator was designed to process contrastive corpora and provide content and contextual analysis by identifying linguistic features that may exist in the corpora. Contrastive corpora are sample sets of data taken from a larger data population that are generally related in some ways but may also contain lexical differences. The Gramulator is able to process and analyze the corpora, determine these differences, and provide this data for further analysis. By analyzing these differences, a researcher may be able to show distinct patterns that tend to distinguish the texts in one corpus from those in another corpus. This type of research is usually referred to as contrastive corpus analysis.

The Gramulator is used to analyze specific corpora and is capable of identifying indicative features of the text types that comprise the corpora. These features may be syntactic, semantic, or pragmatic and serve as identifying elements of a particular text type. The Gramulator determines these indicative features. The resulting output is designed to allow the researcher to review the identified data within the context of the documents. The Gramulator's approach is different from other textual analysis tools that only provide numeric output after analyzing corpora texts. While the corpora could be

any two sets of texts that are representative of a larger group, the corpora for this dissertation contain two sets of wills: holographic wills and professional wills.

Unit of Analysis: N-grams

The Gramulator uses n-grams as the primary unit of analysis. N-grams are adjacently positioned lexical items in a text that can be composed of any number of words, although, most studies focus on two words (i.e., bi-grams) or three words (i.e., tri-grams). N-grams are phrases or strings of text composed of two, three, four, or even more words that are adjacent within the text. The Gramulator groups all of the n-grams that occur with above average frequency. For example, the initial four bi-grams of the first sentence of this paragraph are *The Gramulator*, *Gramulator uses, uses n-grams, n-grams as.* By comparison, the initial four tri-grams are *The Gramulator uses, Gramulator uses n-grams, uses n-grams as, n-grams as the.*

An example of n-gram analysis using the Gramulator can be found in Min and McCarthy (2010). The Gramulator was used to find those n-grams, defined as *differentials*, which showed lexical differences between the corpora. The study demonstrated that native English speaking scientists were more likely to modify noun phrases with prepositional phrases, although non-native English speakers might tend to use the simpler structure of noun modifying noun (i.e., *HIV patients* rather than *patients with HIV*).

Describing typicals. During the analyzing of the corpora process, the Gramulator identifies those n-grams that occur with above average (weighted) frequency. These n-grams are identified as the *typicals*. These *typicals* are dependent to their respective corpus. While *typicals* do not represent distinguishing features between the corpora being

analyzed, they can help the researcher determine distinguishing features of the corpus that they represent.

Describing differentials. Having identified the *typicals*, the Gramulator identifies those phrases that are typical of one corpus but not typical of the other corpus (i.e., they are typical of one and only one of the corpora under analysis). These phrases, or n-grams, are called *differentials. Differentials* are present in just one of the two corpora and therefore are specific to one of the corpora text types. Specifically, the Gramulator determines the *differentials* between two corpora by finding the n-grams that occur with above a frequency of 50% in only one of the corpora.[1]

The Gramulator's approach to differential analysis builds on the alignable differences theory of Gentner and Markman (1997). The premise for the theory is that one of the best ways to identify differences is by first identifying similarities. By expanding this theory to include textual analysis, the Gramulator is able to show the lexical features that differentiate two corpora as well as those features that the two may hold in common.

In summary, a Gramulator analysis always produces two sets of output (i.e., *differentials* and *typicals*). The *typicals* are representative of one corpus and are not influenced by any other corpus. In contrast, the *differentials* are always derived from one corpus relative to second corpus that was analyzed. This process logic means that the Gramulator can find those words and phrases that can distinguish one group of texts from another group, provide a list of these differences, and enable the researcher to analyze these differences in context.

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[1] Note that in previous studies, (e.g., Duran & McCarthy, 2010; McCarthy et al., 2009; and Min & McCarthy, 2010) *differentials* were referred to as significantly improbable features (SIFs).

Using N-grams for Analysis

McCarthy et al. (2012) argue that n-grams are considered a useful form of textual analysis assessment because they are capable of revealing language features and patterns that are characteristic of the theme of the texts forming the corpus. Another useful feature of using n-grams in analyzing various texts is that they can cross linguistic boundaries (i.e., they do not have to be in the same syntactic phrase, nor even in the same clause) to give insight into how one group may speak or write differently from another about the same topic. Although a word or phrase may be used to mean one thing by one group, another group may use the same or similar wording to convey a different meaning. For example, one group may be more prone to take a narrative approach using common everyday language to express a specific intention. These words, when used in a more formal text may pick up a different meaning given the specific context of the phrase in the text.

It needs to be mentioned that although a primary use of the Gramulator is to identify the *differential* n-grams between two corpora, the other output from the Gramulator, the *typicals*, represents the most common n-grams of each corpus. As noted in McCarthy et al. (2012) the most common *typicals* do not vary greatly from corpus to corpus. Given this scenario, the *typicals*, which are the n-grams that occur with above average frequency, usually do not distinguish the lexical features of the corpora (because they are highly common to both corpora). The Gramulator's process of determining *typicals* and *differentials* provides the researcher with the most common n-grams for one corpus and the least common n-grams to the contrasting corpus. By reviewing the typical and differential n-grams for two corpora, the researcher is able to identify both the

language differences and patterns that set the corpora apart and the language similarities that may establish commonality between the corpora.

Modules of the Gramulator

The Gramulator, at the time of this dissertation, includes three pre-processing modules: the *Cleanser*, the *Converter*, and the *Sorter*; and six post-processing modules: the *Viewer,* the *Concordancer*, the *Evaluator*, the *Parser*, and the *Clusterer*. Each of these nine modules is a satellite of the main processing module, referred to as the *Main Module* or simply, the *Gramulator*. This section provides a brief overview of each of the modules with particular emphasis on the modules used in this study. Because the *Balancer*, *Cleanser,* and *Sorter* modules were not used in this project, I will review these modules only briefly at the end of this section.

The Main Module. By default, the Gramulator software opens at the Main Module. Using this module, the researcher designates which corpora are to be analyzed. A key part of this analysis is the weighting and frequency of occurrence for all n-grams. The process begins by selecting and loading the corpora that will be analyzed (see Figure 1).
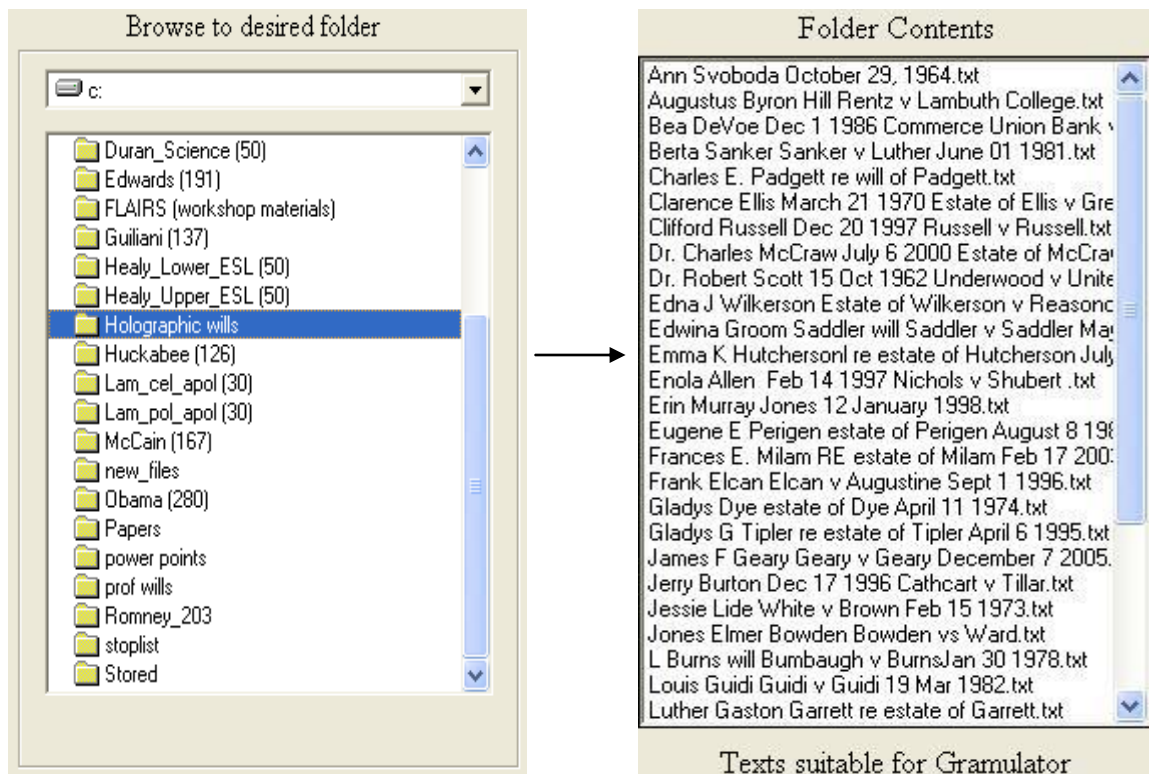
Figure 1. The Main Module of the Gramulator is used to select the corpora to be analyzed. Files for each corpus are shown under Folder Contents.

The researcher has to select two corpora (e.g., *holographic wills* and *professional wills*), then select the *Process* tab, and click the *Differentials* options. The tool guides the researcher through various operation choices (e.g., unigram, bigram analysis, trigram, or cluster-gram analysis). In addition, the Gramulator offers conventionalized naming options for the output data although the researcher is free to name data as desired (see Figure 2). Following these entries, the Gramulator processes the two corpora, producing two sets of *typicals* (i.e., holographic and professional) and two sets of *differentials* (i.e., holographic-relative-to-professional and professional-relative-to-holographic).
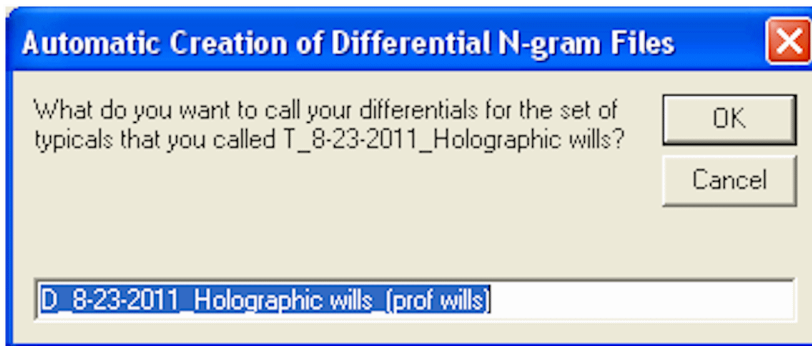
Figure 2. The Naming screen is used to either select the default name for the output generated by the Gramulator or to enter a unique name.

The Viewer. The Viewer allows the researcher to view the typicals or differentials of any processed data. The module also provides a similarity value between the two sets of n-grams being viewed. The similarity value ranges from 0 to 1, where 0 is completely different and 1 is identical. The two sets of *differentials* produced from sister corpora will always produce a similarity rating of zero because, by definition, they have no overlap. The similarity value for *typicals* is likely to be greater than zero since they generally appear in both corpora but at different frequencies. The corpora similarity value can be useful when comparing *differentials* or *typicals* across studies because it provides a quick and easily interpretable evaluation of similarity.

The Viewer is used to compare the *differentials* and *typicals* from two corpora. Having the data displayed in a linear format (see Figure 3) enables the researcher to review the n-grams for each corpus. This type of review can be helpful if the researcher is looking for similar phrases that might tend to create a linguistic pattern for one of the corpora being analyzed.
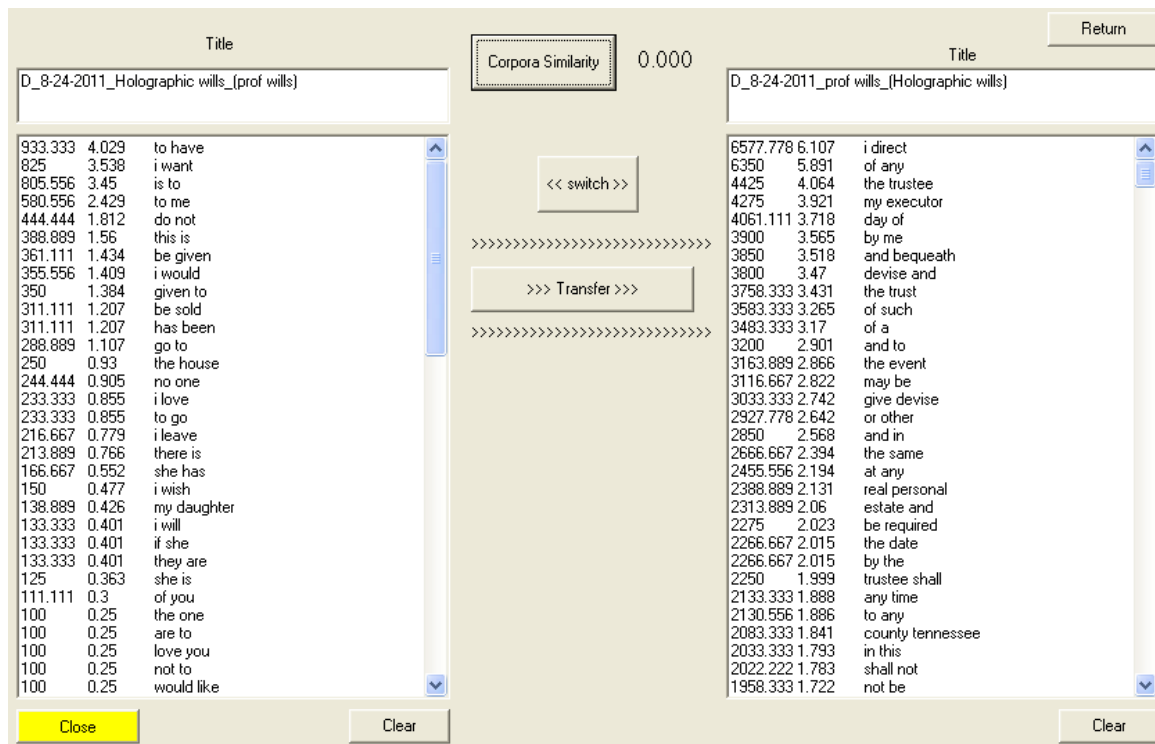
Figure 3. The Viewer allows the user to review the differentails for each corpus in order of highest frequency.

The Concordancer. The Concordancer allows researchers to search for any word or n-gram (typical, differential, or any lexical item) and view all examples within the context of how the word or n-gram appears in a selected corpus. This contextual snapshot allows the researcher to develop a profile of various types of phrases to determine a pattern of usage. A researcher can search for any lexical item within the Concordancer and the module will show how many times the search item occurs, both in terms of occurrences within the texts, and also for occurrences within the whole corpora.

The Concordancer (see Figure 4) also provides occurrence percentages. For example, if the researcher searched for occurrences of the word *herein* in the Concordancer, and the word *herein* is present in any of the texts, the Concordancer lists

how many total occurrences, the number of files the word was found, and the percentage

of occurrences compared to the total number of files in the corpus.
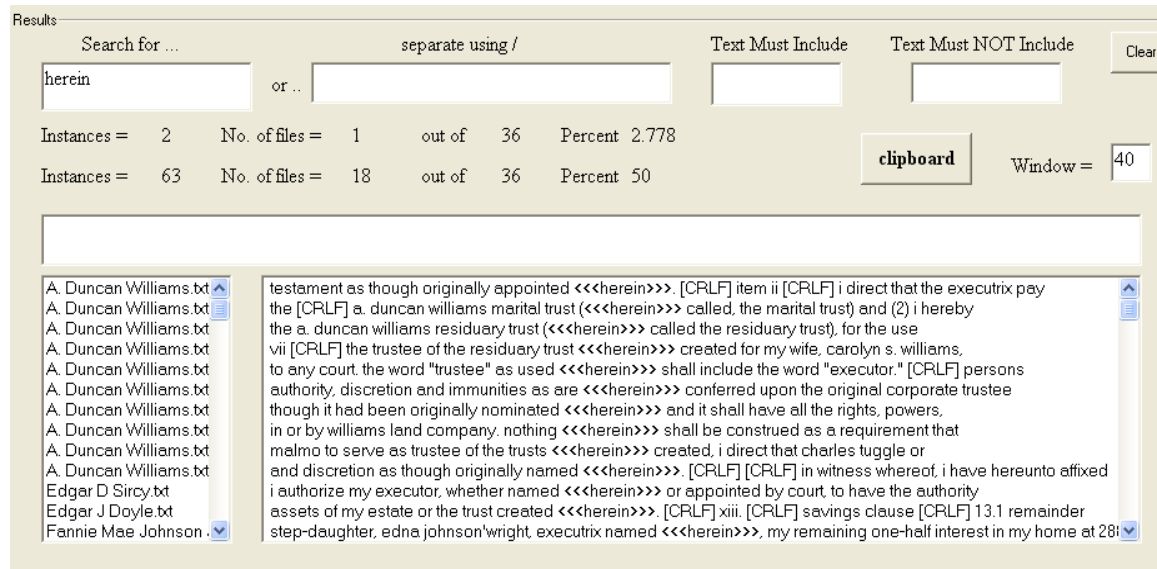
Figure 4. The Concordancer allows the researcher to look for a specific word or phrase in
the corpora. Results show the number of occurrences and the number of files containing
the word or phrase. The researcher can view the occurrences as they appear in the text.

The Evaluator. The Evaluator module allows researchers to evaluate any corpus

using indices. These indices are lists of differentials, typicals, or any group of meaningful

words related to the corpora. The indices may be generated by the Gramulator (using

typicals and *differentials*) or they may be a specific list of words or n-grams that the

researcher compiles for their specific analysis. This type of index might range from a list

of personal pronouns to a list of specific prepositional phrases. Using either the indices

created by the Gramulator or user-generated indices, quantitative results from the

comparison of the selected corpora to the indices are generated. The quantitative data

consists of output designed to be copied and pasted to Excel to perform statistical

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analyses to determine if the language features of one corpus differs from the language features of the other corpus. The primary value of the output is a variable calculated as *tokens* / *words* / *searches* * 1000. *Tokens* refers to the number of instances per text for the sum of all searches. *Words* refers to the number of words in the evaluated text. *Searches* refers to the number of n-grams in the index. By selecting the *Full Details* option from the Evaluator screen, the researcher can see which texts contain specific n-grams (see Figure 5).

The Clusterer. The Clusterer is a module of the Gramulator capable of providing the researcher with a broader picture of the typical n-grams by clustering associated n-grams given their frequency. The Clusterer module operates like the Gramulator's Main Module in that it groups all bigrams that occur with above average frequency. However, the Cluster then treats all these identified bigrams as unigrams, and reruns the process so that identified bigrams can be joined with lower frequency unigrams, or with other bigrams. The Cluster runs until all above average bigrams have been identified. This process usually takes about 3-4 cycles to complete.

The Clusterer groups n-grams of potential similarity so that researchers can more easily assess thematic traces. This technique is helpful in defining strings of text, which, in turn, provide quantitative support to predictions about certain n-grams occurring in related sequences. Although this pattern may not be apparent by reading through the texts or by performing a more traditional textual analysis, the Clusterer identifies related, high frequency n-grams in the order that the n-grams occur. This process continues until all above frequency n-grams have been identified. The result is a text string of related n-grams. This text string can be determined to be template material that is common to that

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particular corpus. The Clusterer enables the researcher to cluster related n-grams to produce patterns that can be found through many of the texts in a corpus.

  Other Gramulator modules. The Cleanser and Sorter modules, although not used in this study, are modules of the Gramulator that prepare data for analysis. The Cleanser helps the researcher to provide a level of consistency in the texts of a corpus. In order to achieve consistency, the Cleanser is capable of providing lemmatizing, spell checking, or removing/modifying/supplementing certain parts of the text. In addition, the researcher may need to consider whether elements of the text will be considered as one word or multiple words. For example, features such as *didn't* and *people's* can be interpreted as one word or two words. The Cleanser module allows these and many other functions to be performed.
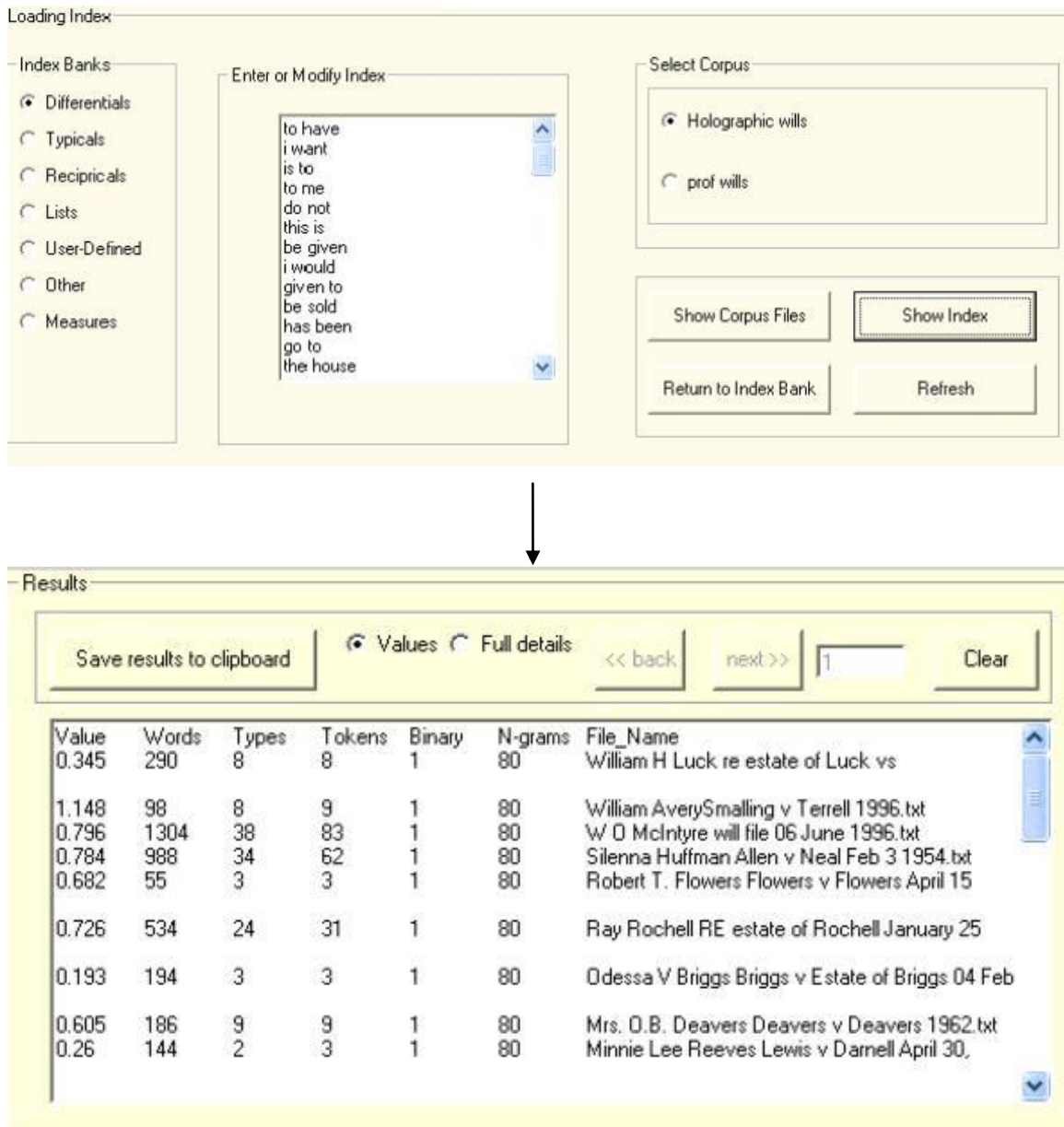
Figure 5. The Evaluator screen allows the researcher to search for indices of differentials, typicals, or any list of pertinent words. The module provides statistical data on the frequency of the indices relative to the corpora.

The Sorter module can be used if a corpus needs to be divided into different sets. This module also allows researchers to randomly allocate texts to any of these sets as well as to sort by key words in order to focus on texts that contain particular lexical

features of interest. This capability allows the researcher to develop a test set to use in the analysis of their corpora. A third aspect of the *Sorter* is that it allows researchers to select specific parts of a text. For example, the research may choose the first 500 words of a text, the final 500 words, or a selection from the middle of the text.

Validation of the Gramulator

Validation is an important part of the development of any software. In effect, validation provides assurance that a tool will do what it is designed to do. One of the best methods of validating the capabilities of a software application is to test it against real data. The purpose of the validation process is to show that the software is capable of doing what it was designed to accomplish and to support predictions regarding the output of the test. The predictions for the Gramulator validation study were that there would not be significant differences between the narrative analysis and that there would not be any significant differences between the scientific against scientific analysis. However, there was a prediction that there would be differences between narrative and scientific.

In order to validate the Gramulator tool McCarthy et al. (2012) tested the Gramulator with a corpora of 900 narrative and 900 scientific, all taken from the Touchstone Applied Science Associates (TASA) corpus.[2] These large corpora were divided into subgroups of 300 texts, resulting in a total of six smaller corpora (3 narrative and 3 science). The Gramulator was then used to evaluate these corpora. Three scenarios were tested. These included testing narrative corpora against narrative corpora, testing

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[2] The TASA corpus was developed by Touchtone Applied Science Associates, Newburg, NY for data on which to base their Educators Word Frequency Guide.

scientific corpora against scientific corpora, and testing narrative corpora against scientific corpora. These predictions were supported by the analysis.

In related validation work, Watanabe (2011) also validated the Gramulator for smaller corpora of 30 texts. These groups of smaller corpora were subgroups of the larger corpora of 300 texts used in the study described above. Primarily, this testing followed the order of the larger corpora analysis and predictions were accordingly the same. The testing values supported the original hypothesis although the corpora were much smaller. This validation process showed that the Gramulator was capable of processing small corpora and still producing sets of reliable differential and typical n-grams that could then be used to analyze text.

Studies using the Gramulator. The Gramulator has been used effectively in several studies to date. One of the first studies, although conducted with a very early version of the tool, enabled the authors to analyze and present a revealing comparison of writing styles used by American, British, and Japanese scientists writing in English (McCarthy et al., 2009). Building on this previous study, Min and McCarthy (2010) were able to reveal several systematic discourse distinctions between the writing styles of American and Korean scientists. One of the most prevalent was the American scientists' tendency to use noun phrases with prepositional phrases in descriptions such as *patient with HIV*, and the Korean scientists' preference for nouns and noun phrases in similar descriptions such as *HIV patient*. Although the syntax of the Korean scientists was correct, it represented a less standard format than the syntax of the American scientists.

Duran and McCarthy (2010) used the Gramulator to analyze the phrases and thematic content that contribute to truthful and deceptive discourse in general

conversations and persuasive arguments. More specifically, the study revealed a number of differences between how people lie and how they tell the truth. The study focused on the various topics people tend to lie about and ones that they tend to shy away from, creating a linguistic pattern for determining deception. For example, the study revealed that although people may say deceptive things in everyday conversation, they tend to shy away from lying about family members. However, they did not have a problem in lying about their friends or school. The Gramulator allowed the researchers to focus on the content of what was said and the context of the conversation. This concept allowed the researchers to move past the abstract concept of deception and provide specific references in a contextual frame that provided specific details.

Hullender and McCarthy (2011) used the Gramulator to conduct an analysis of modern art criticism and photography criticism. The study suggested that differences in linguistic features of the two forms of criticism made them distinct genres rather than one hierarchically composite genre. One of the most prevalent linguistic differences identified by the study was the tendency of modern art critics to utilize hedging in their writings.

Rufenacht, McCarthy and Lamkin (2012) used the Gramulator in an analysis of the linguistic features of fairy tales and English as a Second Language (ESL) texts. The hypothesis for this study was that fairy tales were are more narrative than the typical ESL classroom texts and might be used as reading material for English language learners. The analysis for this study was based on three corpora. The first corpus was composed of a collection of fairy tales. The second corpus was of typical ESL texts. The third corpus contained 50 narrative, 50 science, and 50 history texts. The results of the study

suggested that there are similarities between the linguistic features of fairy tales and ESL texts although the subject matter may be very different.

Lamkin and McCarthy (2011) used the Gramulator to analyze two similar genre of detective fiction, *whodunit* and *hardboiled* fiction. The Gramulator was used to identify indicative linguistic features in order to help explain the relationship between corpora composed of excerpts from whodunit fiction and hardboiled fiction. Two specific areas were studied, spatiality and character references. Although there was no significant difference in how the two genres handled spatiality**,** results showed a difference in character reference. Given the results, the authors concluded that the two genres were more like equal subgenres rather than one being hierarchically ranked above the other.

Summary of previous studies. In reviewing the studies that have used the Gramulator to analyze various textual features, it is clear that the researchers were able to determine differences and similarities between two types of texts. These findings allowed them to analyze specific features in the context used in the particular corpora. Although these findings are important in their own right, they also establish the Gramulator as a valuable tool for other studies needing to perform this type of analysis. Quantitative data may help us determine *what* is different about two text types but to the ability to show *how* the contexts of the texts vary is also important. In this dissertation, the Gramulator not only provides the ability to show the differences in various language features between holographic and professional wills, it also allows us to show specific language patterns that help us understand these differences.

How the Gramulator Is Used in this Dissertation

In this dissertation, the Gramulator is used to assess specific lexical features such as personal pronouns, relative pronouns, gender and kinships terms, emotion words, archaic words, and similarity of text strings. The goal of using the tool is to try to determine certain linguistic patterns between the holographic will corpus and the professional will corpus. The Gramulator is capable of providing quantitative results that can then be analyzed statistically. The Gramulator is a suitable tool for the analysis performed in this dissertation because my purpose is to show language differences that set the corpora apart. My hypothesis is that the holographic wills will tend to be more narrative and the Gramulator will allow me to analyze some narrative text qualities as well as provide results regarding usage and frequency.

For the professional wills, the Gramulator is used to help show that the documents tend to be more formal and template-driven than the holographic wills. In particular, the legal community has a tendency to use common terms and garner them with an uncommon meaning (O'Barr, 1982). An example of this tendency is the legal community's use of the word *hand* to mean *signature*. By analyzing the n-grams in each corpus, the researcher is able to identify patterns such as outlined above thereby identifying linguistic features that differentiate the two corpora. The Gramulator is used to investigate the use of archaic words, doublets and triplets, and template material that tends to be a part of every will. The results from the usage of frequency of these language features are then analyzed and compared to the results from the holographic wills. Because the Gramulator allows the researcher to analyze data in context, I am able to determine how these different language features are being used, if they reflect a pattern of

usage, and if the usage significantly varies between holographic wills to professional wills.

Summary

In this dissertation, the Gramulator offers an original approach to identifying specific linguistic features in the context of the individual documents. The corpora contain two different types of texts that are used for the same purpose. Each text type is used as a will, to divest property to heirs and beneficiaries. Using the Gramulator allows me to look for specific language features that may be common to one group and uncommon to the other group. The tool also provides the capability of reviewing these language features in context to help determine specific language patterns.

Among the specific language features selected for this study, I am looking at the use of personal pronouns, kinship terms, gender terms, emotion words, archaic words, doublets and triplets, as well as other text features such as sentence length and prepositional phrases. The Gramulator is used to find these features, analyze their frequency, and determine if they are similar to both corpora or indicative of only one corpus. The resulting output of *typicals* and *differentials* allows me to study the lexical features that differentiate, distinguish, and identify the respective text types. With this capability as well as providing the ability to discern language patterns for specific features, the Gramulator output can also be used to help determine the testator's meaning, which many times is the core of the will conflict.

Chapter 4: Methodology

Composition of the Corpus

My corpus comprises 72 wills, collected from various probate court offices in West and Middle Tennessee. All of the wills in this corpus have been contested. Of the total number, 36 wills are holographic and 36 are professionally written. The main distinction between the two types of wills is that holographic wills are entirely handwritten by individuals who either cannot or do not wish to pay an attorney for their preparation and the professional wills are drafted by attorneys. In many of the states, including Tennessee, holographic wills are considered legal documents. (See Table 4.1 for details).

Table 4.1
Key Corpora Facts

Descriptive corpora data	Holographic wills	Professional wills
Number of wills	36	36
Mean length in words	352.33	1317.22
Mean sentence length	19.2	29.26
Minimum sentence length	7.94	10.92
Maximum sentence length	48.5	60.09
SD sentence length	9.22	12.08
Number of TN counties represented	11	15
Number of men represented	19	23
Number of women represented	17	13

Details of the Corpus Composition

Most wills are only available in paper format. This condition created a time-consuming method of collection. Because of the time required to request, obtain, and convert all documents into electronic files, these constraints necessitated that this

corpus is relatively small when compared with larger studies using corpora containing several hundred texts. However, the corpus documents were independently retrieved and randomly selected, so using the corpus definition given in Hall (2012), it is considered a thematically related and representative sample of the type of texts being studied. The corpus size and composition is further supported by Hall's description of corpus characteristics as related to this study in that all of the texts represent holographic and professional wills that were probated and contested in Tennessee. As noted previously, the paper-based nature of all wills and probate documents, collecting and converting the paper copies to electronic files was a lengthy process. Practically, this corpus provides a reasonable point of departure.

Method of Text Collection

My method for collecting the data was to first identify contested holographic and professional wills using the Lexis Nexis database. The pertinent search criteria included the terms "holographic" and "probate" used as parameters in the Tennessee Federal and State Cases Combined section of Lexis Nexis. Other search criteria included that all wills be written after January 1, 1960 to develop a corpus with relatively recent language so that comparisons would be more standardized and on par. In order to facilitate collection of the data, only wills from West Tennessee and Middle Tennessee were selected. To retrieve the professional wills, the term "holographic" was omitted; all other parameters remained the same.

From the initial list of documents retrieved from Lexis Nexis, I generated a random list using Microsoft Excel 2007. From this random listing, a list of documents identified from Lexis Nexis was determined. Having determined my list of wills, the

relevant court information was ascertained for each will and copies ordered from probate

court clerk's office of the county where the will was probated. Most of the wills were not

available in electronic format. Six wills were sent by FAX, the remaining 66 were mailed

in hard copy format. Most offices required a written request, along with payment for

copying and mailing. Waiting for postal delivery of the written requests as well as the

actual copies added an extra step into the retrieval process and also increased the timeline

for text collection. In summary, the process was a lengthy, manual effort because after

collection, the holographic paper copies had to be transcribed and the professional wills

scanned into electronic files and then *cleaned* for the computational text analysis

software. The amount of time required to collect and convert the texts into electronic files

was a key factor in limiting the number of texts used for analysis.

Tools Used to Analyze Texts

The corpora texts in this study were analyzed as whole documents using textual

analysis software including the Gramulator (McCarthy et al., 2012), Genre Purity

Analysis Tool (GPAT: McCarthy, 2010), Linguistic Inquiry and Word Count (LIWC:

Pennebaker et al., 2001), and the Measure of Textual Lexical Diversity (MTLD:

McCarthy & Jarvis, 2010). These tools allowed me to analyze each corpus, determine

language patterns and groupings, and help determine specific language differences as

well as possible similarities between the two corpora.

The Gramulator. As noted in Chapter 3, the Gramulator is a computational

textual analysis tool that is capable of providing *qualitative* as well as facilitating

quantitative output and can be used to determine various lexical characteristics of texts.

The Gramulator was designed to process contrastive corpora and provide content and

contextual analysis by identifying linguistic features that may exist in the corpora. The Gramulator is able to process and analyze the corpora, determine these differences, and provide this data for further analysis. This routine is accomplished by analyzing two *corpora* that are related yet have enough differences to set them apart (McCarthy et al., 2012).

The Gramulator analyzes the corpora and identifies those n-grams that occur with above average frequency. N-grams are phrases or strings composed of two, three, four, or even more words that are adjacent within the text. The Gramulator groups all of the n-grams that occur with above average frequency. These n-grams are identified as the *typicals*.

Having identified the *typicals*, the Gramulator identifies those phrases that are typical of one corpus but not typical of the other corpus (i.e., they are typical of one and only one of the corpora). These phrases, or n-grams, are called *differentials.* Specifically, the Gramulator determines the *differentials* between two corpora by finding the n-grams that occur with above a frequency of 50% in only one of the corpora[1].

The Gramulator was validated by McCarthy, Watanabe, and Lamkin using a corpora of 900 narrative and 900 scientific texts, all taken from the Touchstone Applied Science Associates (TASA) corpus.[2] Broadly, the validation was used to find differences between narrative and scientific texts. The validation study is described in detail in Chapter 3.

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[1] Note that in previous studies, (e.g., Duran & McCarthy, 2010; McCarthy et al., 2009; and Min & McCarthy, 2010) *differentials* were referred to as significantly improbable features (SIFs).

[2] The TASA corpus was developed by Touchtone Applied Science Associates, Newburg, NY for data on which to base their Educators Word Frequency Guide.

There are nine modules contained in the Gramulator and each is a satellite to the

main processing module, referred to as the *Main Module* or simply, the *Gramulator*. Of

these nine modules, four are used in this study. These four modules are the *Viewer*, the

Concordancer, the *Evaluator* and the *Clusterer* This section provides a brief overview of

each of the modules used in this study. These modules are explained in greater detail in

Chapter 3.

The typicals and differentials output can be viewed using the Viewer module. The

Viewer allows any two sets of output to be viewed at the same time. Typically, the

Viewer is used to review the *differentials* and *typicals* from the corpora being analyzed.

The Viewer also features a corpus comparison option.

The Concordancer, like any concordance, allows researchers to enter any word or

n-gram (typical, differential, or any lexical item whatsoever) and view all examples of the

selection within a requested frame of words. This contextual snapshot allows the

researcher to develop a profile of various types of phrases to determine if a true pattern of

usage is present. In this particular study, various types of phrases were considered to

determine if they were more prevalent in one corpus and to see if their usage pointed to a

specific genre, either narrative or scientific. Specifically, the Concordancer provides the

ability to see the data in context to get a better idea of its intended use and meaning. The

Concordancer module helps the researcher develop a contextual frame of reference for

various language features.

As the name suggests, the Evaluator allows researchers to evaluate created indices

against any corpus. These indices are lists of differentials, typicals, or any group of

meaningful words related to the corpora. The indices may be generated by the

Gramulator (using *typicals* and *differentials*) or they may be a specific list of words or n-grams that the researcher compiles for their specific analysis. Indices can also be made up on the spot or borrowed from other studies. Indices can be of any length and any frequency. For example, an index might be a list of all personal pronouns loaded in the Evaluator and processed to determine quantitative results on the personal pronoun usage in a given corpora. The researcher may load any two corpora and select any index (typicals or differentials) to assess the frequency of the index data in the corpus. Indices can be modified by the user (added to, changed, or deleted), and indices can also be combined. If the researcher wishes, the changed indices can be saved and later re-used. By using the indices created by the Gramulator or user-generated indices, quantitative data is generated that can then be analyzed to see if the language features of one corpora vary significantly from the other corpora.

Several studies have used the Gramulator to analyze corpora quantitatively and qualitatively. Using the Gramulator has allowed the researchers to focus not only on the content of the texts that comprised their corpora but also discern the context of various linguistic features. Topics of these studies range from writing styles of similar texts across different cultures to comparisons of fairy tales to ESL textbooks.

The Gramulator is used in this study to analyze the typicals and differentials for each corpus. For example, by analyzing many of the differentials in context using the Concordancer, defined patterns of pronoun, gender and kinship terms, emotion terms, archaic words, and phrase and clause usage are apparent. The Viewer provides the capability of viewing either the differentials or typicals identified for each corpus side-by-side. By running different indices against my corpora using the Evaluator, analytical

data was produced and then analyzed statistically. By statistically analyzing the results provided by the Gramulator for these language features using t-tests, I was able to determine if the differences were significant.

GPAT (Genre Purity Assessment Tool). GPAT (McCarthy, 2010) is a textual analysis computational tool designed to assess genre in terms of *expository* (represented by science) and *narrative* (represented by literature). The tool contains five primary indices including values for *expository purity*, *narrative purity*, *shared expository/narrative*, *unknown*, and a binary categorization value of either *expository* or *narrative*. The GPAT indices are made up four character sequences taken from published narrative and scientific texts that were part of the Touchstone Applied Science Associates (TASA) corpus. Specifically, GPAT analyzes sequences of four characters, including spaces and punctuation to predict whether the text is more narrative or scientific. GPAT is able to make this prediction by calculating whether there is a higher frequency of narrative character sequences or scientific character sequences. The percentage of the text that is composed of science character sequences is the percentage of the text that is of *science purity*. The percentage of the text that is composed of narrative sequences is the percentage of the text that is of *narrative purity*.

GPAT is capable of processing single files or multiple files. All results are saved to the clipboard and can be pasted to Excel, SPSS, or similar software. For the single file version, the user has the option of browsing to a folder or pasting directly to the tool. Particularly, GPAT is useful with small texts.

GPAT has been tested in various studies (McCarthy, 2010; Min & McCarthy, 2010; and McCarthy & Hullender, 2010) and has been determined to be effective in using

its indices to analyze texts with regard to genre. Specifically, GPAT was used to evaluate and assess the genres of identified corpora, some of which were similar, others very different. Results showed that GPAT provided a fast and accurate assessment of the corpora genre.

For this dissertation, GPAT is used to analyze the texts in each corpus. Given the nature of the text and how GPAT determines the character sequences, it is used to determine if one corpus is a more narrative or scientific genre than the other corpus. Texts were reviewed to identify features that would normally be associated with either narrative or scientific. For example, bank account numbers, dollar amounts, social security numbers, and various function words are features that are attributed to scientific texts. In like turn some texts contained narrative features such as greater cohesion, personal reference, and shorter text length. Upon analysis, taking these features into consideration, GPAT categorized the texts according to my hypothesis. Holographic wills were more narrative and professional wills were more scientific.

MTLD (Measure of Textual Lexical Diversity). MTLD (McCarthy & Jarvis, 2010) is a lexical diversity assessment tool. Lexical diversity represents those textual differences that suggest that one of the corpora may contain lexical features that set it apart from the other corpora. Typically, lexical diversity refers to the range and variety of vocabulary used in a text or group of texts. Lexical diversity is also referred to as lexical variation, lexical richness, and vocabulary richness (McCarthy & Jarvis, 2007).

Using MTLD to determine lexical diversity, texts are processed sequentially, by calculating the mean length of sequential word strings in a text that maintain a given type-token ratio (TTR) value. MTLD uses a default factor size of 0.720 that is also the

default for several other textual analysis tools, including Coh-Metrix. Types are the unique frequencies of words in a sentence; tokens are the number of words, unique or repeated, in a sentence. The ratio is found by dividing types by tokens. Following this logic, the MTLD value is calculated by taking the total number of words in the text and dividing them by the total factor count. Because the application analyzes the text in forward and reverse sequence, the two numbers are averaged to determine the final value. MTLD can help identify textual differences that would suggest that one of the corpora may be more divergent in lexical features than the other.

In order to validate MTLD as an effective tool to measure lexical diversity, it has been compared with some of the primary competing indices in the field, which include vocd-D, TTR, Maas, Yule's K, and an HD-D (McCarthy & Jarvis). Comparisons involved assessments of convergent validity, divergent validity, internal validity, and incremental validity. Findings showed that MTLD performed well with respect to all four types of validity, and was the only index not found to vary as a function of text length. This validation, along with earlier testing (McCarthy & Jarvis, 2007) has helped establish MTLD as a useful tool in the measurement of lexical diversity.

In this dissertation, the hypothesis is made that the holographic wills are more narrative and the professional wills are more scientific. Following this reasoning, it was surmised that the holographic wills would be more diverse in composition with each telling a story rather than following a specific format. Correspondingly, it was surmised that the professional wills would be more template-driven with standardized terms and phrases used in multiple texts. MTLD is used to analyze the lexical diversity of the corpora to see if these predictions were in line, supporting the base hypothesis.

LIWC (Linguistic Inquiry and Word Count). LIWC is an effective textual analysis tool for studying the various emotional, cognitive, structural, and process components present in individuals' verbal and written speech samples. Initially, LIWC was developed as part of a study of language and disclosure (Francis & Pennebaker, 1993). Since that time, it has been enhanced and is now capable of analyzing text on a word by word basis, calculating the percentage words in the text that match each of up to 82 language dimensions, and generating output as a tab-delimited text file. The core of LIWC's functionality is in the many dictionaries and sub dictionaries used by the application to analyze and categorize text. If a word fits into multiple categories, the application takes this scenario into account and each category is valued incrementally. LIWC is also capable of indentifying word stems so that a word used in various forms can be identified and included in the appropriate category or categories.

Initial validation of LIWC was begun in 1996 by Pennebaker and Francis. The experiment involved the analysis of college student writings by judges and then by LIWC. The results showed that the judges' ratings and the output from LIWC were highly correlated. Since that time the tool has been enhanced and serves as an effective tool in measuring emotion, cognitive skills, thematic content, and linguistic features in written and oral texts.

In this dissertation, LIWC is used to analyze the use of emotion words in the corpora. This output is used in further testing to determine if the usage of emotion words in the holographic wills and professional wills varied and, if so, was it significant. LIWC was also used to determine the total word count and overall sentence length of the corpora.

Summary of Corpora and Analysis Tools

As noted previously, the corpora are small compared to some of the much larger corpora often used in other research studies. However, given the nature of the texts and the collection methodology that was used, this corpus provides a representative sample for this study. The computational analysis tools used each have provided significant help in analyzing the corpora for various linguistic features and providing the subsequent data that allows for statistical analysis.

As noted in Chapter 1, the purpose of my dissertation is to study the language of holographic and professional wills to determine if the language of the documents differ and see if patterns exit. Next, if differences and patterns exist, I propose to determine if they are a source of conflict that can lead to litigation. In order to accomplish this purpose, it is necessary to recognize that content and context are important. Computational analysis tools are capable of providing data that allows analysis of content with regard to context. Whether the data is analyzed quantitatively or qualitatively, every effort has been made to gather data that clarifies each methodology. Although statistical data can determine the differences between the texts, comparable contextual data allows us to see how language is used to create these differences.

Chapter 5: Results

Analysis of Narrative and Professional Text Features

This chapter covers the results generated by processing all of the texts from both corpora using textual analysis software applications. As noted earlier in the Introduction, my hypothesis is that the discourse of holographic wills tends to be more narrative-like, reflecting personal experiences and emotions. Narrative language traits analyzed in this section include use of (a) personal pronouns, (b) references to gender, (c) kinship terms, and (d) emotion words. Professional language traits, often referred to as scientific, that have been analyzed are the use of (a) archaic words (b) doublets and triplets, (c) relative clauses and prepositional phrases, and (d) sentence length.

Genre Purity Analysis Tool (GPAT) Results

Results were conducted at the corpus level using the GPAT (McCarthy, 2010) textual analysis tool. The results were analyzed in terms of their binomial distribution to determine the probability of the corpus texts having more narrative traits or more scientific traits. My hypothesis is that holographic wills are more narrative than professional wills. The results were in the predicted direction: (Holographic: narrative 27, science 9, $p < .001$; Professional wills: narrative 20, science 16, $p = .203$). The result suggests that texts of the holographic wills contain more narrative traits than the texts of the professional wills.

Measure of Textual Lexical Diversity (MTLD) Results

MTLD was used to measure the diversity of words used in both corpora by analyzing the texts as whole entities rather than randomly checking for individual linguistic items (McCarthy & Jarvis, 2007, 2010). Using the raw data output from

MTLD, I conducted a between texts t-test to assess the effect of the index lexical diversity on the corpora of holographic wills and professional wills. The result was in the predicted direction: (Holographic wills: M = 74.973, SD = 20.998; Professional wills: M = 64.487, SD = 12.528).The result reached a level of significance: t (1,70) = 2.573, p = 0.012, d = 0.607.The effect size of 0.607 can be described as medium. The result suggests that holographic wills contain more of the features of lexical diversity than professional wills.

Personal Pronoun Usage

The Concordancer module of the Gramulator was used to investigate pronoun usage in both corpora. The Evaluator module of the Gramulator was used to determine pronoun usage per text. This process helped establish count of the type of pronouns, either first person, second person, or third person, singular or plural that appear in the different texts. (See Table 5.1).

Table 5.1
Count of Personal Pronouns by Will Type

Pers. Pronoun	Holographic		Professional	
	# of wills	frequency	# wills	frequency
I	29 (80.5)	277 (40%)	34 (94%)	407 (22%)
Me	17 (47%)	59 (9%)	26 (72%)	71 (4%)
My	35 (97%)	347 (51%)	36 100%)	1390 (74%)
Subtotal	36*	683	36*	1868
He	12 (33%)	23 (10%)	15 (42%)	31 (11%)
She	13 (36%)	54 (25%)	16 (44%)	28 (10%)
It	17 (47%)	83 (38%)	18 (50%)	69 (24%)
His	11 (30%)	27 (12%)	17 (47%)	88 (30%)
Her	15 (42%)	33 (15%)	21 (58%)	73 (25%)
Subtotal	36*	220	36*	289
We	5 (14%)	6 (37.5%)	3 (8%)	6 (86%)
Us	6 (17%)	10 (62.5%)	1 (3%)	1 (14%)
Subtotal	36*	16	36*	7
You	12 (36%)	78 (100%)	0	0 (0%)
Subtotal	36*	78	36*	0 (0%)
They	14 (39%)	43 (83%)	11 (30%)	29 (52%)
Them	9 (25%)	19 (37%)	11 (30%)	27 (48%)
Subtotal	36*	52	36*	56
grand totals	36*	1049	36*	2220

* Percentage calculations based on total corpora number of 36 wills

As stated by Murphy (1988) and Johnstone (2009), personal pronouns are often used to indicate a personal social relationship. First and third person pronouns are often used to show reference between the narrator and the narratee. A between text t-test was conducted to assess the effect of the index of 1st person personal pronouns on the corpora. The index of first person personal pronouns included *I*, *me*, *my*, *mine, we*, *us*, *our*, and *ours*. The result was in the predicted direction: (Holographic wills: $M = 8.93$, *SD* = 3.844; Professional wills: $M = 7.108$, *SD* = 2.472) with personal pronoun usage in holographic wills significantly higher: $t (1,70) = 2.391$, $p = 0.019$, $d = 0.564$. The effect

size of 0.564 can be described as medium. The result suggests that holographic wills contain more first person personal pronouns than professional wills.

After analyzing use of second person personal pronouns between the corpora, I determined that there were 78 frequencies of second person pronouns found in 12 of the 36 holographic wills. However, there were no second person pronouns used in the professional wills. Having determined this fact, there was no need to conduct any statistical tests. While the second person is not often used in narrative text, its use helps to show a particular relationship. Fairclough (1989) holds that it denotes a "relationship of solidarity" between two parties.

In keeping with the previous analyses, a between texts t-test was conducted to assess the effect of the index of third person personal pronouns on the corpora. The index of third person pronouns included *he*, *she*, *it*, *its*, *his*, *her*, *hers*, *him*, *they*, *them*, *their*, and *theirs*. The result was in the predicted direction: (Holographic wills: $M = 1.906$, $SD = 1.17$; Professional wills: $M = 0.876$, $SD = 0.597$). The result reached a level of significance: $t(1,70) = 4.704$, $p < 0.001$, $d = 1.109$. The effect size of 1.109 can be described as very large. The result suggests that holographic wills contain more third person personal pronouns than professional wills.

The overall usage of personal pronouns between the two corpora was analyzed by conducting a two tail t-test on the results from the Gramulator analysis. Results from this test indicate that there is a difference between the personal pronoun usage in holographic wills and professional wills. The result was in the predicted direction: Holographic wills: $M = 4.061$, $SD = 1.441$; Professional wills: $M = 2.661$, $SD = 0.751$. The results, $t(1,70) = 5.169$, $p < 0.001$, $d = 1.218$. The effect size of 1.181 can be described as very large, the

result suggests that holographic wills contain more of the features of personal pronouns than professional wills. These results help identify a pattern of pronoun usage that is indicative of narrative texts.

The individual texts were examined to see if these patterns existed and, if so, their effect on each corpora. (See Table 5.2).

Table 5.2

Personal Pronoun Pattern Analyses of Specific Text Examples

Corpora	Example text	Analysis
Holographic	*I* have forgiven *my* family for treating *me* the way *they* have and *I* pray God has also forgiven *them*.	Use of 1st and 3rd person denotes relationship between narrator and narratee; personalizes the text.
	My sister Pearl is to be cared for out of *my* estate as long as *she* may live.	Specific personal reference – "my sister Pearl"; denotes intimate relationship.
	Wish *I* could have done more for *you* when *you* was young at home.	Use of 2nd person links text to reader; helps create emotional impact.
	You have really been a true friend and *I* want *you* to enjoy what *I* have.	Use of 2nd person links text to reader as well as narrator to narratee.
	When *you* think of *me* think of *our* past good years and the good times that *we* all had in years past.	Use of 2nd person links text to reader; helps create emotional impact.
Professional	*My* wish is that *they* all serve Christ above all and *we* all be in Heaven together.	Use of 1st and 3rd person denotes possible relationship between narrator and narratee.
	Such gifts are considered for gift tax purposes as having, been made half by *my* spouse and half by *me*;	No specific personal references; text not connected to the narratee.
	The Trustee shall at said time pay over, convey and deliver the trust estate then in *its* possession to the persons then entitled to receive the income.	Formal and non-personal; 3rd person pronoun used as place marker.
	No person shall be deemed to have survived *me* unless *they* survive *me* by at least thirty (30) days;	No personal references; text not connected to the narratee.
	If *my* husband and children all predecease *me* then *my* entire estate shall be distributed, per stirpes to *my* living lineal descendants if any.	No specific personal references; text not connected to the narratee.

Gender Reference

The analysis of gender between the two corpora in this study is not targeted from a viewpoint of women's language vice men's language, but rather how gender is treated among the texts of the two corpora and if there is the possibility of a difference in gender references between the two corpora.

A between texts t-test was conducted to assess the effect of an index of gender terms on the corpora of holographic wills and professional wills. The result was in the predicted direction: (Holographic wills: $M = 0.628$, $SD = 0.71$; Professional wills: $M = 0.35$, $SD = 0.366$). The result reached a level of significance: $t(1,70) = 2.09$, $p = 0.04$, $d = 0.493$ while the effect size of 0.493 can be described as medium, the results suggest that holographic wills contain more of the features of gender terms than professional wills.

Kinship Terms

Kinship terminology refers to words used to reference specific familial relationships. Stone (2000) argues that there are many areas where gender and kinship analyses often intersect. For example, the reference of a specific kinship term such as *wife*, also references a specific gender and kinship relationship to the testator. However, the term *spouse* does not denote a specific gender relationship because a spouse can be either male or female.

I conducted a between texts t-test to assess the effect of the index kinship terms on the corpora of holographic wills and professional wills. The result was in the predicted direction: (Holographic wills: $M = 0.576$, $SD = 0.587$; Professional wills: $M = 0.325$, $SD = 0.324$). The result reached a level of significance: $t(1,70) = 2.242$, $p = 0.028$, $d =$

0.528.The effect size of 0.528 can be described as medium. The result suggests that holographic wills contain more of the features of kinship term than professional wills.

A sample of specific gender and kinship references have been selected and analyzed from both corpora. (See Table 5.3)

Emotion Words

My hypothesis states that legal language allows lawyers to distance themselves from the emotional aspect of the situation. Using the textual analysis software LIWC (Pennebaker et al., 2001), I analyzed the use of emotion words in each corpora. A two-tailed test was conducted on the raw data generated from LIWC. The result was in the predicted direction: (Holographic wills: $M = 2.823$, $SD = 2.677$; Professional wills: $M = 1.802$, $SD = 0.828$). The result reached a level of significance: $t(1,70) = 2.185$, $p = 0.032$, $d = 0.515$. The effect size of 0.515 can be described as medium. The result suggests that holographic wills tend to utilize more emotion words than professional wills.

In order to show the variance in emotion words used between the two corpora, specific examples have been selected and analyzed to show the patterns for this language feature in each corpora. (See Table 5.4).

Table 5.3

Gender and Kinship Word Pattern Analyses of Specific Corpora Examples

Corpora	Example text	Analysis
Holographic	Jane my dearest *wife* I love you and am so sorry for even thinking these thoughts much less doing them.	Use of proper name, gender specific kinship term, and personal pronoun defines specific relationship role.
	In the event both of us shall die before our *daughter* and *son* reaches legal age, we hereby designate J. H. Barnes as the testamentary guardian	Use of gender-specific kinship terms with personal pronouns defines specific relationship roles.
	Maple cabinet in kitchen which belonged to my *Aunt*, Mrs. L.L. Shipp.	Use of proper name, gender-specific kinship term, and personal pronoun defines specific relationship role.
	I nominate and appoint my *nephew*, Sonnie Edward Potts and my *neice* Virginia Spurlock Potts to serve as co-executor and executrix…..	Use of proper names with gender-specific kinship term and personal pronoun defines specific relationship role.
Professional	If my *spouse* survives me, to my *spouse*; or If my spouse predeceases me, to the trustee designated in paragraph B of Article IX of this will.	Use of non-gender specific kinship term with no proper name categorizes rather than defines role.
	If my said *husband* shall not survive me, but one or more of my *children* shall survive me.	Use of gender-specific and non-gender specific kinship terms label rather than define relationships.
	In the event that the income of this trust available for distribution to or application for my said *children* should be inadequate for their comfortable maintenance, support and health, the Trustee shall be authorized to distribute....	Lack of gender-specific kinship terms and use of *said* to modify *children* rather than a personal pronoun and/or name serves to categorize rather than define relationships.
	References in this instrument to "*my heirs*" mean those persons, other than creditors, who would take the personal property of mine….	Use of non-gender specific kinship term with no proper name categorizes rather than defines role.

Table 5.4

Emotion Word Pattern Analyses of Specific Corpora Examples

Corpora	Example text	Analysis
Holographic	I give to you my Love Connie S Geary and *trust* that you will arrange for the following.	Use of *trust* denotes confidence in relationship.
	so you cant *trust* anyone that Mike Bottom and Larry Simmons are connected with. If something happens to me, let it go.	Use of *trust* to denote lack of confidence and overall distrust.
	I want it to go for the *benefit* of the Church - put it in the bank….	Use of *benefit* to provide assistance and support.
	I hope that you will continue to be that kind of a person: It is a great *asset* as there are not a lot of people like you that I know.	Use of *asset* to denote a positive human talent or advantage.
	I have decided that Charles Driver shall *share* equally with the others named in the sale….	Use of *share* to denote giving equal portions to others.
Professional	I hereby give devise and bequeath my residuary estate as follows: (1) the marital *share*, as hereinafter defined, to the *Trustee*, DONALD A. MALMO, in *trust*, to hold and administer in a Marital *Trust* for the use and benefit of my spouse…	Use of *share* denotes a monetary dividend/unit of company stock; use of *Trustee* denotes person responsible for supervising the *trust*; and *trust* denotes financial fund.
	I direct that the remainder of my cash *assets* or converted cash *assets*, as the case may be, be divided into thirteen *shares*	Use of *assets* to denote items with financial value; use of *shares* to denote monetary dividend stock.
	To vote in person or by proxy any *shares* of stock held in the *trust* corpus at any meeting….	Use of *shares* to denote company stock; *Trust* denotes a financial fund made up of *shares* of stock
	To borrow money, without personal liability, for any purpose for the *benefit* of my estate or said *trusts*	Use of *benefit* to provide instructions on of estate; *Trusts* denotes financial fund.

Archaic Words

One of the most common features of legal language is the use of archaic words (Danet, 1980; Mellinkoff, 1963; Stark, 1984; Tiersma, 1999). Using the Evaluator module of the Gramulator, both corpora were processed using an index of archaic words gleaned from various sources. Examples of archaic words include, *whereby*, *therefore*, and *aforesaid*. A t-test was conducted against the results from the Evaluator and the results were in the predicted direction: (The result was in the predicted direction: (Professional wills: $M = 0.366$, $SD = 0.218$; Holographic wills: $M = 0.08$, $SD = 0.15$).The result reached a level of significance: $t(1,70) = 6.477$, $p < 0.001$, $d = 1.527$. The effect size of 1.527 can be described as "huge." The results suggest that professional wills average a higher number of archaic words, a feature of legal language, than the holographic wills.

In order to show the usage pattern of archaic words between the two corpora, specific examples have been retrieved to show the patterns for this language feature in each corpora. (See Table 5.5).

Table 5.5

Archaic Word Pattern Analyses of Specific Corpora Examples

Corpora	Example text	Analysis
Holographic	I, Augustus Byron Hill, *hereby* make this my Last Will and Testament…	Interferes with subject, verb, and object; unnecessary
	I direct my executor *hereinafter* named to pay any just debts that I may owe.	Archaic word is vague and redundant.
	I have *hereunto* set my signature this 12 day of january 1998.	Interferes with subject, verb, and object; unnecessary.
	The furniture *therein* is to be divided among my four children	Interferes with subject, verb, and object; unnecessary.
	Therefore I am including Reece Johnson, Mary Ann Johnson Lewis and Charles Driver to share equally…	Archaic word is unnecessary but does not interfere with subject, verb, object order.
Professional	I, A. DUNCAN WILLIAMS, a resident of County of Shelby, State of Tennessee, being of sound and disposing mind and memory and over the age of eighteen (18) years, do *hereby* make, publish and declare this to be my Last Will and Testament….	Archaic word tied to multiple doublet and triplet phrases. Difficult to follow sentence order.
	All the rest, residue and remainder of the property which I may own at the time of my death, real, personal and mixed, tangible and intangible, of *whatsoever* nature and *wheresoever* situated	Multiple archaic words with multiple triplet phrases. Difficult to define specific subject and object of sentence.
	I authorize and empower the Executrix to pay the bequests *hereinafter* provided, to establish the trusts *hereinafter* created and to commence the payment of the income *therefrom*.	Multiple archaic words with multiple doublet phrases. Difficult to define specific subject and object of sentence.
	IN WITNESS *HEREOF*, *whereunto* I have signed my name on this the 1st day of June, 1989	Multiple archaic words add to redundancy.

Doublets and Triplets

Doublets and triples are also noted as a characteristic language feature of legal writing (Danet, 1980; Garner, 2002; Mellinkoff, 1963). I conducted a between texts t-test to assess the effect of the index doublets and triplets on the corpora of professional wills and holographic wills. The result was in the predicted direction: (Professional wills: $M =$ 0.087, $SD = 0.059$; Holographic wills: $M = 0.026$, $SD = 0.045$). The result reached a level of significance: t (1,70) $= 4.941$, $p < 0.001$, $d = 1.165$. The effect size of 1.165 can be described as very large. The result suggests that professional wills contain more doublets and triplets, features more common to legal language, than holographic wills.

In order to show the variance in doublets and triplets used between the two corpora, specific examples have been retrieved to show the patterns for this language feature in each corpora. (See Table 5.6).

Table 5.6

Doublet and Triplet Pattern Analyses of Specific Corpora Examples

Corpora	Example text	Analysis
Holographic	this is my true *will and testament* reaffirmed today, my mind is clear…	Will and testament is redundant; testament was used when only oral wills were valid.
	sound mind and disposing memory, do hereby *make, publish, and declare* this to be my last *will and testament*	The two doublets and one triplet are repetitive and add to the redundancy.
	I *nominate and appoint* my nephew, sonnie edward potts and my neice	Both words in this doublet are synonymous
Professional	a resident of Shelby County, Tennessee being of *sound mind and disposing memory* and more than eighteen (18) years of age, do hereby *make, publish and declar*e this my *Last Will and Testament*, revoking any and all other wills and Codicils	The two doublets and one triplet are repetitive and add to the redundancy. Will and testament mean the same thing.
	I hereby *nominate and appoint* as trustees of *each and every* trust created	In both doublets, the words used are synonymous
	all of the *rest, residue and remainder* of my estate, real, personal and mixed of every *kind and nature*	The doublet and triplet are repetitive and make the document wordy without clarifying the meaning.
	it is my intention that the Executrix have the *right, power and authority* to use the same for the purposes of administration of my estate	All of the words in this triplet are synonymous

Relative Clauses and Prepositional Phrases

Relative clauses, introduced by a relative pronoun, are often indicative of

professional or scientific writing (Danet, 1980; Mellinkoff, 1963). Analyzing both

corpora using the Concordancer module of the Gramulator against an index of relative

pronouns, the results were slightly different than predicted. There was a significant

difference in the usage of some relative pronouns: *who - p = .032; whom - p = .028; that -*

p <.001; and *which - p*<.001) between the two corpora. However, after testing, the results

were not as expected and were not significant: (Professional wills: *M* = 1.264, *SD* =

0.571; Holographic wills: *M* = 1.267, *SD* = 1.123). The result was not significant *t* (1,70)

= -0.01, *p* = 0.992, *d* = -0.002. The result suggests that professional wills do not contain

more relative clauses than professional wills. One possible reason for this result is that

while the relative clause analysis was conducted using only relative pronouns, analysis of

the language of the professional wills shows that in many instances, the archaic words

may fulfill a similar function. See Table 5.7 for examples.

Another language feature, prepositional phrases are also noted to add to the length

and wordiness of legal writing (Charrow & Charrow,1979; Garner, 2002; Mellinkoff,

1963). I conducted a between texts t-test to assess the effect of the index prepositional

phrases on the corpora of professional wills and holographic wills. The result was in the

predicted direction: (Professional wills: *M* = 3.443, *SD* = 0.464; Holographic wills: *M* =

3.247, *SD* = 0.696). The result was not significant t (1,70) = 1.408, *p* = 0.164, *d* = 0.332.

The effect size of 0.332 can be described as small. However, the result provides no

evidence that professional wills contain more of the features of prepositional phrases than

holographic wills.

Sentence Length

The analyses of relative clauses and prepositional phrases did not show significant

difference between the two corpora. However, a between texts t-test on overall sentence

length of each corpus was conducted using data from LIWC. The result was in the

predicted direction: (Professional wills: *M* = 29.256, *SD* = 12.085; Holographic wills: *M*

= 19.198, *SD* = 9.22).The result reached a level of significance: *t* (1,70) = 3.97, *p* < 0.001,

$d = 0.936$. The effect size of 0.936 can be described as large. The result suggests that, overall, the sentence length of professional wills is greater than the sentence length of holographic wills.

Template-driven Material

One of the dynamics of professional wills that may be less apparent than other textual features is that they tend to be template-driven (Danet, 1980; Garner, 2002; Joos, 1961; Mellinkoff, 1963). While this feature may provide consistency in some cases since it is planned and framed in a given context, it also distances the writer from the text, making the text more monologic rather than dialogic. The Clusterer module was used to test the hypothesis that professional wills were more restricted in their syntax, (i.e., following a template design). The Clusterer module operates like the main Gramulator module in as much as it groups all bigrams that occur with above average frequency. However, the Clusterer then treats all these identified bigrams as unigrams, and reruns so that identified bigrams can be joined with lower frequency unigrams, or with other bigrams. The Clusterer runs until all above average bigrams have been identified (a process that takes about 3 to 4 cycles). An independent group t-test was conducted to assess the effect of group (i.e., professional and holographic) on the variable of cluster length (in terms, words). As predicted, professional wills were significantly longer than holographic wills: (Professional wills: $M = 4.513$, $SD = 3.398$; Holographic wills: $M = 2.776$, $SD = 1.270$).The result reached a level of significance: $t(1,70) = 47.981$, $p < 0.001$, $d = 8.859$. The result suggests that the bigrams in the professional wills can be clustered to a greater level than those in the holographic wills. The t value is so large

since this test is not based on frequency but on finding bigrams, joining them, then

repeating this process until the cluster cannot be increased.

Table 5.7
Archaic Words That Introduce Clauses and Modify Noun Phrases

Corpora	Example text	Analysis
Professional	or if any successor trustee appointed as *hereinafter* provided ceases to act as trustee *hereunder* for any reason, the person or persons indicated in paragraph F of this Article shall, by written instrument, appoint any person	*Hereinafter* and *hereunder* modify nouns although they are not restrictive.
	IN TESTIMONY *WHEREOF*, I have *hereunto* subscribed my name to this first codicil to my Will.	*Whereof* modifies the introductory prepositional phrase and *hereunto* modifies the direct object, *name*.
	invest the several trusts as one or more common fund or funds and make joint or several distributions of income and principal *thereof*, *whichever* the Trustee shall deem prudent.	*Thereof* modifies actions made to the trusts. *Whichever* introduces an clause modifying the objective phrase *joint or several distribution.*
	my estate real, personal and mixed of *whatsoever* kind and nature and *wheresoever* the same may be situated, owned by me at the time of my death	*Whatsoever* modifies *estate*. *Wheresoever* introduces noun clause describing location and ownership of estate.
	and I do *hereby* revoke any and all wills or codicils *heretofore* made by me.	Although *hereby* serves as an adverb, *heretofore* modifies the noun phrase containing the direct objects *will or codicil.*

This clustering shows that professional will may be predisposed to a more

formula-like structure rather than individual, personalized text. For example, the longest

cluster in the professional wills corpora was *nashville, tennessee, do make, publish and*

declare this to be my last will and testament, hereby revoking all wills and codicils

heretofore made by me. <hard return> item i <hard return> I direct that all of my just

debts, my funeral expenses, and the costs of administration of my estate. This cluster was

formed from at least 28 bigrams, some with overlapping words: *nashville, tennessee, do*

make, make publish, and declare, declare this, to be, my last, last will, and testament,

hereby revoking, all wills, and codicils, codicils heretofore, heretofore made, by me, item

i, i direct, direct that, all of, of my, my just, just debts, my funeral, funeral expenses, and

the, costs of, administration of, of my, my estate. The longest cluster for the holographic

wills was much shorter: *to make and declare this to be my last will and testatment.* This

cluster is formed from approximately 9 bigrams, some with overlapping words: *to make,*

and declare, declare this, to be my last, last will, will and, and testament.

Summary Results

See Table 5.8 for a summary of the results for this section.

Table 5.8
Summary Results for Holographic and Professional Wills

Variable	Holographic		Professional				
	M	*SD*	*M*	*SD*	*t*	*d*	*p*
Personal pronouns	4.061	1.441	2.661	0.751	5.169	1.218	< .001
Gender terms	0.628	0.71	0.35	0.366	2.09	0.493	0.04
Kinships words	0.786	0.868	0.459	0.469	1.984	0.468	0.051
Emotion words	1.983	2.677	0.68	0.827	2.185	0.515	0.032
Archaic words	0.080	0.15	0.366	0.218	6.477	1.527	< .001
Doublets and triplets	0.026	0.045	0.087	0.059	4.941	1.165	< .001
Relative clauses	1.267	1.123	1.264	0.571	-0.01	-0.002	0.992
Prepositional phrases	3.247	0.696	3.443	0.464	1.408	0.332	0.164
Sentence length	19.198	9.22	29.256	12.085	3.97	0.936	< .001
Template text	2.776	1.27	4.513	3.398	47.981	8.859	< .001

Chapter 6: Qualitative Analysis

Overview of Qualitative Analysis

Having completed the quantitative part of this dissertation, this chapter presents the qualitative portion.[1] Here, I analyze two wills *qualitatively* examining many of the textual features used in the *quantitative* analysis (see Chapters 1 and 5). I investigate the language of one holographic will and one professional will so as to ascertain possible differences in the language used in these two types of wills. By conducting a qualitative analysis, I expand on the observation of Denzin and Lincoln (1994) that qualitative research is interpretive and naturalistic. I apply their perspective in this chapter in an attempt to understand how individuals or groups interpret and relate their life experiences in natural context. Particularly, I attempt to illustrate a parallel between this natural context and the language of the testator's will. This parallel may suggest a relationship between an individual's point of view and the individual's intended meaning in the will.

The main purpose of my qualitative analysis is to identify language patterns within the example texts that may help simplify the determination of the meaning of the text. As noted in Chapter 1, my research question is "Do linguistic differences between professional wills and holographic wills have the potential to affect the interpretation of

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[1] It is worth noting at this point that there is something of a difference between qualitative 'assessment' (as used here) and what is traditionally viewed as Qualitative 'Research.' The latter, capitalization intended, may be seen as a broad school with accepted over-arching methodologies that focus on the 'how' and 'why' of inquiry rather than the 'where,' 'when,' and 'what.' However, even in quantitative research, some attention needs to be paid to examples generated from the analysis. This aspect of the project is commonly referred to as the qualitative assessment because, in and of itself, it is less focused on the quantities of which it is a part, and more focused on the qualities of the examples under examination. Needless to say, this usage has not been warmly received by purists in the qualitative field who seem to largely consider the term as 'their own.' As linguists this is on par with calling the invariant "be" non-standard English then claiming it is a special feature of African American Vernacular English with four different tenses. Sufficient to say, that settling this dispute is beyond the scope of this dissertation and any questions as to the terminology used need to be addressed to the publishers of the texts from which these terms were taken.

the wills, subsequently influencing the outcome of the probate process?" My research question queries the possibility of language differences between holographic and professional wills. I suggest that if language patterns can be found to help resolve meaning within the texts, these patterns may also illustrate differences between the two types of texts. In order to address this question, I present two case studies in the qualitative analysis that may indicate what these differences are and what impact they may have in determining the intent of the testator.

My hypothesis is that holographic wills tend to be more narrative in their style than professional wills. I use the case studies in this chapter to look at contextual features of two wills from my corpora to analyze the language used, in its particular context, and determine if the context supports my hypothesis. Specifically, I am looking for language features and patterns in the holographic will that support a narrative perspective. This narrative perspective typically is used to relate real life experiences, relationships, and often personal beliefs and emotions (Schiffrin, 1996).

In comparison to holographic wills, professional wills are drafted by lawyers using legal language. Professional will are written to be read and understood by the court using the language of the court. Lawyers create documents that are in legal format and will hold up in court. These documents are usually formal and rule-driven (Klink, 1992). However, this process often excludes the average person from understanding exactly how the process works and what the language means. Typically, legal language is noted as being vague, pompous, and many times unclear (Mellinkoff, 1963). In my case study of the professional will, I analyze specific features of legal language and whether this language makes the intent of the will clear.

In this chapter, I use the case study methodology to analyze two wills, one holographic will and one professional will. The case study method of qualitative research is often used for more intensive studies of smaller corpora in order to gain a better understanding of the larger representative population (Creswell, 2007). This method allows for a more focused, interpretative analysis of a small group of data rather than large corpora with hundreds of data samples. The case study method also allows for the correlation of specific statistical data to a deeper understanding of the context of the texts (Flyvbjerg, 2011). In some instances, this method is used for a single case, allowing the researcher to focus on multiple parameters within the case. In this regard, the case study method is well-suited for this dissertation as each corpus is small (i.e., each consists of 36 wills).

Using the case study methodology, I review the lexical features analyzed in Chapter 5 to identify language patterns within the texts (Maxwell, 1996). If language patterns can be identified, I assess if these patterns may help find the testator's intent in the case of a contested will. By analyzing specific features of both holographic and professional wills, I am able to point to potential differences between holographic wills and professional wills. Therefore, this analysis allows me to determine if these features can potentially cause a conflict with the will. By determining if a language conflict exits, the analysis of these features may help clarify the meaning of the text.

In both case studies, I use several theories and linguistic approaches to conduct my qualitative analysis. For the holographic will, I review four theories of meaning (Derrida, 1988; Leiter, 2002; Schauer, 1995; Solum, 2009) to determine if these theories can be applied to help resolve the meaning of the will. For the purposes of this study

these theories support each other comparatively and contrastively by identifying variables that can be used in determining meaning. Consequently, these various theories of meaning are discussed and applied to help define the intent of the testator. The *deconstructionist theory* looks solely at the text. The *originalist theory* maintains the writer's intent must determine meaning. In contrast, *legal realism* and *case precedence* are used almost exclusively in the legal community to resolve conflicts between the language and the perceived context. For the professional will, I use theories of *ambiguity* (Bach, 1994; Cornelison, 2001; Schane, 2002; Small et al., 1988; Spaulding, 2011) to help point to probable causes of ambiguity and shed light on the intent of the testator. Next, I use pragmatic approaches such as Speech Act theory (Austin, 1962; Pratt, 1977; Searle, 1976, 1980; Tiersma, 1986; Winn, 1992). Lastly, I implement various semantic approaches such as the analysis of semantic roles of nouns (Austin, 1962; Finegan, 1994; Johnstone, 2008; Murphy, 1988). Each of these approaches plays a key role in analyzing not only the content of the will but also the context.

Selecting Wills for Case Studies

The wills for the two case studies used in this chapter were selected based on the quantitative data gathered from the Gramulator in Chapter 5. This quantitative data represents key *lexical features* analyzed including *sentence length*, *personal pronoun usage*, use of *gender and kinship terms*, use of *emotion words*, use of *archaic words*, and use of *doublets and triplets*. Using descriptive statistics from the summary analysis in Chapter 5, I compared several wills and identified two that are representative of their respective text type. I followed the method of Trochim (2006) and calculated the range of standard deviations to create a normalized array that includes 95% of the scores. Scores

outside of this range were considered outliers. Thus, the first case study is an analysis of the holographic will of Odessa Vaughn Briggs and the second case study analyzes the professionally prepared will of Mary White Reeves Davis. For the purposes of this chapter, each will is considered representative of that type of will although, of course, generalizations made from such approaches are speculative and caution is advised with the interpretation of the analyses.

Intra Textual Features

I focus my analysis in both case studies on the "lexical features" analyzed in Chapter 5. However, in this chapter, I refer to these lexical features as *intra textual* features. For the purposes of this study, the term intra textual is used to refer to features that are actual words and phrases used in the text. Conversely, I contrast intra textual features to *extra textual features,* which are not part of the text, to show the impact of each on a contested will.

Part of resolving the conflict in a contested will is looking at the intra textual features of the will and how these features are used. Although one case study will is holographic and one is professionally prepared, both were contested and taken to court for interpretation and judgment because of conflict regarding the language used in each will. Issues regarding clarification of meaning are prevalent in the holographic will and resolution of ambiguity is a key issue in the contest of the professional will. In order to analyze these problems linguistically, I review the key intra textual features presented in Table 6.1.

Table 6.1
Descriptive Characteristics of Holographic and Professional Wills[2]

| Quantitative features | Holographic | | | Professional | | |
| | Case | Corpus | | Case | Corpus | |
	Results	Mean	SD	Results	Mean	SD
Total words	185	352.33	411.03	1973	1317.22	1875.28
Sentence length	14.23	19.2	9.22	46.98	29.26	12.09
Personal pronouns	4.12	4.06	9.22	2.06	2.66	0.75
Emotion terms	0.54	1.98	2.68	1.27	0.68	0.83
Kinship terms	0.70	0.79	0.87	0.17	0.46	0.47
Gender terms	0.86	0.63	0.71	0.40	0.35	0.37
GPAT results	Narrative	Narrative	Narrative	Science	Science	Science
Archaic words	0.26	0.08	0.15	0.65	0.37	0.22
Doublets/triplets	0	0.03	0.05	0.05	0.09	0.06

Extra Textual Features

In contrast to intra textual features (described above), I also address in this

dissertation an analysis of the *extra textual* features of selected wills. Extra textual features

can contribute to either the writing or comprehension of a text such as a will. Broadly, these

features pertain to the writer of the text (rather than the text itself) and include *education*,

family and relationships, *events*, and *emotions* (Granger, 1981; Ray, 1977; Sharkey, 2010). In

some cases, the extra textual features of a will are as important as the intra textual features

(Dworkin, 1972). Therefore, extra textual features such as family members who do not like

each other or resentment by someone for an event that may have happened many years ago

can affect the how people read and interpret a will. That is, although these extra textual

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[2] The columns in Table 6.1 represent descriptive characteristics for each contested will,
holographic and professional, as compared to the statistical data for each corpus taken from Chapter 5. For
the corpus data, the mean and standard deviation have been given in order to show that each will is
representative of that particular corpus.

features (also known as *social factors*) are not part of the text of the will, they are still linked to its interpretation. Dworkin notes that social factors can influence people's judgment and can, to a point, create a sense of obligation. In support of Dworkin's claim, Baron (1992) notes that in some cases these factors can represent the testator's "self-definition" (p. 676). These social factors and their influence on a person's will need to be discussed. Whereas, some individuals, particularly heirs, may place special emphasis on certain relationships and emotions, the court can only use the words of the document to determine meaning. Although the court cannot consider extra textual features, these features can help point to possible points of conflict that may or may not be part of the language. While this may seem out of place, a contested will is about conflict resolution. Since the testator is not able to clarify the will and resolve the conflict, other measures must be used to perform these tasks.

Holographic Will Case Study

In this case dissertation, I compare the language and format used in the contested holographic will of Odessa Vaughn Briggs against the language and format of the court's decision in the law suit regarding the will. Specifically, I review the responsibility of the court, the issues encountered with the will's contents, and the legal issues posed by the language of the will. This comparison serves to point to various differences between the language of the will and the language of the court and how these differences may impede the court's ability to determine the intent of the testator. To conduct this analysis, I focus on three specific linguistic areas: theories of meaning, pragmatics, and semantics.

Discussion of Theory of Meaning

Linguistically, all four of the theories used in the holographic will case study support the interpretation of meaning. Specifically, the theories reviewed previously in

this chapter differ in how they view the relationship of the text to the intended meaning. Each theory supports the concept that meaning can be determined from various perspectives. Given this concept, that is why the context of the text is an important part of the analysis. In overview, deconstructionist theory (Balkin, 1986; Derrida, 1988; Halion, 1989; Norris, 2011) supports the notion that meaning cannot be derived from the text and that one cannot possibly know what the author intended. Originalist theory (Solum, 2009) supports the notion that the author's intention must be taken into consideration. It is this theory that most often represents how lay people feel their interests need to be assessed in a court of law. Legal realism (Leiter, 2002; Wilkins, 1990), maintains that there is no definite right or wrong answer: intent or meaning must be determined by applying the law to social context rather than relying on predefined norms. Case precedence (Lamond, 2008; Schauer, 1995) supports a ruling by relating to previous court decisions.

  Deconstructionist theory. Derrida (1988) argues that that the text is all that can be considered to determine meaning, noting that the author and context are almost irrelevant. The premise of deconstructionist theory is that a word cannot have a fixed meaning that is constant in any context. To determine meaning using the deconstructionist theory, texts have to be reviewed with an open mind and a willingness to accept a broad range of possible meanings for the texts (Derrida, 1988). Deconstructionist theory supports the notion that although the writer and the intended meaning of the text may be lost, the text is still readable (Halion, 1989). Derrida used this correlation of the text losing meaning to describe how difficult the process of determining a single meaning can be. The notion that deconstructionist theory does not support the importance of the writer on the text or the determination of the writer's intent does not

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make it ideal for this study. One of the purposes of this study is to specifically look for a meaning and the intent of the author. As such, in this study deconstructionist theory will be used comparatively.

Originalist theory. The originalist theory is typically used in discussions regarding the constitution and the original intent of those who wrote the constitution. Although Solum (2009) admits that now there is some ambiguity in the legal community over the meaning of *originalist*, Solum presents his own viewpoint. Originalist theory relates to the linguistic interpretation of the text based on the assumption that the original meaning of the text is determined by the everyday language of the citizens when the constitution was drafted (Solum). This same definition can be applied to other texts from a legal perspective. The originalist theory queries what the writer of the original text meant in the language used at the time the text was written. Solum notes that most originalists consider that the meaning of the text is determined by the intention of the author, and the author's words will provide this meaning. Although the testator's intent is not always apparent, this determination is the original charge that the court is given.

Legal realism. The basic premise of legal realism is that there is no definite right or wrong answer: intent or meaning must be determined by applying the law to social context rather than relying on predefined norms. The Harvard Law Review (1982) noted that there are three key elements of legal realism. These elements are the importance of studying changing legal doctrine, a critical approach to formalism, and a commitment to pushing for legal change in keeping with social changes. Leiter (2002) further notes that legal realism is a descriptive theory that attempts to link the facts of a case with the governing law to help support the judicial decision in the case. Further, Leiter (2007)

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notes that when using legal realism, determination of meaning is often guided by considerations of social, economic, and possibly ethical dynamics.

Case precedence. Judges often refer to similar cases and reference the rulings and interpretations in these cases. Case precedence provides a specific context for the judge to use in determining the meaning of a contested will. In this regard, case precedence is used most by the legal community in presenting and determining legal suits. Judges often rely on case precedence to "festoon decisions with the appropriate number of precedents, statues, and everything else, such that the decisions appear externally determined even though they are not" (Schauer, 1995, p. 879). Case precedence is based on existing legal rulings and is considered binding (Lamond, 2008). Judges may use case law to help interpret the law and to guide their decision in a similar case.

Discussion of Pragmatic Analysis

In this study, the term *pragmatic analysis* is used to relate the language of the texts back to the testator. Particularly, I am concerned with the contextual meaning based on the language used. In order to perform this pragmatic analysis, I apply Speech Act theory.

Speech Act theory is based on the premise that speech is within itself an act. (Austin, 1962). Austin argued that acts such as *making a promise*, *giving a command* or *issuing a declaration* were the same as performing any other kind of bodily action. For example, to say or write, *I promise to study*, represents an act of making a promise and committing to an act. In further explanation of speech act theory, Austin claimed that in order to determine the nature of a speech act and achieve the intended goal, whether

spoken or written, two steps need to occur. First, the meaning of the language used in the speech act needs to be considered. Second, the context in which the language is used must be considered. Austin argued that these two steps helped determine the intention of the speech act.

To help explain this two-step process, Austin identified three parts of each speech act. The three key parts to a speech act are *the locutionary act*, *the illocutionary act*, and the *perlocutionary act* (Austin, 1962; Pratt, 1977; Searle, 1976, 1980). First, the locutionary act is defined as the actual utterance or sentence. For example, the phrase *I promise to study* is the actual statement made and therefore is the locutionary act. The second part of a speech act is the *illocutionary act*. This part is defined as the effect or meaning of the locutionary act. Taken in context, the example, *I promise to study*, is both a promise, and a commitment: to someone to do something. The third part of a speech act is the *perlocutionary act*. The perlocutionary act is the consequence of the locutionary act. For example, the consequence of the locutionary act *I promise to study*, is that the someone to whom the promise was made makes appropriate plans (e.g., a class revising the topic is cancelled).

In this study, I use Pratt's (1977) description of perlocutionary effect to analyze the language of the court. This description relates to the intended goal of the speaker. Pratt notes, "a speaker may also perform a perlocutionary act, that is, by saying what he says, he may be achieving certain intended effects on his hearer" (p. 81). Pratt's argument is supported by Tiersma (1986), who claims that legal texts also tend to promote an illocutionary effect by using the directness of the perlocutionary act to reinforce an action. These arguments are also supported by Searle (1980) and Finegan (1994). The

observations of Pratt and Tiersma conform to Searle's definitions of the speech act

categories that he labeled as directives and declaratives. Additionally, Finegan (1994)

defines directives as "Speech acts intended to get the addressee to carry out an action"

and declaratives as "Speech acts that bring about the state of affairs they name" (p. 336).

Discussion of Semantic Analysis

In this study, *semantic analysis* is used to provide another venue to analyze the

meaning of the language used in the texts at the lexical level. Semantic analysis allows

the study to show not only the role and meaning of the lexical units in the text but also to

define the communication process and contents of the texts. Although words can have

different meanings when used in different contexts, I analyze the *contextual relations* of

specific intra textual features. This approach allows me to determine, by the context, the

meaning of the lexical units. Particularly, I use the semantic roles defined as *agent,*

patient, instrument, benefactive, recipient, and temporal to analyze a key part of the will

(Finegan, 1994). Each role has a function, and a noun can be categorized in more than

one role. These roles can help clarify the meaning of a sentence by determining what

properties the noun holds and what actions relate the noun to the sentence verb. For

example, in the statement, *the man opened the door*, the noun *man* has the role of agent

and *door* has the role of patient. As Finegan notes, the role of the agent is to serve as the

initiator of an action. Conversely, the role of the patient is to serve as the entity that

undergoes change or action. Another example is that of the role of instrument. In the

sentence *the man opens the door with the key*, the *key* serves the role of the instrument

through which the agent performs action. In this example, the *man* would be the agent.

An example of the roles of benefactive and recipient are found in the sentence, *the man*

gave the money to the woman, the woman is in the benefactive role as one benefiting

from an action performed by the man with the money. In a different context but similar

action, the sentence *the man won the money*, shows the *man* as the recipient of the

money. The recipient is in the role of receiving a physical object. As an example of the

temporal role, the word *tomorrow*, in the sentence *we will work tomorrow* defines the

time that an action occurs.

Responsibility of the Court

As noted in Chapters 1 and 5, a holographic will is completely handwritten,

usually without legal counsel. Although this type of will is legal in the state of Tennessee,

it can cause problems when interpreted by the legal community, because holographic

wills are often simple in language and format but are not specific regarding intent.

According to Tennessee Jurisprudence (1985), which is the state of Tennessee's code

regarding legal matters, "The court's function in construing a will is to ascertain what

words written by the testator really mean, determined by the most reasonable and natural

reading of the language" (p. 195). The code further notes that "This intention is to be

ascertained, first, from the particular words; second, the context; and third, the general

scope and purpose of the instrument in light of surrounding circumstances" (p. 199).

Expressly, the court's responsibility is to determine as closely as possible the intent of the

testator from the language and content of the testator's will. In linguistic terms, this legal

code requires that the language, the discourse, and the semantics of the entire document

be analyzed. It is important to note at this point, that circumstantial and/or extra textual

features cannot be considered by the court. Mellinkoff (1992) notes that the court must

look to the "four corners of the document" (p. 256) and defines this phrase as "a

metaphor for the contents of a writing" (p. 256). Specifically, Mellinkoff means that the testator's intent must be determined from the language in the document. The court does not consider any evidence other than the text of the will.

Review of Will Contents and Context

Odessa Vaughn Briggs initially penned her holographic will in 1980. Family members noted that she decided to write her own will after visiting an attorney and finding out the cost of having her will prepared professionally. Also, she may also have felt justified in writing her own will because her husband left a holographic will, which was not contested. Upon analysis of her will, it appears that she chose to mimic several of the phrases used in her husband's will (See Table 6.2).

Table 6.2
Comparison of the Wills of M.F. and Odessa Vaughn Briggs

Will of M.F. Briggs, Sr.	Will of Odessa Vaughn Briggs
This is my last will and testament.	This is my last will and testament.
I do hereby revoke all other wills.	I do hereby revoke all other wills.
At my death I request all my just debts to be paid out of the estate.	At my death I request all my just debts to be paid out of the estate.
I appoint her executrix without the necessity of making bond and making any reports or settlements with the courts.	I hereby appoint Merle Briggs, my son, executor of my estate without the necessity of making bond or making any report or settlement with the court.

Although Mrs. Briggs may have felt that copying parts of her husband's will leant validity to her own will, this assumption did not keep her will from being contested. I identify two key differences that may have led to the contest of her will. The first difference is that her husband left everything to her, with the exception of his half interest

in a 720 acre farm, which he left to their two sons, Merle and Ikie. Also, Mr. Briggs named Mrs. Briggs as the executrix of his will. This action meant that she was in charge of handling the requests in his will. By contrast, Mrs. Briggs left her estate to her two sons, requesting that upon their deaths, the estate go to her "remaining heirs." This wording was vague at best and required interpretation. Additionally, one of the extra textual factors that affected this situation was that at her death, Mrs. Briggs' total estate was worth over one million dollars in cash and comprised over 2,700 acres of prime timber and farm land. Her two sons would be required to share this large estate equally, as tenants of a life estate. Also, at the time of her death, there were several children and grandchildren who could be considered potential heirs.

An estate of this size can bring into play certain negative social dynamics such as greed, rivalry, and envy (Volkov, 2012). People who ordinarily co-exist amiably may tend to fear that they will not receive their fair portion and can be tempted to take what they want rather than to share equally. As Ontario (2011) notes, many times, the greater the amount of the estate, the greater the amount of tension and rivalry that develops in determining that the estate is divided equally.

Review of Legal Issues

As evident in Table 6.2, both Mr. and Mrs. Briggs tried to incorporate some legal terminology into their wills, presumably in an effort to make their wills sound more "official." However, some of the wording in Mrs. Briggs' will required legal interpretation. Although she may have used some legal terminology such as *I hereby revoke* and *without the necessity of making bond or making any report or settlement with the Courts* this wording did not clarify the intent of her will.

Another factor that needs to be addressed is the grammar, or lack of suitable grammar, in a holographic will. Tennessee Jurisprudence (1985) holds that holographic wills are considered legal and that in determining the intent of the testator, "the use of inept words or errors in grammar and punctuation will not vary, change or alter the intent" (p. 200). The construct of Mrs. Briggs will does contain some wording that would not ordinarily be used in a formal document. However, vague wording such as the phrase *surviving heirs* or inaccurate syntax such as the use of a plural third person pronoun modifying a singular noun (*their death*) does not relieve the court of the burden of trying to determine the intent of her will.

Another legal issue stemmed from the Briggs' family's interpretation of Mrs. Briggs will that came at the death of one of her two sons, Merle Briggs. Other than specific amounts of cash designated to certain grandchildren and two cemetery maintenance funds, Mrs. Briggs left her entire estate to her two sons, in trust, making them life tenants. Upon Merle's death, the younger son, Ikie Briggs, declared that everything in the trust went directly to him. The repercussion of this claim was that Merle's wife and heirs would be left with nothing. The significant factor that led to disagreement on both sides of family (and finally a law suit) was the wording of the fourth paragraph of Mrs. Briggs' will.

> All real estate (except for my 1/2 half Hays Crossing farm and all Pickwick property which they may sell and divide) I leave in trust to my two sons (Merle & Ikie) their lifetime. At their death to be divided equally between surviving heirs. They (Merle & Ikie) are to collect, divide and use all income from rents, timber & etc. (Odessa Briggs, will, February, 1980)

It is in this paragraph that the intent of testator could be interpreted in different ways. One side of the family determined that upon the death of one son, the other son

inherited everything. The other side of the family countered that as life tenants, the trust would last until both died and that Merle's heirs would receive his portion of income from the estate. For a summary of the legal factors, see Table 6.3.

Table 6.3
Summary of Legal Factors Court Must or Must Not Consider

Must Consider	Must Not Consider	Significant Factors
The language of the will	Circumstantial and/or extraneous factors	The wording of the fourth paragraph of Mrs. Briggs' will
The "four corners of the document", meaning the entire document	Poor grammar or punctuation used by the testator	Estate left in trust to her two sons making them life tenants
The intent of the testator	Hearsay rather than documented proof	If the other son was allowed to take everything, the other son's heirs would be left with nothing

The most important legal factor that the court could consider was the determination of the meaning of the wording of the fourth paragraph of Mrs. Briggs' will. A key fact that had to be considered was that Mrs. Briggs left her entire estate to her two sons, in trust, making them life tenants. The question of when the trust ended and how the property would be distributed hinged on the court's determination of what the court considered to be Mrs. Briggs' intent. One interpretation posits that the living son inherited the entire estate; in another interpretation the estate was part of a trust to be divided with the surviving heirs upon the living son's death. In the first scenario, part of the family is totally excluded from inheriting anything.

Application of Theories of Meaning

Having reviewed the legal issues in the contest of Mrs. Briggs' will as well as the court's responsibilities in this case, I now apply the four theories of meaning: deconstructionist, originalist, legal realism, and case precedence to determine if any of these theories can help resolve the testator's intent.

Deconstructionist theory. As noted, the deconstructionist theory is broad and focuses solely on the text. Also, deconstructionist theory does not support that words have fixed meanings but rather the meaning is totally dependent on the context of the language. However, the court must focus on the text *and* determine what the testator meant. Given the charge that the court must determine the testator's intent, the author of the text cannot be omitted from this process. In this study, deconstructionist theory cannot be applied to the text.

Originalist theory. In the analysis of Mrs. Briggs' will, the meaning must be determined using only the text. However, unlike the deconstructionist theory, the originalist theory seeks the intent of the testator. In this case, the court was charged to determine as closely as possible the testator's original intent. In the fourth paragraph of Mrs. Briggs' will, she specifically notes that she leaves her property to *my two sons (Merle & Ikie) their lifetime*. Applying the originalist theory supports the notion that she meant for both sons to inherit her estate equally. The act of passing everything to one son, after the death of the other son, nullifies this equal inheritance.

Legal realism. Regarding Mrs. Briggs' will, the court applied legal realism by turning to the language and the context of the document. The court made a concerted effort to identify the legally significant facts as well as some extra textual features. This

process allowed the court to distinguish between the relevant and irrelevant arguments raised by each side's attorneys. In this regard, the court noted:

> That the clear, certain and unmistakable intent of Odessa V. Briggs was that each of her sons was to share equally in the life estate and that upon Merle F. Briggs, Jr.'s death, his share was to pass to his heirs at law or under the provisions of his will until the death of Ikie Briggs, at which time, the life estate will terminate and all properties will then be divided equally between their surviving heirs. (Briggs v. Estate of Briggs, 1997)

This interpretation by the court involved not only the relevant arguments of the attorneys on both sides but the content and the context of Mrs. Briggs' will.

Case precedence. In the court's interpretation of a holographic will, the court usually supports its decision by stating determinations from other similar cases. Legal precedence plays a large part in how the court interprets a will. As noted earlier, in the case of Mrs. Briggs, the court went to two different cases that had similar circumstances. Citing Daugherty v. Daugherty and Alexander v. Miller the court built its decision around existing cases. Contrastively, although some circumstances were very similar, one of the cases dated to 1871. Although the 1871 case may have been similar in nature, the time interval makes the case very dated, particularly regarding the language used. However, the court considered the case an applicable legal reference. This process is an example of how the court builds on previous decisions although society and laws have changed and evolved.

Summary. In reviewing the final ruling, the court's decision-making process was tied most closely to the originalist theory and legal realism supported by case precedence. Whenever feasible, the court sought to determine the testator's original intention through the language she used and the context of the entire document. However, when gray areas arose, such as the interpretation of what needed to be done with Merle's portion of the life

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estate, the court turned to legal realism and case precedence by citing five cases with similar circumstances as legal precedence. Each of the cases involved the formation of life estates and the presence of surviving heirs and the importance of the intent of the testator.

Application of Pragmatic Analysis

In this section, I report a pragmatic analysis of the court's decision by applying Speech Act theory. Building on Pratt (1977) and Tiersma's (1986) analysis of the perlocutionary effect of the language of the court, I analyzed the language of the court's decision as well as the language of the will. The perlocutionary effect of the court's decision is that the language is strong and firm, leaving little room for redress on the part of an appellate court. The court's citing of legal precedence and the use of such phrases as *This Court disagrees* and *this Court finds and so holds* have a direct, authoritative, and final tone to the reader. Even French terms appearing in the court's decision such as *pur autre vie* [for or during the life of another] (Black's Law Dictionary, 1991, p. 860) and *cesetui qui vie* [the person whose life measures the duration of a trust, gift, estate, or insurance contract] (Black's Law Dictionary, p. 156) reflect the impact of the legal culture. As previously discussed, these statements conform to Searle's (1980) speech act categories labeled directives and declaratives. Through the analysis of these speech acts the court is able direct the remaining son (Ikie) to divide the income of the estate with Merle's heirs and also to support that this outcome was the intent of Mrs. Briggs when she wrote her will.

The perlocutionary affect of directives found in the court's decision differs from the wording found in Mrs. Briggs' will. Although she makes a few brief directives such

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as *Cash: To my grandsons Joe Briggs and Charles A. Briggs $3,000.00 each* there are also broad statements that are not clear. In the first part of the fourth paragraph of Mrs. Briggs' will, she notes that *All real estate (except for my 1/2 half Hays Crossing farm and all Pickwick property which they may sell and divide).* The text is not clear about what happens to the other one half of the Hays Crossing farm or who *they* refers to specifically.

By applying Speech Act theory to Mrs. Briggs' will and the court's written decision, a pattern emerges. Although the wording of the will may be vague in some areas, the court's decision is worded with clearer, more direct language. The illocutionary effect of this wording is that the court, through legal precedence and careful review of the language and context of Mrs. Briggs' will, has determined her intent. According to Searle (1980), this type of wording provides, "A background of practices, institutions, facts of nature, regularities, and ways of doing things" (p. 227). This effect also promotes what Winn (1992) refers to as "legal ritual." It is this ritual that "involves the use of words not simply to communicate thoughts and intentions, but directly to create social events and institutions" (p. 496). In this way the court not only determines the intent of the testator but defines the parameters used to carry out the intent.

Application of Semantic Analysis

In this section, I report on a semantic analysis of the court's decision using the definitions given by Finegan (1994) of various semantic roles that noun and pronoun phrases play in a sentence. A major part of the conflict in Mrs. Briggs will centered on the interpretation of the fourth paragraph, the focus of this semantic analysis is to identify each noun phrase within the fourth paragraph, determine the semantic role of the phrase,

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and provide a brief explanation of the context of the phrase within the sentence. Using

this approach, analyzing the semantics of this particular section in their context can help

resolve some issues regarding the testator's intent. This analysis is supported by the

notion that although meaning makes language clear, the context of the words used makes

a difference in how we understand the text (Austin, 1962). See Table 6.4.

Table 6.4
Analysis of Noun Phrases and Semantic Roles in Context

Noun Phrase	Semantic Role	Context of Phrase
All real estate	Patient	Property undergoes a change of state. Is passed from one owner to another.
my ½ half Hays Crossing farm and all Pickwick property	Patient	Property undergoes a change of state. Is left out of the trust.
They	Agent	The responsible initiators of change, authorized to sell the designated property.
I	Agent	Initiator of change. Directs how property should be handled.
Trust	Instrument	The intermediary through which the agent performs the action.
My two sons (Merle and Ikie)	Recipient Benefactive	The recipients of the defined object, the trust, also the benefactors since the trust is directed to them for their well-being.
their lifetime	Temporal	Defines the length of time the action ocurs.
their death	Temporal	Defines when the action will end.
surviving heirs	Recipient Benefactive	Those designated to receive the estate upon the death of the first recipients. Those who will also benefit from the trust.
they, Merle and Ikie	Agent	Those designated to initiate action (collect, divide, and use all income).
all income from rents, timber, and etc.	Instrument	The intermediary that the agent is to collect, divide, and use.

Analysis of noun phrases. When the semantic roles of the noun phrases in the fourth paragraph are defined, we see that there are two sets of recipients and benefactors: the two sons (Merle and Ikie) and the surviving heirs. Both sons are designated to receive the trust at some point in time and both will benefit from the trust. Therefore, it becomes clear that if one son claimed the entire estate upon the death of the other son, several of the surviving heirs would be deprived of their inheritance. The court's conclusion supported this notion as is reflected in the following statement:

> There was no language in Odessa's will expressing an intent for Merle's one-half interest in income from said properties to terminate upon Merle's death and for Ikie to then collect all (100%) of the income from rents, timber, etc., and this Court therefore cannot speculate as to such intention. (Pierotti, Memorandum opinion, 1995, p. 3)

The court supported its position by citing the decision in Daugherty v. Daugherty as legal precedence. This decision came from a case involving a life estate left to three sons, one of whom predeceased his father and two brothers. The father did not change the will, which directed that the life estate be divided equally among the brothers, and upon their deaths, surviving heirs. Citing case law from the South Western Reporter (1990), the court held that as the deceased son's sole heir, Helen Daugherty (his wife) was entitled to one-third (1/3) of the estate (p. 653).

Of all the noun phrases used in the fourth paragraph of Mrs. Briggs will, two stand out because of their unique construction. "Their lifetime" and "their death" represent singular nouns modified by third person plural possessive pronouns. It is worth noting at this point that the results in Chapter 5 suggest a higher frequency of third person pronoun usage in holographic wills over professional wills. The use of third person pronouns often suggests a relationship between the narrator and narratee (Johnstone,

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2008; Murphy, 1988). By using language to present such a relationship, the testator can personalize the text. Mrs. Briggs may have felt that the two sons would know her intent with her use of this wording.

The use of specific gender and kinship terms helped clarify Mrs. Briggs intent in some areas. It is clear that her reference to "my two sons" specified that the life trust was for Merle and Ikie Briggs. However, the use of general terms such as "surviving heirs" lacked defined focus and could be interpreted in various ways. This lack of definition led to conflict over Mrs. Briggs' intent.

In analyzing the key phrases from the fourth paragraph, the court determined that the testator, Mrs. Briggs, intended for the life estate to endure through the lifetime and death of both sons. In this instance, *death* and *lifetime* are determined to be collective terms. According to the legal precedence cited by the court, "An estate to A during life and the lives of B and C, is cumulative, and will exist until the death of the longest lived of the three" (Alexander v. Miller 1871, p. 69). The court held that the life estate was "to remain intact until the death of Ikie" (Pierotti, Memorandum opinion, 1995, p. 3). With regard to the future of the estate, the court ruled

> Odessa's holographic will further provides that at their (Merle and Ikie's) death all real estate is to be divided between surviving heirs. In accordance with this language, this Court finds and so holds that upon the death of Ikie, the life estate is to terminate and all real estate is to be divided equally among both Merle and Ikie's "surviving heirs". (Pierotti, Memorandum opinion, 1995, pp. 5-6)

Although the court's ruling was appealed, the appellate court upheld the probate court's original ruling.

Summary of Holographic Case Study

In summary, the results of this analysis suggests that in order to resolve the legal conflict created by the language of this will, the court relied on originalist theory and case precedence to help determine meaning. In conjunction, the analysis of the pragmatics of the will show that although Mrs. Briggs did have some directives regarding her estate, there was also some vague wording that did not support a clear, decisive meaning. In some cases, the presence of pronouns as referents did not appear to refer to anyone specifically. This issue is most notable in the fourth paragraph *All real estate (except for my 1/2 half Hays Crossing farm and all Pickwick property which they may sell and divide)*. It is not clear about the other ½ of the Hays Crossing farm and it is not clear who *they* references regarding the process of selling and dividing.

Additionally, Mrs. Briggs' attempt at incorporating some legal terminology did not help to clarify her intent. Did one son inherit everything upon the death of the other son? Who could sell and divide her ½ of the Hays Crossing farm? Also, who was considered a surviving heir? Since this estate involved a large amount of property and money, the answers to these questions were important and costly. After five years and much litigation, the court was finally able to determine that if the remaining son (Ikie) inherited everything, a whole group of heirs would be left with nothing leading them to direct Ikie to divide the income of the estate with Merle's heirs. Although this analysis appears simple to a casual reader, the mechanics of this legal case were not simple: the court had to show that given the language of the will that this outcome was the intent of Mrs. Briggs when she wrote her will. Although Ikie and his family appealed the probate court's ruling, the appellate court upheld the original ruling. An attempt to appeal to the

Tennessee State Supreme Court was denied. The estate was held in escrow for five years

and the only revenue generated was the fees of the lawyers and the timber specialists,

who were brought in to provide an unbiased, professional opinion concerning the

condition and the value of the existing timber.

Professional Will Case Study

This case study analyzes the professional will of Mary White Reeves Davis. The

will was prepared for Mrs. Davis by her lawyer in 1976. Since her death in 1999, the will

has been the subject of three separate court cases and multiple legal motions related to

these cases. Two of these cases went to the Tennessee Supreme Court for final verdicts.

One case claimed that ambiguity and conflict with another document would have to be

resolved before the estate could be settled. Another case tried to introduce another, later

will as the valid will. This case was finally waived due to lack of evidence that the second

will was valid. The final litigation of this will was set to be resolved in October 2011 but

a continuance set a new court data for January 2012. This analysis focuses on the

language of the will as well as the ambiguity cited by the court.

In this case study, I analyze the language and format of Mrs. Davis' will. To

conduct this analysis, I focus on three specific linguistic areas: theories of ambiguity,

pragmatics, and semantics. Specifically, I look to the legal language used in Mrs. Davis'

will to see if this language is direct and clear or if follows a typical boilerplate scenario

that is ambiguous and redundant. Also, I analyze the use of archaic words, emotion words

in a non-emotion context, and doublets and triplets to determine if this usage helps clarify

the will or, conversely, create a conflict in the will. Although the latent ambiguity

identified by the court exists between the will trust and another trust document, I analyze

the parameters of the two trusts to determine if this ambiguity is primarily a legal issue or one that could be resolved with linguistics.

Discussion of Theory of Ambiguity

The theoretical analysis of Mrs. Davis' will focuses primarily on the language of the will and a second document linked to her estate. Both texts have language stipulating the establishment of a trust. However, both trusts are funded by the estate. In this situation, the court has identified a latent ambiguity that must be resolved. Ambiguity results when the explanation of the situation in the text cannot be applied to what is evident in the real life scenario represented by the text. At this point, the text is neither instructional nor informative. Regarding this particular ambiguity, I analyze the language of the will to determine if it created the latent ambiguity identified by the court. Specifically, I analyze ambiguity from a linguistic and a legal viewpoint.

Various theories of ambiguity are reviewed and applied to show how each could be used to resolve the latent ambiguity. Although the primary issue in this section is to resolve this ambiguity, I also look at the pragmatics of this will by analyzing the discourse of the text for the presence of declaratives and boilerplate language. This presence tends to create a formal and rule-driven text. Additionally, I analyze the semantics of intra textual features identified in Chapter 5. These features include use of archaic language, emotion words in non-emotion context, and doublets and triplets.

For this case study, I review the essence of ambiguity and theories related specifically to ambiguity. In order to analyze the ambiguity and the language of the text, I use the definition of Graesser (2002) for a *situation model* as the reference of what the text is about. Using this situation model, we can determine that although the text is

composed of concrete words, there is a disconnect when applying these words to a real life scenario (Graesser et al., 2008). The ambiguity of the text in addressing the situation creates this disconnect.

Lexical ambiguity. Linguists tend to research ambiguity from a lexical standpoint. Small et al. (1988) divide lexical ambiguity into two main types: semantic and syntactic. Semantic ambiguity is usually distinguished by either words that have a similar meaning and the meaning is dependent on the context of the words or words that are spelled the same but have different meanings. Syntactic ambiguity relates to the structure of a sentence or phrase and the lexical category of a particular word. For example, the word *fish* can be used as a noun or a verb in a sentence. In a sentence, the reference of the word *fish* depends whether it has been used as a noun or a verb.

Semantic ambiguity. According to Bach (1994), semantic ambiguity occurs when a word, phrase or sentence has more than one meaning. An example of semantic ambiguity is found in the phrase *I saw her duck*. The word duck has more than one meaning on the surface. It could refer to a water fowl or the acting of bending over quickly. The phrase needs specific contextual reference to remove this ambiguity. Another type of semantic ambiguity is when a word can be used in different categories, typically as either a noun or a verb. For example, the word *cook* can be used as a noun or a verb. Only the context of the usage will allow us to determine which category is correct for that particular usage.

Determining the definitive meaning of a particular word or phrase may not be a simple task. Finegan (1994) notes that determination of meaning is a "multifaceted notion" (p. 158). The meaning of a word or phrase may vary depending on whether it is

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related to another word or has multiple implications. In legal texts, Charrow et al. (2001) note that a common source of ambiguity is the word *shall*, given that lawyers tend to use this word incorrectly. In some instances *shall* is used to mean *must* although in other instances, it is used to mean *will*. The first usage denotes mandatory action but the second is used to mean a future action.

   ***Syntactic ambiguity*.** Another form of lexical ambiguity is syntactic ambiguity. According to Cruse (1986) syntactic ambiguity is a matter of how words are "grouped together" in a sentence or phrase (p. 66). For example, the phrase *young men and women* may mean *young men* as well as women of any age or it may mean *young men and young women*. Although these are simplistic examples, typically the more words in a sentence, the easier it is for syntactic ambiguity to occur.

   Regarding syntactic ambiguity, Bach (1994) notes that how words "fit together" in a sentence can affect how a reader understands the words (p. 19). Charrow et al. (2001) state that in legal writing, misplaced words and phrases can often cause ambiguity. Specifically, they note that using pronouns as antecedents must be done carefully so that there is no question regarding the specific noun the pronoun references. They also caution that conditionals such as *and*, *or*, and *if* must be placed correctly to avoid ambiguity. The syntax of conditionals, particularly in clauses denoting exceptions, can cause confusion unless the phrases are laid out so that the meaning is clear. This clarity can often be accomplished by using shorter, more concise sentences rather than long, sentences linked with archaic terms such as *therefore*, *hereby*, and *wherewith*. Used in conditional phrases, these words tend to confuse the reader rather than lead them to an understanding of the meaning of the text.

Patent and latent ambiguity. In the legal field, there are two types of ambiguity, patent and latent. Schane (2002) describes patent ambiguity as a situation where a word or words have more than one meaning or there is uncertainty caused by the language of the text. However, latent ambiguity differs from patent ambiguity in that the ambiguity is not specifically with the language of the will. Latent ambiguity becomes evident when applying the instructions of the language of the will. These instructions may contain two or more items that meet the same description or no items that meet the criteria of the description.

Patent ambiguity. Patent ambiguities are evident from the language of a text. The ambiguity may relate to wording in one part of the text that conflicts with wording in another part of the text (Cornelison, 2001). An example of patent ambiguity is a provision in a will instructing that an estate to be divided equally among 3 heirs and another provision in the will that stipulating that all stock options go only one of the heirs. Another example of patent ambiguity is lack of specificity in a text. If a will name someone as a beneficiary but does not specifically bequeath the person any property, an ambiguity results. Schane (2002) and Cornelison note that courts handle patent ambiguities in different ways. However, both authors note that the court rarely allows extrinsic evidence to clarify a patent ambiguity.

Latent ambiguity. According to Cornelison latent ambiguity is when a will refers to property or beneficiaries that cannot be easily defined within the context of the will. In simpler terms, there is a conflict between the will's description of the situation and the reality of the situation. An example of latent ambiguity would be where the testator made a bequest to a nephew named John Jones although there are two nephews named John

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Jones. This scenario creates an ambiguity in making the bequest because more than one person fits the will's description. This situation not only creates an ambiguity but also a stalemate in the legal process. The court is left to sort through this ambiguity to determine, in this particular case, how to handle the testator's instructions.

Because the court's responsibility is to determine the intent of the testator, Cornelison (2001) notes that when a case of ambiguity arises, the court tries to resolve the situation by either referring to case law or bringing in extra textual evidence to clear up the ambiguity. Spaulding (2011) notes that some lawyers object to the use of extra textual evidence on the basis that it may be unreliable or that it may constitute an attempt to commit fraud. However, he also notes that the court is very particular regarding the use of extra textual evidence. This notion is further supported by the fact that this outside evidence and testimony can neither add nor detract from the text of the will. In this regard, the testator's intent is preserved.

Discussion of Pragmatic Analysis

I use discourse analysis to highlight various pragmatic features in the will. Ferguson (1994) notes that over time, certain discourses tend to "develop identifying markers" (p. 20). Pragmatically, legal language is marked by the use of declarative statements and boilerplate language. The presence of these features creates a scenario where only those who are versed in legal language truly understand all of its nuances and meanings (Johnstone, 2008). In this manner, legal language can be exclusionary and as Chafe (1994) notes tends to exhibit a certain amount of autonomy. Those who are not part of the legal community can be excluded by this discourse. Chafe's argument is that

legal language is exclusive to those persons who are not part of the legal community such as judges and other lawyers.

Specifically, the pragmatic features evident in professional wills are the presence of a language structure that is formal, detached, lengthy, and impersonal (Danet, 1980). Part of this structure is caused by the use of declaratives. Searle (1976) defined declaratives as speech acts that "bring about some alternation in the status or condition" (p.14) and are supported by an institution such as the Church or the law. Declaratives alter a situation by the fact that they have been successfully stated. Additionally, declaratives do not imply a relationship between the speaker and hearer. These speech acts rely on authority and directness.

Legal discourse often uses template-driven or boilerplate text. This type of discourse is more formal and tends to be in an authoritative tone. Although this feature may provide consistency in some cases, it also distances the writer from the text, making the text more monologic rather than dialogic. As Bakhtin (1981) notes, this type of discourse has power: the language is not presented but rather "it is only transmitted" (p. 344). In this study, I review various examples of this type of direct, formal language.

Discussion of Semantic Analysis

In analyzing the semantics of this will, I review the use of archaic language, doublets and triplets, and emotion words used in a non-emotion context. The review of archaic language builds on observations from Mellinkoff (1963) that words such as *hereby, heretofore, thereof, and whosoever*, are obsolete in all but the legal profession. Further, Tiersma (1999) notes that although these words may give the law an aurora of authority and respect, they make the text difficult to read and understand. Regarding the

use of doublets and triplets, although Mellinkoff argues that these phrases are redundant and wordy, Klinck (1992) notes that many lawyers consider doublets and triplets to be precise terms. Mellinkoff counter argues that the usage is not related to precision but rather to habit and that the usage has outlived its function. Garner (2001) concurs with this premise, noting that lawyers need to consider their wording more carefully rather than accept doublets and triplets as "default" terms.

Another part of the semantic analysis in this case study is the use of emotion words in a non-emotion context. Mellinkoff (1963) relates this usage to a category he has titled, "common words with uncommon meanings" (p. 11). This category includes words that would typically mean one thing in ordinary language but take on a different meaning when used in a legal context. This viewpoint is supported by the claim that courts and statues have decided these different meanings. However while the meaning may be accepted in the legal community, it may have created a contradiction between the ordinary meaning and the legal meaning (Charrow et al., 2001).

Responsibility of the Court

Mrs. Davis' will was drafted professionally but contested. As with the holographic will, the court was responsible for determining the validity of the will. Having established the validity of the will, the court must then ensure that the testator's assets are distributed according to the testator's directions (Tennessee Jurisprudence, 1985). In contrast to the holographic will, Mrs. Davis' professional will was drawn up by an attorney with specific bequests and followed a recognized legal format. However, there were extenuating circumstances. Over a 12-year period, three law suits and several legal motions were brought to the court over this will. Some of these extenuating factors

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included the protest of a prenuptial agreement signed in 1969, the sudden appearance of a holographic will, and the dilemma of an ambiguity between two trusts. This ambiguity tied up all of the assets of the estate. The resolution of this ambiguity along with the other conflicts required the court's intervention.

Review of Will Contents and Context

Mary Reeves Davis' first husband was the country music star Jim Reeves and she was his sole heir, inheriting all income and business related to his music career. After Mr. Reeves' death in 1964, Mary inherited all of his estate including various businesses, property, and royalties from recording contracts. Mary executed a business deal with RCA Recording Co. to release previously recorded songs by Jim Reeves. There were a large number of these recorded, unreleased songs and for many years after his death, Reeves stayed on the record charts due to the efforts of his widow.

In 1969, Mary remarried. In the mid 1990s, Mrs. Davis suffered the onset of Alzheimer's disease. Prior to her death in 1999, her second husband, Terry Davis entered into an agreement to sell her property, including the music business. The agreement provided that Mr. Davis was entitled to approximately half of the income from this sale but that the main purpose was to provide for Mrs. Davis' living expenses and health care through the creation of a trust. The trust was to end upon her death. However, Mrs. Davis also had a trust established in her will that was to be funded from her estate, including the music royalties and other income from the music business that she had maintained. Her will stipulated that the trust be used to help promote country music as an American art form. After specific amounts of cash were dispersed, the remainder of cash was to be divided evenly between her brothers and sisters and the siblings of Jim Reeves. Many

events and issues affected this will and the legal course it has followed for over 13 years. See Table 6.5

Review of Legal Issues

There were three key legal issues regarding Mrs. Davis' will. The first was the conflict between the trust agreement set up by Terry Davis regarding the sale of Mrs. Davis' music businesses and the trust established in Mrs. Davis' will. Terry Davis set up the trust after gaining power of attorney from his wife. The sale of the business was set at $7.3 million. This trust agreement conflicted with the trust set up by Mrs. Davis' will with the intention of perpetuating the memory of the late Jim Reeves and setting up a foundation to recognize country music as an American art form. The trust created by the will could not be set up if the second trust agreement was allowed to remain in effect under the governance of Terry Davis. Also, the second trust had wording to the effect that all property in the trust would pass to Terry Davis in the event of Mary Davis' death. In the will, Terry Davis was to receive $100,000 and was not to receive funds from the trust set up by the will. The two entities were at cross purposes and the court was tasked with resolving this ambiguity.

The second issue involved an ante nuptial agreement that Mrs. Davis had drawn up for her husband to sign prior to their marriage. A key part of the agreement was a list of Mrs. Davis' assets. Over time, the list was misplaced and could not be presented as evidence. The court had to resolve the legal point as to whether Mrs. Davis made adequate disclosure of her holdings prior to getting Terry Davis to sign the agreement.

Table 6.5

Background Information Affecting the Legal Contest of the Estate of Mary Reeves Davis

1953-64: Jim Reeves' brief music career includes 72 country singles, including 11 No. 1 hits. In 1964 Reeves dies in a plane crash. He leaves his entire estate to his wife Mary, including approximately 80 unreleased songs.
1966: Mary Reeves makes a deal with RCA to release these songs one at a time rather than in one album.
1969: Mary Reeves gets remarried to Baptist minister/film producer/real estate agent, Terry Davis. Prenuptial agreement specifies Mary retains all rights to Reeves' royalties.
1970-84: A Jim Reeves single appears on the country charts each of these years as Mary releases dozens of previously unreleased songs. Mary has an annual income of $300,000 to $400,000.
1976: Mary signs a will designating the bulk of her estate, including the royalties, to be divided equally between her and her late husband's siblings, along with a trust directed to create a foundation dedicated to promoting country music as an art form. Terry Davis is to receive $100,000.
Mid-1990s: Mary Reeves Davis suffers the onset of Alzheimer's disease.
1996: Mary agrees to sell all of her late husband's royalties and memorabilia to Ed Gregory for $7.3 million. Gregory convicted of bank fraud in 1982.
1996: Tennessee Department of Human Services finds Mary Davis living in unsanitary conditions with Terry Davis and 200 cats in their house. She is removed and put in a nursing home.
1997: Davis' niece alleges her aunt was not competent to make the transaction to Gregory and files a law suit.
1999: Mary Reeves Davis dies.
2000: Nashville attorney Ames Davis is named to administer Mary Davis' estate.
2001: Ames Davis files a law suit challenging transactions involving Ed Gregory, William White (Mary Davis' nephew), and Terry Davis.
2002: Ed Gregory files for bankruptcy. He owes Mary Davis' estate more than $6 million.
2004: Ed Gregory dies with his bankruptcy case still pending. He owes over 200 creditors.
2005: Terry Davis produces an unknown, single-page, handwritten will allegedly written by his late wife in 1996. It names Terry Davis as sole beneficiary of her estate.
2006: U.S. Bankruptcy Court returns all royalties to Mary Davis' estate in return for a $400,000 payment.
2007: A Nashville court voids the prenuptial agreement on the grounds that Mary may not have disclosed all of her assets to Terry Davis prior to their marriage.
July 2011: A Nashville probate court rules the 1976 will is the only valid will.
October 2011: A continuance is granted in the case over Davis' estate. New court date is January 23, 2012.

A third issue arose when Terry Davis presented an unknown will, which he claimed his wife wrote in 1996. This will made Terry Davis the sole beneficiary of the estate. The heirs of Mrs. Davis countered that the probate statute of limitations prohibited this will from being considered. Mrs. Davis' heirs also raised issues regarding the validity of the will as well as her mental state when she purportedly drafted the will.

All of these issues related to settling the estate of Mrs. Davis and during one timeframe there were three different law suits related to the contest of Mrs. Davis' will. Although there was only one legal case contesting the will, there were multiple other legal issues for the court to resolve in order to resolve the will contest. See Table 6.6.

Table 6.6
Summary of Legal Issues the Court Must Resolve

Legal Issues	Court's Responsibility
Latent ambiguity of the language of the Mary Davis' will and trust agreement. Both related to sale of music royalties and memorabilia.	The court must resolve ambiguity to determine testator's intent.
Conflict of antenuptial agreement and missing list of assets.	The court must determine whether wife made proper disclosure of her assets.
Resolution of the validity of purported 1996 will that made Terry Davis sole beneficiary of Mary Davis' estate.	The court must rule on whether a statute of limitations law applies in this case and then whether the will is legitimate.

Application of Theories of Ambiguity

Lexical ambiguity. In reviewing the ambiguity that exists in Mrs. Davis will, the analysis shows that the language of the will does not create the ambiguity. The will specifically states that the money and property outlined in the trust is to be used "for the

purpose of developing and promoting an appreciation of Country Music as an American art form" (Mary Davis, will, September 1976). Any lexical ambiguity that exists is between the text of the will in establishing this trust and a separate trust agreement drawn up by Mrs. Davis' husband prior to her death. Both trusts were to be funded from the same estate, but each had different parameters and specifics. Each trust was different, the references between both are confusing and in some cases misleading. Only one of the trusts could be established with Mrs. Davis' estate. After years of legal motions, in the final analysis of Mrs. Davis' will and the text of the second trust, the court determined that the second trust ended upon Mrs. Davis' death and that the trust defined in the will took precedence.

Semantic ambiguity. As previously noted, some words commonly used in legal language may have more than one meaning. Specifically, *shall* is used to mean a mandatory action although it may also mean a future action. Although the word *shall* is used frequently in Mrs. Davis' will, there is no apparent inconsistency in its usage. Although the repeated usage of *shall* does make the text more formal, it clearly gives directions as to what is to be done in the future with her money and property.

One of the most pertinent occurrences of semantic ambiguity occurs in the trust agreement drawn up by Mrs. Davis' husband. The words *transferred* and *received* are used to describe how assets of the trust are to be handled in the event of Mrs. Davis' death. Although both words refer to a change in the status of her estate, the court was not clear on the use of these terms.

> Are the words "transfer" and "receive" synonymous in the sense that a personal right of ownership does or does not attach? Do both imply an interest in fee or do they impose a fiduciary responsibility with reference to what is transferred or received? (Arnold v. Davis, 2004, p.13)

The court's confusion over the exact meanings of these two words impacted how the estate would be handled. While separate from the latent ambiguity, this ambiguity added to the conflict.

Syntactic ambiguity. In order to determine if syntactic ambiguity existed in Mrs. Davis' will, I reviewed how the words of the will were placed and linked. A key area of focus was the use of conditionals and archaic words. In the two sentences in Mrs. Davis' will that describe the creation of the trust, there are 13 conditionals used as well as 3 archaic words. Further, the two sentences are lengthy and difficult to process with the potential of creating an ambiguity from the overuse as well as the placing of the conditionals.

Latent ambiguity. In legal terms, latent ambiguity can exist when the language of a text may be very clear, but extenuating circumstances render the instructions given in the text invalid. The court concluded that a latent ambiguity existed in Mrs. Davis' will regarding the creation of a trust. Although there were instructions to set up a trust using the assets of her estate, these instructions conflicted with a trust set up prior to her death. Although this conflicting trust was to have ended upon Mrs. Davis' death, her second husband, Terry Davis contested this event. According to the second trust, the remainder of the estate passed to Mr. Davis. This event was not possible if the testamentary trust was established according to the instructions in Mrs. Davis' will. To add to the dilemma, Mrs. Davis had signed both documents. This ambiguity had to be resolved in order to either fulfill the testamentary trust or rule it invalid.

Specifically, the court determined that a latent ambiguity existed in the trust agreement drawn up in 1996 by Terry Davis to sell most of what was referred to as Jim

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Reeves Enterprises for approximately 7.3 million dollars. Although the sale was never

fully realized, some money was collected. This trust conflicted with the trust outlined in

Mrs. Davis' will that requested a trust be established to further country music as an

American art form and to endow both Mrs. Davis' siblings and Mr. Reeves' siblings. For

clarity, the trust agreement drawn up by Terry Davis is referred to as the second trust and

the trust outlined in Mrs. Davis' will is referred to as the testamentary trust.

According to the court, the problem that needed to be resolved was

A latent ambiguity as to whether Mrs. Davis intended that Mr. Davis
receive the assets outright if he survived Mrs. Davis, or whether he was to receive
them in a fiduciary capacity for Mrs. Davis' Estate, or whether the assets passed to
the Estate at all. (Arnold v. Davis, 2004, p.11)

With the problem identified, the court then proceeded to bring in and review extra textual

facts and testimony to clarify the ambiguity. Testimony from Mrs. Davis' attorney was

provided an additional perspective on the second trust. His testimony noted that the

second trust was solely to provide for the care and well being of Mrs. Davis. The attorney

noted that her intention was that her estate be handled according to the provisions of her

will according to the testamentary trust. Further testimony noted that Mrs. Davis was not

a party to the second trust and that her husband, Terry Davis had obtained Power of

Attorney prior to having the trust drafted. There was also strong evidence regarding Mrs.

Davis' poor health and the fact that her husband refused to have her psychiatrist give an

opinion regarding her competency.

In reviewing the language of the second trust document, the court found that there

was a difference in meaning between the words *assets* and *payments* used in the second

trust with the word *payment*s being more limiting. Both terms had been used

interchangeably in the document. The court also found that there was ambiguity in the

use of the word *transfer* noting that it could denote ownership or simply responsibility. The court cited that although the meaning of some of the language in the second trust was not clear, there was other language in the second trust that was clear. One of the primary stipulations was that the second trust was to end upon the death of Mrs. Davis. Further, the court noted that because the second trust did not have the requirements of a will, the assets remaining in the trust would pass to Mrs. Davis' estate. At that point, the court ruled that the instructions in Mrs. Davis' will would be carried out and therefore, the testamentary trust would be established according to her will. The court was able to make this ruling after resolving the issue of the latent ambiguity although the contest of the will is still pending.

Application of Pragmatic Analysis

The discourse of Mrs. Davis' will and the court's decisions are similar in that each is written in legal language. Both are direct and have an authoritative tone. Taking this analysis further, it is evident that much of this will follows a template or boilerplate format. Given the quantitative results in Chapter 5, there is a significant amount of boilerplate material used in professional wills. Often this usage is referred to as *form material* or *boilerplate text*. In most cases it is used in different texts over a period of time to accomplish the same goal. Boilerplate text was developed to help lawyers draft many different kinds of legal documents but according to Mellinkoff (1963) this text also helped perpetuate bad writing and ambiguous language.

Additionally, using boilerplate text does not take into account the effect of new data on the existing data or, more importantly, the impact of human error. In the case of Mrs. Davis' will, the template material did not keep the text from being ambiguous nor

did it help resolve this ambiguity. Boilerplate text may provide consistency in some cases because it is planned and framed in a given context. Phrases such as "I do hereby revoke any and all wills or codicils heretofore made by me" are familiar and consistent with similar phrases found in other wills but such phrases do help to resolve any conflict or ambiguity that may exist. Other text such as "I hereby give, devise and bequeath to my trustee (s) named herein in trust" sound legal but do not reflect the voice of the testator. Garner (2001) notes that this language is often ineffective in that it is often wordy and redundant.

Although many linguists and legal scholars feel that legal language as a whole is wordy and vague, there is one construct in Mrs. Davis' will that is neither. The bigram *I direct* is the most common in the professional will corpus although rarely occurring in the holographic will corpus. The phrase *I direct* occurs 18 times in Mrs. Davis' will. Applying Searle's (1980) categories of illocutionary acts, the phrase *I direct* serves as a directive, instructing the court what to do with Mrs. Davis' estate.

Application of Semantic Analysis

The semantic analysis of Mrs. Davis' will includes a review of the archaic language used as well as "emotion words" used in a non-emotional context and the use of doublets and triplets. There are 27 occurrences of archaic language in Mrs. Davis' will, including 12 occurrences of "hereby." Using Tierma's argument, the multiple occurrences of "hereby" would serve to commit the trustees of Mrs. Davis' will to implement the trust described in her will. However, analysis suggests that the situation is not that clear cut. Most of the sentences are long and wordy, containing multiple archaic words that do not appear to clarify the intent of the text.

The use of doublets and triplets is also part of the language in Mrs. Davis' will. Doublets and triplets are part of the history and formality of legal language. Some present a blend of English, Latin, and French terms while others are remnants of the oral phase of the law. During the Middle Ages, legal transactions, particularly wills, were executed orally and were referred to as testaments. Later, when writing became much more prevalent the associated document was known as a will. The phrase *last will and testament* is a product of this evolution. Garner (2001) counters the argument that the use of doublets and triplets make a legal document more precise by noting that not only is the use of doublets and triplets unnecessary, these phrases serve as surplus words that the court must still take into account. There are 15 instances of 5 different doublets and triplets in Mrs. Davis' will. After review, Garner's observation appears to have merit because none of the instances actually clarifies the text of the will.

One of the key language features analyzed in the quantitative analysis was the use of emotion words. Although professional wills often contain words that would typically be categorized as emotional, these words are used in a non-emotional context. Words such as *trust, share, benefit,* and *asset* are used primarily to describe or give instructions of a fiscal nature. Mrs. Davis' will has 34 instances of emotion words used in a non-emotional context. Examples of these emotion words are *co-trustee*, *trust*, *trustee*, and *share*.

Summary of Professional Case Study

The contest over Mrs. Davis' professional will was lengthy due to the many legal issues involved. The use of legal language did not appear to make the will more precise nor did it help resolve any of the legal issues. Unlike Mrs. Briggs' holographic will, Mrs.

Davis' will was grounded in jurisprudence; however, this fact did not keep the will from falling prey to ambiguity. This ambiguity had to be resolved before the court could move forward in carrying out the instructions of Mrs. Davis' will. Although the court defined the ambiguity as latent, the court ruling noted specific ambiguities related to words used in the second trust. Upon closer analysis, it appears that lexical ambiguity also existed in the document with alternating uses of the words *assets* and *payments* causing semantic ambiguity. The court's ultimate review of the plain language of the will did provide enough evidence to resolve the ambiguity and allow a ruling to be made.

Although most of the instructions in Mrs. Davis' will were specific, the language used was confusing. This confusion led to conflict that could only be resolved in court. Because there were multiple parties involved, as well as a large amount of cash and assets, this situation served to heighten the conflict. The conservator for Mrs. Davis' estate noted that it seemed that the court battle over her estate had involved half of the lawyers in Nashville (Wadhwani, 2011). Although the court ruled that the will provisions were to be upheld in 2004, various filings, countersuits, and other disputes have kept this case going.

This probate process, although not totally resolved, has brought about several changes. One change is that Mrs. Davis' body was moved from its burial site in Nashville to the place she had designated in her will, next to her first husband, Jim Reeves, in Texas. However, there are some issues still unresolved. Several companies have reported that they have collected royalties from the sales of Jim Reeves music but have no one to send the royalties to until there is final resolution regarding Mrs. Davis' estate.

Chapter 7: Discussion and Summary

Overview of This Study

In this dissertation, I addressed the question "Do linguistic differences between professional wills and holographic wills have the potential to affect the interpretation of those documents, subsequently influencing the outcome of the probate process?" In order to address this question, I analyzed a corpus of contested holographic and professional wills. This analysis focused on specific textual features of the respective corpora such as lexical diversity, narrative features such as the use of pronouns, gender, kinship, and emotion terms, and template driven material including archaic words, clauses, and doublets and triplets. First, I analyzed these features in a quantitative analysis using computational textual analysis tools such as the Gramulator. Then, using the quantitative findings as a guide, I examined a sample of the corpus from a qualitative perspective. The results indicate that holographic wills are more lexically diverse than professional wills and contain more narrative features than professional wills. Results also showed a greater use of pronouns as well as gender, kinship, and emotion terms. Professional wills showed less of these features while exhibiting a greater use of archaic words, doublets and triplets. Overall, the professional wills were more formal and template driven than the holographic wills. Further, results indicate that the language of holographic wills may be distinct from the language of professional wills, but they both have issues that cause them to be less than transparent in terms of their intent.

By investigating various lexical features in holographic wills and professional wills, this study fills a gap in the existing literature by providing a comparison between everyday language and legal language. Also, the study looks at various means of

determining the testator's intent by analyzing the language and context of wills. The analyses and results presented here offer help to lawyers and non-lawyers alike. Primarily, these results can help lawyers draft wills that are clear, concise, and to the point. Specifically, the results show that the use of archaic words and doublets and triplets is more confusing than clarifying. In turn, the use of template formatted texts, does not appear to be efficient if the document winds up in litigation. Equally important, those people who choose to draft their own will need to remember that only the text will survive to represent their intent.

The results of this study support the claim by Ong (2002) that the text must stand on its own. In a holographic will, the language used will guide the court in carrying out the testator's intentions. Since their death will bring about the probating of their will, those who draft holographic wills must be cognizant of the fact that they will not be there to clarify their intent. The testator's heirs or the court will have to resolve any issues with the wording of their will.

What Methods Were Used in This Study?

Data collection. I collected a contrastive corpus of holographic and professional wills. The wills were identified by entering relevant search criteria into Lexis Nexis using a random selection approach, I identified 36 holographic wills from an identified pool of 113 wills and 36 professional wills from an identified pool of 213 wills. All wills were gathered from various probate court offices across West and Middle Tennessee. Each will in this corpus was *contested*, meaning there was an issue with the interpretation of the wills requiring the court to intervene and determine a resolution.

Tools. The tools used for my quantitative analysis included the Gramulator (McCarthy et al., 2012), Genre Purity Analysis Tool (GPAT: McCarthy, 2010), Linguistic Inquiry and Word Count (LIWC: Pennebaker et al., 2001), and the Measure of Textual Lexical Diversity (MTLD: McCarthy & Jarvis, 2010). Each of these computational analysis tools was used to analyze a particular linguistic feature or features within the texts. For example, the Gramulator was used to provide *qualitative* as well as *quantitative* output. This output was used to analyze various lexical features of the texts regarding content and context. GPAT is an application designed to determine whether a text is more narrative in style or more scientific. Therefore, GPAT was used to assess the genre of the holographic and professional wills. Building on the premise that holographic wills are more narrative than professional wills, and, therefore more diverse in composition, MTLD was used to determine the lexical diversity of the corpora. Finally, LIWC was used to analyze the use of emotion words in the corpora.

Quantitative analysis. For the quantitative part of my study, the corpora were analyzed using computational textual analysis tools. Lexical features analyzed included, but were not limited to, personal pronouns, gender and kinship terms, emotion words, prepositions, archaic words, and relative clauses. Using the output collected from these various computational analysis tools, Student t-tests and Fisher's Exact Tests were conducted to gather statistical results. If significant differences occurred, I was able to discern language patterns occurring in one type of text that did not often occur in the other type.

Qualitative. For the qualitative part of my study, I used case study methodology (Creswell, 2007; Denzin & Lincoln, 1994; Flyvbjerg, 2011; Maxwell, 1996). I performed

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a case study on one contested holographic will and one contested professional will. Using the lexical features analyzed in the quantitative analysis, I focused my qualitative study on the contextual aspect of the text. Specifically, I looked for language patterns pointing to differences between the two texts that may have caused a legal conflict. This analysis provided a more contextual view of the language used in the text, the language used to resolve the conflict, and other dynamics that may have influenced either the conflict or the resolution of the conflict.

What Are the Results of This Study?

The findings of this study support my original goal, which was to show how the language of the documents differed, to see if patterns exited, and determine how these patterns were used to meet the intended goal of the testator. The results show that language patterns exist in both types of wills and that these patterns may create conflict. Additionally, findings support my hypothesis that holographic wills are more narrative in style than professional wills. For example, holographic wills had a significantly higher number of personal pronouns than professional wills. Pronouns are considered to be an indicator of narrative text (for example, see Biber, 1992; Graesser et al., 2002). Coupled with other lexical features including use of emotion, gender, and kinship terms, findings indicated that holographic wills tend to be more narrative in style than professional wills and the text is more lexically diverse than professional wills. The discourse of the holographic wills tells the testator's story and often provides insight into the testator's emotions, beliefs, and relationships. Conversely, the structure and lexical features of professional wills tend to render these wills more formal and authoritative. For example, the use of legal language features such as archaic words, doublets and triplets, and

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template material is much higher in professional wills than holographic wills. These language features, as well as the lengthy, complex sentence structures in professional wills are specifically indicative of legal texts and of more formal, authoritative texts.

Specifically, in reviewing the results of the personal pronoun usage between the texts of holographic wills and the texts of professional wills, a pattern of difference is discovered. Although the overall theme is the same, the personal, inclusive nature found in the holographic wills is not present in the professional wills. First and third person pronouns such as *I, my, he, she, we, they*, and *their* often serve to show involvement and relationship in the holographic wills. Specifically, the use of second person pronouns in holographic wills helps to show a relationship between the narrator and the narratee. When coupled with specific kinship terms and/or personal names, this type of reference helps to link the narrator and the narratee by way to the text. Additionally, these language patterns help to show some sort of emotional impact, help establish a relationship between the reader and the text or in some cases help establish both relationships. These results support Murphy's (1988) claim that this type of address is less formal and may even show a pattern of relationship. The results indicate a pattern within the holographic texts that point to acknowledged relationships, between the testator and the testator's heirs. This result also tends to support Baron's (1992) claim that people who draft their own wills are, in a sense, directing their words to family members and possibly close friends and neighbors. In this sense, these testators tend to make their writing more personal and relational. Given that the results show that professional wills are either lacking in the use of these features or only have minimal occurrences, this result may be an indicator that professional wills do not exhibit this relational characteristic.

Because the primary purpose of a will is to divest property and belongings, the terminology used to reference and divest this property is a key factor for analysis. Additionally, the divesting of property can have an emotional aspect, it is important to note that this emotional aspect may play a part in whether a will is contested. Relatives and other potential heirs may become anxious that they will not receive what they feel is rightfully theirs. Hard feelings may exist between heirs named in the will. All of these human emotions can lead to aggravated behavior and, in many cases, litigation. In order to address these dynamics, I looked at gender references to gain a better perspective of how the testators felt about the people around them. I also analyzed emotion terms in both will types. Additionally, I analyzed the use of kinship terms to see if the language of the will connected the testator to the intended heirs.

The results reveal that holographic wills tend to utilize more gender, emotion, and kinship words than professional wills. It is worth noting that in this study, the analysis of gender between the two corpora was not from the viewpoint of women's language as compared to men's language. Instead the viewpoint of the study was how gender is treated among the texts of the two corpora and if there was the possibility of a difference in gender references between the two corpora. The study looks at the use of gender references from a more relational viewpoint supporting Stone's (2000) position that gender and kinship terms often intersect to show a particular relationship to the testator.

Further analysis of the lexical features analyzed in Chapter 5 revealed that the professional wills often contained emotion words that are used in a non-emotion context. Examples of these contexts include descriptions of setting up trust funds, bequeathing shares of stock, and allocating specific assets. LIWC, the computational software used to

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analyze emotion words in the corpus uses many dictionaries and sub dictionaries to analyze and categorize text. LIWC tags words such as *trust*, *share*, and *asset* as indicators of positive emotion. However, the use of these words in most professional wills does not infer emotion. Using the Gramulator, I was able to analyze each will for a given set of emotion words in context. After controlling for the appearance of these words in various non-emotion contexts in the professional wills, I processed the data using LIWC. The results show a much lower use of emotion words within an emotional context in the professional wills.

In reviewing the results, a pattern emerges from the holographic wills and professional wills indicating that holographic wills tend to be more *dialogic*. Although the testator is not speaking, the language used to draft the will presents a dialogue between the testator and the testator's heirs. Further, the results show that the professional wills are less interactive, more formal, and authoritative. Building on Bakhtin's (1981) theory of dialogic and authoritative discourse, the language of the two different types of wills form patterns to support this theory. The language of holographic wills shows a relational aspect between the testator and the testator's family and heirs. The only relation that the language of professional wills supports is one between the text and the court. These wills are written in the language of the court, to be read by the court, and to be interpreted by the court. The personal language of the holographic wills is not present in the professional wills.

In analyzing lexical features prominent in legal language, I focused on the use of archaic terms, doublets and triplets, and the use of template or boilerplate material. The results suggest that professional wills have a significantly higher occurrence of these

features. These results are in line with previous research (Danet, 1980; Garner, 2001; Johnstone, 2008; Mellinkoff, 1963; and Tiersma, 1986, 1999). The presence of these features often serves as a distancing mechanism by lawyers. By comparison, professional wills are written for the court and other lawyers rather than family and potential heirs. Consequently, whether the lawyer's client understands the will is a fact that can often be overlooked. In this regard, the language of professional wills tends to be exclusionary.

Contrary to my original prediction, there was no significant difference between the number of relative clauses used in professional wills as compared to holographic wills. One possible reason for this result is that the relative clause analysis was conducted using only relative pronouns. However, a closer analysis of the language of the professional wills shows that in many instances, archaic words may fulfill the function of a relative pronoun. For example, clauses are often introduced with *therefore*, *hereby,* and *wherein* rather than *that*, *which*, or *when.* Given that the literature suggests that relative clauses are indicative of legal language (Danet, 1980; Mellinkoff, 1963), further research is required regarding the use and composition of clauses in legal language.

What Was The Purpose of This Study?

The purpose of this study was to assess how the linguistic differences between holographic and professional wills may affect their respective interpretation, and, as a consequence, how this interpretation may affect the outcome of the probate process. Overall, my focus was to study how the language of the documents differed, to see if patterns exited, and determine if these patterns identified a specific discourse such as narrative or expository and if the patterns created conflict. Specifically, I analyzed the patterns that were identified in the quantitative analysis from a qualitative perspective to

determine if they might create a conflict regarding the testator's intent. In summation, I looked for any differences between the two types of wills and if these differences have any commonality or if they create a conflict.

Chapter by Chapter Review of the Dissertation

In Chapter 1, I outlined the method for collecting the data and the tools used to analyze the data for the quantitative analysis and the qualitative analysis. Although contested wills are not common, I look to the language of contested wills to determine patterns and possible conflicts. I detailed the differences between holographic and professional wills, perceived differences between these two types of wills, and the conflict that such differences can cause. In order to address these issues I outlined a quantitative analysis. This analysis used a total of four computational textual analysis tools, each with varying capabilities, to analyze various lexical features and linguistic traits. The quantitative analysis focused on lexical differences and similarities that exist between holographic and professional wills. My goal was to study how the language of the documents differed, see if patterns exit, and determine if these patterns tend to create a conflict within the document.

Next, I outlined a qualitative analysis that consisted of two case studies focusing on various lexical features of two wills, one contested holographic will and one contested professional will. Each case study provided a linguistic analysis of the language of the will focusing primarily on theory, pragmatics, and semantics. The case studies were suggested so as to provide a more contextual analysis of the type of language used as well as how this language was used in the two types of wills. In performing the analysis at a

more contextual level, I was able to better interpret the text and see extrinsic features that might not have been as apparent in the quantitative analysis.

In Chapter 2, I presented a review of the literature most relevant to my study. My literature review was ordered in three main sections. These section topics included legal probate process, linguistic research, and applied natural language processing (ANLP), forming the basis of my review. For the legal probate process section, I looked specifically at researchers of legal language from various perspectives. Key researchers for this area included David Mellinkoff, Peter Tiersma, Brenda Danet, Bryan Garner, Lawrence Solum, and Bryan Leiter. Regarding the literature for the linguistic research section, I primarily reviewed researchers in the area of narrative such as Walter Ong, Norman Fairclough, Art Graesser, William LaBov, and Deborah Schiffrin. I was also interested in researchers who had published on the subject of lexical features that are indicative of narrative. These researchers included George Murphy, Jamie Pennebaker, Linda Stone, and David Schneider. Other linguistic researchers in the areas of pragmatics, semantics, ambiguity, and discourse include Stephen Levinson, J.L. Austin, John Searle, Barbara Johnstone, Mikhail Bakhtin, Edward Finegan, Wallace Chafe, D. A. Cruse, and Kent Bach. Lastly, in review of the literature for ANLP, I reviewed Douglas Biber, Philip McCarthy, Scott Jarvis, and, again, Jamie Pennebaker.

In Chapter 3, I reviewed the Gramulator tool that was used to conduct most of the analyses in this dissertation. The Gramulator is a computational analysis tool used to provide quantitative and qualitative analysis. Another important aspect of the Gramulator is the tool's ability to provide content and contextual analysis by identifying linguistic features that may exist in the corpora. Previous studies have used

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the Gramulator to analyze various textual features, therefore enabling the researchers to determine differences and similarities between two types of texts. These findings allowed them to analyze specific features in the context used in the particular corpora. In this dissertation, the Gramulator provided the ability to show the differences in various language features between holographic and professional wills, it also allowed me to account for specific language patterns that existed in the texts.

In Chapter 4, I described the methods I used to gather my corpora of 72 holographic and professional wills, the tools used to conduct analyses of various lexical features on these corpora. Each tool had been tested and validated for its intended use. In addition to the Gramulator, GPAT, MTLD, and LIWC were used to analyze various lexical and linguistic features. I then reviewed how the results from these analyses would be studied. It is worth mentioning that the corpora are relatively small, partly due to the labor intensive effort that it took to acquire the texts and then convert them to electronic files. However, despite the size, the corpora helped to form a reasonable point of departure for an aspect of linguistic inquiry that has received little if any attention.

In Chapter 5, I analyzed various lexical features indicative of narrative texts including (a) personal pronouns, (b) references to gender, (c) kinship terms, and (d) emotion words. I also analyzed lexical features indicative of professional texts, particularly legal language, such as (a) archaic words (b) doublets and triplets, (c) relative clauses and prepositional phrases, and (d) sentence length. I conducted t-tests and Fisher's Exact Tests on results gathered from the computational analysis tools.

Overall, results showed that holographic wills contained more personal pronouns than professional wills. Further, another aspect of the personal pronoun analysis shows that the second person pronoun *you* is not found in any of the professional wills. However, second person pronouns were found in 12 of the holographic wills for a total of 78 instances. Although the second person is not often used in narrative text, its presence helps to show a particular relationship. Use of second person pronouns in personal reference helps to engage the narratee with the text. These results support the argument of Fairclough (2003) that the use of the second person denotes a "relationship of solidarity" between two parties. The results further support Graesser et al. (2002) claim that use of the second person references four agents: narrator, narratee, character, and reader. These agents help to link both the narrator and the textual reference of *you* to the reader, thereby increasing the reader's involvement with the text.

In Chapter 6, I conducted two case studies for the qualitative part of the study based on the lexical features[1] analyzed in Chapter 5. I found that both the content and context of the two wills supported the quantitative results from Chapter 5. The qualitative analysis was important in that it provided a detailed review of specific lexical features and linguistic traits. For example, in reviewing the context of lexical features such as personal pronouns, gender terms, kinship terms, emotion words, archaic terms, and doublets and triplets, the qualitative analysis affirms the statistical results. The differences between the lexical features, highlighted in the quantitative analysis point to specific language patterns within the texts that often create conflict or ambiguity.

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[1] In Chapter 6, I reference these lexical features as intra textual features in order to contrast with extra textual features.

What Is the Significance and Implications of These Findings?

Overall, the results of this study help to fill a gap in the literature with regard to contrasting the use of legal language and everyday language. Also, the results of this study support the literature on traits of legal language and traits of everyday language used in narrative form. Correspondingly, the results support that holographic wills tend to be more narrative than professional wills. The significance of this finding not only highlights that the language of the two types of wills are different but indicates these differences may affect the legal interpretation of the documents. The results of this study suggest that those who draft holographic wills may not follow legal jurisprudence. There may be instances where the testator goes outside of the bounds of the legal parameters of a will. An example of this departure is found where the testator bequeathed property to an heir but the testator did not own the property. In these cases, there may be litigation. However, for those who conscientiously provide a methodical breakdown of 1) how they want their estate handled and 2) who they want to give certain things to, their wills are no more vague or ambiguous than many professional wills. This study supports that clarification of meaning may be taken from *personal precedence* rather than the *case precedence* used in professional wills. For the purposes of this study, the phrase personal precedence refers to the personal traits of the testator. The apparent tendencies that these individuals show through their writing.

Given the results of this study and the long history of legal language problems, one wonders why lawyers have not come up with a plan to better address and resolve language differences. In particular, there is a need to address the differences between legal language and everyday language. Related to this scenario, one wonders why the

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lawyers have not come up with a more efficient way of determining meaning. Personal observations and language patterns in the holographic will may often point to what the testator really meant. These features also may help clarify specific language features used in these wills. Further, regarding the drafting of professional wills, the results indicate that these texts are wordy, vague, and often unclear. However, we find that lawyers perpetuate this situation by often using template or boilerplate material and making it fit the specific need. This process distances the lawyer from the text as well as the client. The significance of this factor is that the client is outside of the writing process rather than being an integral part of the process.

What Did We Learn?

The results of the quantitative analysis and the qualitative analysis indicate that there may be many factors leading to the dispute of a will as well as to the resolution of that dispute. The issue of resolving these disputes often requires that the court determine the testator's meaning. Theoretically, the *implication* of meaning would be sufficient in scenarios other than a last will and testament. However, when dealing with dispersing the estate of someone, the meaning must be clear. Determining the testator's meaning entails more than just reading the text. Different people can read the same text and derive a different meaning. This study highlights that linguistic approaches can be used to analyze the language used within the context of the text, determine specific patterns that are characteristic of the text structure and language and from this analysis draw meaning.

Further, as the results show, holographic wills tend to be more narrative in style than professional wills. Often, these holographic texts may lack some legal phrasing. However, the review of professional wills, drafted by lawyers who are trained in

jurisprudence and legal language, found these that these documents were typically

formal, verbose, vague, and ambiguous. Also, the results suggest that the language

differences in holographic wills *and* professional wills can be resolved using linguistics.

However, the legal system rarely uses linguistics to resolve conflicts that center around

language. This argument may be taken further to suggest that the legal profession does

not have a language-based approach to resolve language conflicts found within

documents. Also, the overall approach to determine meaning when the intent of the

testator is not clear does not appear to be comprehensive.

Relevance of the Study

This study is important to probate and estate lawyers who are responsible for

drafting wills and making sure that the requests of the testator are specified. These

lawyers typically draft professional wills, advise clients on the distribution of their estate,

and may represent an heir or heirs in a legal dispute over the meaning of a will. These

lawyers are schooled and experienced in jurisprudence and legal language, which they

use on a daily basis in their profession. However, when a dispute regarding the

stipulations of a will arises, lawyers are often at a disadvantage in determining the

meaning of the language used in the will, particularly a holographic will. The application

of computational textual analysis and linguistic analysis may help resolve this problem.

The application of these types of analyzes can provide more specific, detailed results

regarding the language used and contextual meaning of the language.

This study is also important to probate court judges because they have the

ultimate authority to determine the final outcome of the probate process and to decide on

a controversy regarding a will. The overall charge of the probate judges is to make sure

that the law is upheld, that the will is interpreted as closely as possible, and the dispute is resolved. With no prior knowledge of the parties involved and no possibility of getting clarification from the testator, this task may be daunting. Judges may spend most of their time trying to find relevant case law rather than researching the language used in a contested will. Given the opportunity to review a linguistic analysis of a disputed will, may provide judges with the clarification necessary to resolve the dispute and move forward with finalizing the testator's will. Although the percent of contested wills is small, these contests are expensive and lengthy. This study supports an ordered approach to help judges review language issues such as ambiguity, vague wording, and complex sentences and resolving these from a linguistic perspective. This approach may also reduce the costs and time of those contests that do occur.

Another, group, benefiting from this study are legal assistants and paralegal professionals. These professionals help lawyers on a daily basis and often create drafts of documents for the lawyers' final review. Also, legal assistants and paralegal may assist in establishing trust funds and planning estates. Although they cannot legally finalize a document, they can play a large role in the overall process of drafting the document. Being aware of the language necessary to draft a clear, meaningful will, helps professionals in these positions to focus on content and context rather than just form.

What Future Research Might Be Conducted?

The corpus used in this study was relatively small. However, the corpus was sufficient to provide some intriguing results that fills a gap in the literature and encourages future research with an expanded corpus. This expansion may include other forms of wills, such as preprinted forms and computer software-generated wills. By

expanding the corpus, more features can be analyzed although, for the results to be comparable, similar lexical features need to be analyzed.

This study only begins to reveal the research possibilities in the area of legal documents. As the legal community becomes more diverse, there will be a need to look at other types of legal documents. In some cases these documents will have a counterpart such as a holographic will such as a text written by a lay person. The results of the current study compel us to reason that by comparing the language used and applying linguistic principles, more than likely, language conflict in the document can be resolved.

Future research in the comparison of legal language and everyday language can expand the scope of the current study. Additionally, future studies may analyze other forms of legal documents for comparative results. Particularly, the legal community needs to review the affect these results may have on more detailed parts of the probate area, including assets protection, estate planning, trusts, and powers of attorney.

The results of this study also highlight the need to explore other professional areas that may tend to use specific and, in some cases, exclusionary language. Although communication is a key goal in most professions, this communication may be hampered by the use of language that is only understood by members of that profession. This type of exclusion can often turn people away from a profession rather than taking advantage of the expertise available. As paying clients, people need to feel that a profession respects their situation rather than excluding them from the overall process.

Conclusion

The current study marks only a beginning in the study of probate language compared to everyday language. Also, it demonstrates that the need to use linguistics to

determine meaning is important. Specifically, I suggest that although a holographic will's

meaning may not be entirely clear, by using textual analysis, it is possible to better

understand its intent. The goal of my research in this study was to demonstrate to the

legal community how non-professionals write their wills so that when a controversy over

a holographic will arises, the legal community can apply this analysis and determine the

testator's intent, since by law, this process is what is required. I have approached this goal

from a linguistic perspective and analyzed my corpus looking for patterns to indicate the

language related to a particular discourse. Once language patterns emerged, I looked

further to see if the patterns of the relevant discourses, in this study, narrative and formal

discourse created conflict. It is this conflict that is a key part of my study. Using a

linguistic approach, these conflicts can be resolved. Also, I suggest that it is important for

linguists to embrace the study of any professional language that may tend to exclude

people who are not part of that profession. Linguistically, the more we learn about how

languages of different professions, like the law, are used and interpreted, the more we

extend our overall knowledge of language. And surely that is of benefit to us all.

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