SHAPING DISCOURSE, SHAPING CULTURE:

THE 'FINDING' GENRE AT THE WORKERS' COMPENSATION REVIEW BOARD

by

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Abstract

Language and thought are interrelated and shaped through social experience within cultural contexts. Writing is a socio-cultural activity, and the standard forms of writing--genres--that arise from and are used by a culture embody and maintain the norms of their culture, the shared assumptions and beliefs through which a culture constructs its knowledge about reality. Hence, the exploration of a genre illuminates its culture and some of the ways that culture makes meaning.

This study of the "finding" genre at the Workers' Compensation Review Board employs quantitative and qualitative research methods to (1) evaluate and interpret the effects on the genre of a "plain language" writing training program, and (2) investigate the relationships among the products, contexts, and processes of finding-writing.

The quantitative evaluation of the training's effects revealed that the stylistic features of findings, such as passive constructions and jargon, were generally unaffected by the training. The qualitative investigation into the finding's contexts and processes revealed that this resistance occurs because the style is constrained by the genre's rhetorical and cultural contexts, as well as by the texts with which it interacts dialogically.

The genre's impersonal and authoritarian discourse-

stance likely excludes many of those whom the Review Board
identifies as its primary audience, but it embodies the norms
of Review Board culture and serves its particular purposes
and those of the broader legal culture. A plain language
revision of the finding's authoritative discourse is also a
re-vision of the values and functions of Review Board culture
and how it constitutes its authority.

The finding genre is informed by the social,
intertextual processes of the judicial system, and affirms
the knowledge of that culture by participating in the
intertextual dialogues that constitute the culture. The
finding genre and its culture thus construct each other, and
their relationship exemplifies how language functions in
creating realities.

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Contents

Introduction

This study of writing investigates a genre, the
"finding," in the context of its discourse community, the
British Columbia Workers' Compensation Review Board. The
initial motive was to evaluate the effects on findings of a
writing training program given to Review Board members by
Simon Fraser University's Writing and Publishing Program.
However, the implications of the evaluation's results led me
into ethnographic territory, into an examination of the
socio-cultural processes and contexts that inform the genre.
Thus this study became, in essence, a writing ethnography--a
description of the Review Board culture constructed through
the examination of one of its symbolic artifacts: the finding
genre.

Specifically, this study aims to describe (1) the
effects of a writing training program on findings, (2) the
features and conventions of the genre in relation to its
cultural contexts, and (3) the social process of finding-
writing. It thus focusses on the written *product* of the
finding (in Chapter 3), on the finding's *contexts* (in Chapter
4), and on the *processes* that inform the finding (in Chapter
5). In order to conduct these different kinds of inquiries,
I developed a methodology that incorporates elements from
both quantitative and qualitative methods of writing research

and combines them to serve an ethnographic end.

Because this study is based on empirical research, it follows (loosely) the traditional structure of an empirical research project, especially in its first three chapters. Chapter 1 locates the study within a theoretical context, provides background on its research object, and describes its primary goals and inquiries. Chapter 2 discusses the methodology employed, and Chapter 3 describes and analyzes the results of the empirical quantitative research. The two remaining chapters, while drawing on empirical research, are primarily hermeneutical in nature: they focus on interpreting the results of the qualitative research within the context of composition theory on writing as a socio-cultural process.

Like all genres, the finding genre is a cultural form: a genre's features and conventions embody the norms of its culture, i.e., the assumptions and beliefs shared by members of that culture and through which their culture is shaped. And, like all genres, this ethnography embodies and is formed through a set of cultural assumptions and beliefs. So, implicit in my explication of the finding's conventions are the assumptions of the academic culture in which this study functions and through which it is shaped. This study's tendencies toward reflexivity and qualification stem from its attempt to acknowledge its own cultural-situatedness and thereby reveal the lens through which its object is perceived.

What began as an evaluation of the effects on a genre of a writing program thus became an exploration of the interdependent relationship between language and culture as it is revealed in the genre. This study seeks to illuminate this relationship and, ultimately, some of the ways in which language functions to create realities.

Chapter 1

Contexts

The exploration of genre is part of a broader discussion among contemporary composition theorists about writing as a social process and the relationships between language, thought (or knowledge), and reality. Over the past quarter-century, composition theory and pedagogy have shifted away from traditional, product-centered paradigms and toward process-centered approaches to writing. And one of the more recent results of this paradigm shift is an emphasis on writing as a social process rather than an individual, cognitive activity.

Composition study has traditionally "favored Platonic and internal dialogic views" of writing where the individual writer finds knowledge and inspiration from within herself solely or from a dialogue with an internalized other (LeFevre 94). These views concentrate upon the individual writer as the sole agent of meaning-construction and invention, and largely ignore the social contexts and cultures the writer inhabits.

Karen Burke LeFevre summarizes the "key limitations" of a Platonic view of invention thusly:

> [It] leads us to favor individualistic approaches to research and to neglect studies of writers in social

contexts (23); [it] depicts invention as a closed, one-way system (24); [it] abstracts the writer from society (25); [it] assumes and promotes the concept of the atomistic self as inventor (26); [and it] fails to acknowledge that invention is collaborative. (29)

She argues that invention is a social act, and that "thought and language are intimately related," are active agents "in a process of constituting reality," and are social in that "all language . . . operates flexibly as part of a continuum that includes both private and public dimensions" (118-9).

Currently, there are two theoretical camps in composition study: those who, in Patricia Bizzell's terms, regard writing as "inner-directed," and those who see it as "outer-directed," who focus on the "social processes whereby language-learning and thinking capacities are shaped and used in particular communities" (215). The discussion between the two camps continues, and only very recently have "a number of researchers . . . expressed their discomfort with the dichotomy that has been created between social and cognitive perspectives on language learning" (Berkenkotter 151). For example, Linda Flower--previously, a vocal proponent of the cognitive perspective--has proposed "a more interactive theory" that suggests "that both cognition and context may in a sense *construct* one another" (286, 287).

In terms of the social/cognitive dichotomy, this study belongs to the "social" camp: it investigates a standard form used by a culture--a genre--through a social perspective.

However, in the final pages, I turn my focus to the
individual and attempt to pursue her relationship with the
language(s)/culture(s) she inhabits, thereby shifting my
perspective on language from the purely social to the "more
interactive." Nevertheless, the main thesis of this study is
that language is primarily a socio-cultural activity that
participates in the construction of knowledge and,
ultimately, reality. This thesis is informed, in part, by
the recent (academic) discourse on social constructionist
theory.

Theoretical Context

Social constructionist theory perceives knowledge and
the authority of knowledge as non-foundational and
constructed through social means. According to Kenneth
Bruffee in "Social Construction, Language, and the Authority
of Knowledge," "[k]nowledge is identical with the symbol
system (i.e., the language) in which it is formulated. The
community of knowledgeable peers constituted by that symbol
system constructs knowledge by justifying it socially, that
is, by arriving at a sort of consensus" (779). Bruffee
affirms Richard Rorty's claim that even though "we are shoved
around by physical reality," our knowledge is not engendered
by such contact with reality, but rather by the way we "deal

with" our *beliefs* about reality and justify them socially (cited in Bruffee 777).

From this perspective, then, knowledge is generated by our social justification of beliefs about reality. As Rorty asserts, "we understand knowledge when we understand the social justification of belief, and thus have no need to view it as accuracy of representation" (*Philosophy* 170). Clifford Geertz proposes similar arguments: "Human thought is consummately social: social in its origins, social in its functions, social in its forms, social in its applications" (cited in Bruffee 780). In general, social constructionist theory sees knowledge and the authority of knowledge as "community-generated, community-maintaining symbolic artifacts," and from some social-constructionist perspectives, the individual self is also a community-generated and maintained construct: emotion, perception, cognition, imagination, and so on, are "social affairs" (Bruffee 777, 775).

Similarly, Mikhail Bakhtin sees the individual psyche as "a social entity that penetrates inside the organism of the individual person" (cited in Emerson 249): consciousness exists on the thresholds of social experience, and language (both inner and outer speech) is dependent on experience. Individual belief systems or ideologies are thus dependent on social experience, engendered in a psyche's interaction with its environment. And language is the fluid embodiment of

these socially-constructed belief systems.

Kenneth Burke's notion that a word embodies an attitude, and an attitude is an incipient action, is similar to Bakhtin's notion that a word's meaning lives in the world of speaking, acting people, and cannot be severed from its social contexts. Burke states "the nature of the term as an 'act' is defined not just by its place in the context of a certain language, but by its extra-verbal 'context of situation'" (*Language* 359). He discusses "the social content in . . . words, their nature as receptacles of personal attitudes and social ratings due to the fact that language is a social product" (*Language* 361). Stanley Fish also claims there are no determinate, acontextual meanings: "meanings come already calculated, not because of norms embedded in the language but because language is always perceived, from the very first, within a [changeable] structure of [situational, social] norms" (318).

All texts or, in Bakhtin's terms, "utterances" are thus social in their creation, form, and function within living contexts. However, they are also social in their dialogic relationships to other utterances, in their participation in a "chain of speech communication," i.e., their *intertextuality.* Bakhtin says, "There can be no such thing as an isolated utterance. It always pre-supposes utterances that precede and follow it. . . . Each is only a link in the chain, and none can be studied outside this chain" (*Speech*

136).

Written genres, then, arise from their discourse community's socially justified beliefs, and, among other functions, serve to maintain those beliefs by participating in the intertextual dialogue of their community. A genre is social, and (as with any socially-shared form) those who adopt its use also partake, to some degree, of the attitudes that shape it. Learning a genre is learning how to communicate with the members of its community; familiarity with a genre marks an end of a kind of rite of passage into its community. For example, a student who becomes adept in an academic essay genre learns how to participate in that academy's conversation and so adopts, to some extent, the attitudes that conversation embodies; hence she gains entrance into the academic culture.

Genres are therefore suasive in that they constrain responses to situations through the attitudes they shape and maintain. According to Richard Coe, they are thus ideological: "when a particular form constrains against the communication of a message contrary to the interests of some power elite, it serves an ideological function" ("Apology" 20).

Basically, genres perform useful functions in their cultures: they "represent the most efficient ways cultures have at a given point in time of going about their business" (Martin, Christie, and Rothery 62). J.R. Martin "defines

genre as a staged, goal oriented social process": genres are *staged* because there is usually more than one step involved in order for participants to reach their goals; they are *goal oriented* because they evolve to fulfill a task or "get things done"; they are *social processes* "because members of a culture interact with each other to achieve them" (59).

Like languages, genres are "*evolved* systems": they act as stable forms used and maintained by a culture, yet they are also flexible and participate in social change (Martin et al., 60, 59). Indeed, as Anne Freadman asserts, the rhetorical rules of a genre are more an occasion-appropriate "etiquette" than they are "fixed laws," and as such have everything to do with "how people get on with one another" (111).

So discovering the rules or conventions of a genre facilitates not only the teaching/learning of the genre and thus the socialization into its culture, it also facilitates understanding of the culture's beliefs and how it justifies them socially--in short, its "knowledge" and assumptions about reality. The analysis of genres that arise from and are used by a discourse community or culture can therefore offer clues to how that culture goes about making meaning.

For example, in Richard Freed and Glenn Broadhead's comparative discourse-analysis of two similar consulting firms, they find that one firm's *Management Consultant Proposal Guide* is like a "sacred text" that contains

"commandments" and "codes of conduct"; "in short [it]
codifies the organization's institutional norms, its rules
and regulations," and is "a guide, not just for writing
proposals but for living, working, and surviving in the
culture" (158). The *Guide*, while acting as a *pre*scription
for the kind of writing done at the firm--i.e., its rules of
genre--is also a *de*scription of the firm's culture.

Yet even though institutional norms "define the writer's
discourse community," they are often invisible to the writer
because their "context is invisible, transparently bound to
the ordinary and the everyday" (Freed and Broadhead 162).
And "sacred texts, often invisible, govern behaviour and
desire and [as Fish says] . . . 'standards of right and wrong
do not exist apart from assumptions but follow from them'"
(Freed and Broadhead 163-4). By making visible the rules of
a genre, one also makes visible its culture's norms, i.e.,
its socially-shared knowledge and assumptions.

Like other genres, the "finding" genre at the Workers'
Compensation Review Board embodies a system of attitudes that
is upheld by the members of that culture. And the
conventions of the genre reflect cultural norms which are, as
such, often invisible in their "normalcy" to the members who
uphold them. One aim of the following chapters is to make
visible the conventions of the finding genre, and the social
processes and contexts that shape it, and thereby promote an
understanding of the genre's discourse community and how that

community goes about making meaning. Such an understanding
will provide better tools for effective writing instruction
in the genre and those of other related (legal) communities,
as well as contribute to the field of inquiry into the
relationships between language, thought, and reality.

Ethnographic Context

Review Board findings are a form of *forensic* writing--in
both Aristotle's sense of *forensic* as a certain kind of
formal argument or rhetoric that has "a basis in the law"
(235), and in the sense of *forensic* as concerned with the
application of medical knowledge to legal matters. (Findings
usually concern the medical condition of the worker, i.e.,
whether or not an unfit condition resulted from his or her
employment and if that kind of condition is compensable.)
Characteristically, forensic writing "has to do with matters
of fact--now true or untrue, and necessarily so . . . since
the past cannot change. . . . The Forensic speaker [or
writer] argues about the past . . ." (Aristotle 234).

In particular, findings are a form of legal *decision-
writing*. In Ronald Goldfarb and James Raymond's guide to
legal writing (*Clear Understandings*), legal decision-writing
is described--like Aristotle's forensic argument--as
"[r]etrospective writing--writing that deals with facts from

the past" (68). They state, "The purpose of this kind of writing is almost always either to explain or persuade. As opposed to lists of more or less independent provisions, they should be meticulously designed engines of logic, applying one or several theories of law to the facts at hand" (68).

Findings are legal documents composed collaboratively by three Review Board members who form a panel. They decide the outcome of a worker's appeal (to the Workers' Compensation Board) based on a formal hearing or a "read and review" of the worker's case file. In a hearing appeal, the three Board members are present at the hearing along with the worker and often his or her legal representative. After the hearing, the members meet and decide whether they will allow or deny the appeal: they weigh the evidence and determine and apply the laws and policies relevant to the case. One member of the panel then drafts the finding and circulates it among the other members for revision and editing. When the finding meets the satisfaction of the panel members, all three sign the final draft.

In a read and review appeal, one member reads all the information on the worker's file, makes the decision, drafts the finding and circulates it. As in a hearing appeal, the read and review finding must be approved and signed by three members. (Hearing appeals are the most common, and for this reason, they are the focus of this study.)

When the "Board of Review" was established in 1974,

findings--or "decisions" as they were then called--were short and included a personal cover letter (to the appellant) that outlined the decision made. That is, the appellant received an informal letter in addition to the official finding. After a year or so the cover letter was abandoned, and findings grew progressively longer and more detailed. From approximately 1978 to 1989--when a new "standard" format was introduced--the style and form of the finding remained essentially consistent.

During the Board's early years, there were three panels who coped with thousands of appeals a year. In 1986 the legislature moved to alleviate the backlog problem by expanding the organization. New members were hired, and the "Workers' Compensation Review Board" was officially instated. New members, whose professional backgrounds range from legal to labour union, continue to be hired, and, currently, there are fourteen panels who write approximately 350 findings a month in total. Since 1989 writing competence has been a criterion for hiring members.

The Writing Program

In 1989, at the request of the Review Board's Chair, Simon Fraser University's Writing and Publishing Program developed and implemented a series of writing courses that

were compulsory for all members--the "veterans" as well as the newly-hired. The instructor, Peter Buitenhuis (of S.F.U.'s English department), and the Board's Chair developed a new standard format for findings that incorporates a "plain language," reader-centered style and form.

Prior to the development of the standard format, findings were essentially narratives of the appeal written from the perspective of the Review Board, i.e., they were writer-/subject-centered: the events of the appeal were described in the order of their documented submission to the Board--the chronology of the case, not the chronology of the actual events in the appellant's experience. The steps leading up to and including the panel's decision were narrated in chronological order. That is, most findings began with a description of the reasons for the appeal, followed by a report (and sometimes discussion) of the evidence, and concluded with the decision reached--the outcome of the appeal. There was no obvious implied audience in the findings. The document was sometimes divided, apparently arbitrarily, into sections with Roman numerals. Titles of functions, such as "the worker" and "the employer," were used rather than the names of the people involved.

Upon examination of these findings, S.F.U.'s Writing and Publishing Program identified, in its course proposal, the following "problems" apparent in the findings: "weak organization, particularly in narrative structure; frequent

neglect to identify the function and identity of the parties in the case; overuse of the passive voice; confusing syntax, especially in the overuse of dependent clauses; verbosity."

A major goal of the writing program was to change the structure and style of the finding from writer-/subject-centered to reader-centered, to make the finding more accessible to the lay reader. The program assumed (in agreement with Review Board officials) that the primary audience of a finding is the appellant--the worker--who is likely unfamiliar with legal (and bureaucratic) discourse. Hence the instructor encouraged the use of lay language over technical language and personal names over titles of functions, and prescribed a logical structure for information in which the logic of the decision (-making) is salient rather than the chronology of the case.

The standard format structures the finding logically by dividing it into sections with the following headings: Introduction, Issues, Outcome, Evidence, Submissions, Law and Policy, Reasons and Findings, and Conclusion. The logical structure and the use of sections with headings are characteristic of plain language documents: in a logical structure the lay reader is able to follow the logic behind the decision; in a section-heading format the lay reader is able to locate information quickly and easily.

The instructor taught members how to write plain language, standard format findings and to improve their

writing generally by (1) working closely with each, in one-on-one tutorials, on revising a draft of a finding he or she had already written and (2) conducting lectures and seminars. His pedagogy was process-oriented and drew on current composition theory. Lectures were primarily devoted to introducing techniques aimed to enhance and enable the writing process in its pre-writing, drafting, and revising stages, and attended to the particular writing context of Review Board members. For example, when discussing the pre-writing stage, he encouraged members to "free-write" immediately after the hearing; he also suggested the use of invention heuristics, and provided the members with a model heuristic he designed especially for finding-writing.

When discussing the drafting stage, the instructor taught members how to analyze rhetorical context, how to choose what information to include and exclude in the finding, and how to organize a finding in the standard format. He taught how to revise a finding by presenting a six-step revision heuristic, designed to focus the writer's attention on (1) information that needs adding, deleting, or substituting, (2) the truth and accuracy of statements, (3) paragraph unity, development, and coherence, (4) sentence clarity and simplicity, (5) diction (use of lay language), and (6) proofreading for minor errors. During lectures on drafting and revising, he emphasized the importance of using a style suitable to a lay audience.

The seminar aspect of the course included workshops and open discussion: members worked on exercises, the results of which were discussed and evaluated in class; open discussions encouraged members to voice their opinions on the lecture material, discuss their experiences as finding-writers, raise questions, offer suggestions, and so on.

The instructor also employed some product-oriented pedagogical methods, such as providing a list of prescriptive criteria for writing effective findings, and examples of what the product should look like. The following is a prescription for writing findings (in the standard format) created by Peter Buitenhuis and given to Board members in the program:

1. Write for an educated layman [*sic*].

2. Avoid legal language whenever possible.

    a. Use technical legal phrases only when you need them.
    b. Avoid gratuitous Latin words and phrases.
    c. Don't reach for a long word when a short one will do the job better.
    d. Don't toss in weak qualifying phrases.
    e. Avoid piling nouns on top of other nouns.
    f. Avoid expressions often associated with legal documents that have no real legal function.

3. Write concisely.

4. Divide your judgement into sections.

    a. Introduction
    b. Issue(s)
    c. Outcome
    d. Evidence
    e. Submissions
    f. Law and Policy

       g. Reasons and Findings
       h. Dissent (where appropriate)
       i. Conclusion

5. Begin with your conclusion.
   (That is, begin either with your conclusion or by
   pointing toward it.)

6. Follow the principles of good composition.

       a. Write for others, not for yourself.
       b. Keep to the main point.
       c. Put your prose into chunks that the reader can
          digest.
       d. Emphasize nouns and verbs.
       e. Don't overwork the verb *to be*.
       f. Use the active voice, most of the time.
       g. Be specific, whenever possible.
       h. Use accepted conventions of grammar and
          typography.
       i. Proofread.

The main text used in the course was Goldfarb and Raymond's
Clear Understandings: A Guide to Legal Writing.

The Plain Language Movement

    The Review Board's attention to the writing it produces,
and its desire to make that writing more accessible to its
audience, may be seen as part of a current trend toward using
plain language in public documents of government, business,
and law. Plain language legal documents

       are written in language that is appropriate for the
       needs of the reader and the purpose of the document, are
       designed so that important information can be easily
       located, can be understood the first time they are read,
       and are legally binding. (Dykstra 4)

The objective of the Plain Language Movement is "to have writers communicate effectively with their readers" (Redish 126). In recent history, the catalyst for the Plain Language Movement was the consumer movement that began in the United States during the 1960's and 1970's. Because of "the infusion of law into every aspect of daily life" (Dykstra 15), consumers demanded a plain language approach to legal information so that they could understand the laws that affected their lives. The "governments, the courts, and private businesses concurred. Led by lawyers, the writing of the law, whether in consumer documents, forms or regulations, underwent close scrutiny; new methods were tested and found useful" (Dykstra 15).

The United States now has plain language laws "that require the use of plain language in certain types of consumer documents" (Dykstra 16), e.g., insurance policies. The United Kingdom followed the United States's lead, and, currently, their "consumer-led movement is the most active advocate for the plain language cause in the Commonwealth" (Dykstra 21). Australia also plays an active role in the Plain Language Movement, and its consumers have formed a group that promotes plain language. The movement toward plain language is spreading to European countries—some of which, like Scandinavian countries, have been producing plain language documents on legal information for quite some time (Dykstra 24).

Canada, however, does not have a consumer-led movement or plain language laws, and "lags far behind other countries in using plain language to effectively communicate information on the law to the public" (Dykstra 25). Canada has also not kept up with its neighbours in the use of plain language in government. The 1987 "Southam News Survey and Report of Literacy in Canada" finds "[l]ittle has been done in Canada to make government materials more readable--a sharp contrast to other western nations" ("Government").

Since the time of the "Southam News" report, a number of plain language advocacy groups--many of which are working toward the implementation of plain language in the legal community--have formed throughout Canada, including, in British Columbia, The Plain Language Institute (initiated by the B.C. Ministry of the Attorney General) and the Plain Language Project (which is part of The Continuing Legal Education Society of British Columbia). Both are funded by the B.C. Law Foundation. In addition, the Legal Services Society in Vancouver has been producing plain language guides to the law since 1982, and is a resource for information on plain language and the law. On a national level, the Canadian Legal Information Centre (CLIC) provides a forum for plain language in Canada, and has committed itself to improving public access to legal information.

The Plain Language Movement in Canada has been gathering momentum in recent years, and British Columbia has been

playing an increasing role in it. S.F.U.'s Writing and Publishing Program, for example, has been instrumental in bringing plain language to Vancouver business and legal communities through its offering of non-academic writing courses, such as those given to members of the Review Board. Such courses contribute to the Plain Language Movement by providing members of such communities the instruction needed to communicate information effectively to those both inside *and outside* their communities. Teaching members of legal communities to write in a highly-accessible, "plain" language is especially important because, as Gail Dykstra says, "[t]he content and intent of the law will only be understandable when the language of the law is understandable" (1).

Goals and Inquiries

The Review Board's official objectives in establishing a standard format are as follows (excerpted from a memo from the Review Board's Chair to all members):

1) <u>To have consistency with the legislation and regulations</u>

We have a responsibility in everything we do to demonstrate that our conduct and performance standards are consistent with the legislative framework within which we operate. Reference: Section 90(3) of the Workers' Compensation Act.

2) <u>To minimize the amount of time and labour required</u>

A standard format and terminology permits us to derive
the maximum benefit from our word-processing system and
makes the jobs of the support staff and secretaries
easier.

3) <u>To provide ease of understanding</u>

A standard format in which the structure and flow of the
findings are fairly constant makes our decisions easier
to read and understand. They will also be more suitable
for publication in the Reporter Series, since those
looking for direction and guidance within the system
will not have to acquaint themselves with a variety of
forms and terms.

4) <u>To enhance our image and credibility in the eyes of
those we serve</u>. (Bibby 1)

Of particular interest to the Review Board was the

effectiveness of the writing training program and the ways in

which their writing may be improved further. In conjunction

with S.F.U.'s Writing and Publishing Program, I proposed to

facilitate the improvement of the writing of findings by

examining how they are written and evaluating the effects of

the training program upon them.

The methods I used to gather data include (1)

observation and note-taking, (2) an extensive holistic

evaluation (performed by four evaluators) of thirty findings

written by both the veterans and the newly-hired members

before and after the introduction of the standard format, (3)

a computer discourse-analysis, and (4) a questionnaire and

interview. Due to my interest in the relationships among the

finding genre, its social/rhetorical constraints, and its

discourse community, I incorporated in the above methods the

means by which I could gather data in these areas as well.

Hence I combined the research aimed toward improving the Review Board's writing and their training program and the research aimed toward answering and stimulating questions pertinent to composition studies. That is, the gathering and analyzing of data served a dual function. One "arm" of research complemented the other: For example, the description of the finding genre serves as a basis for its prescription; that is, the kind of writing that is actually being done may now be compared/contrasted to the kind of writing the Board prefers, and the gap between the two may be closed in a revised training program. And the articulation of the various factors that enable and constrain the writing process and product may help to conceptualize what changes are possible and how they might be implemented.

The question of concern to the Review Board--whether the training program was successful in producing more effective findings--had, I discovered, no simple answer, but rather spawned further questions. Some of these questions found likely answers; others remain fertile ground for speculation, hypothesis, and even more questions that extend past the ethnographic domain of the finding genre and toward the nature and functions of language.

Chapter 2

Methodology

Empirical inquiries into the nature and functions of language as a social phenomenon may be generally categorized as quantitative or qualitative. My inquiry into the Review Board's finding genre does not, however, fit neatly into one or the other category, but combines elements from each. I made use of both quantitative and qualitative methods in my research. The nature of the task dictated the method of approaching it: For example, the evaluation of the training's effects on findings called for measurement and comparison/contrast of objectifiable textual entities, such as the use of lay language over jargon, and the active voice over the passive. So my product-based research of the genre was essentially quantitative: I isolated textual features and used objective criteria to measure them. However, my inquiries beyond the text--why certain features exist, why the training affected some features and not others, and how the (Review Board) discourse community shapes, and is shaped by, its documents--were qualitative, and made use of interviews, questionnaires, observation, and note-taking.

Quantitative inquiries approach the social study of language through the analysis of objectifiable, empirical proofs. For example, in sociolinguistic research,

quantifiable linguistic features may reveal information about social class (cf. Labov). A quantitative anaylsis of a text whose aim is to describe its generic features might measure readability levels, determine topical progressions in sentences and paragraphs, and examine specialized vocabulary. This kind of analysis of textual features "has long been dominant in the study of business and technical writing" (Faigley 233). Indeed, "the primary concerns of linguistics and literary criticism during much of the twentieth century have been the description of formal features in language and texts" (Faigley 233).

Qualitative inquiries into language as a social phenomenon are essentially ethnographic and based on the precepts of recent (interpretive) anthropological research. The researcher, over a period of time and immersion in the culture being examined, conducts a "case study" of the culture, employing a variety of data-collecting methods, e.g., observation, note-taking, and personal interviews. Because qualitative research investigates the complex web of social and linguistic interaction in its dynamic whole--which is not objectifiable or measurable--the researcher may use intuition and innovative interpretive and heuristic strategies to find vantage points in the thicket of data. Indeed, according to Stephen Doheny-Farina and Lee Odell in "Ethnographic Research on Writing,"

in trying to understand the significance of a body of
data, an ethnographer must depend in part on intuition,
serendipity, inspiration; as with any other form of
inquiry, there is no way to reduce the process of
ethnographic inquiry to a sequence of conscious
intellectual operations that lead inevitably to a
profound insight. (527)

Quantitative and qualitative approaches differ in their

assumptions about, and the manner in which they

conceptualize, the task at hand. Quantitative research--

which is dominant in the "hard" sciences--tends to assume the

existence, and seek knowledge, of distinct, objectifiable,

universal, and measurable entities. Qualitative research--

which is (becoming) dominant in the social sciences--tends to

assume that knowledge is contextual, bound by the conventions

of community symbol systems, and, as some theorists maintain,

is constructed through the social justification of belief.

The kinds of results qualitative research usually

produces, in contrast to quantitative research, are "more

issue-based than property-based, more case-particular than

population generalizing, more subjective than objective, more

experimental than rationalistic, more empirical than

idealistic, and more hermeneutic than positivistic" (Day and

Stake 7). So where the quantitative researcher would isolate

and objectify features of a written text in determining their

relations to, for example, a (generalized) social class, the

qualitative researcher would study the text within the

subjective dynamic of its (particular) social context.

George Herbert Mead says, "the behaviour of an individual can be understood only in terms of the whole social group of which he is a member, since his individual acts are involved in larger social acts which go beyond himself and which implicate the other members of that group" (cited in Doheny-Farina and Odell 506). Faigley uses a similar line of reasoning when he predicts that "because qualitative research offers the potential for describing the complex social situation that any act of writing involves, empirical researchers are likely to use qualitative approaches with increasing frequency" (243).

The relative merits of the two research modes are the subject of an ongoing cross-discipline debate among academic researchers and theorists (cf. Berkenkotter). However, although both quantitative and qualitative approaches to language/writing research have their strengths and weaknesses, each is valid and both are valuable in adding to the conceptually distinct facets of the common body of knowledge to which they aspire. Thus it is likely that a combined quantitative-qualitative methodology would provide a more thorough and well-rounded description of its subject than could each alone. Indeed, Carol Berkenkotter echoes this sentiment when she asks, "Need we choose sides between quantitative and qualitative or empirical and hermeneutical approaches to our objects of study?" And "how do we help our graduate students to conduct multimodal inquiry?" (166).

Because I used a combined quantitative-qualitative methodology, I employed what N. Denzin refers to as *methodological triangulation.* In Doheny-Farina and Odell's words, this means "using a variety of research methods to elicit data from a variety of sources" (509). Denzin believes that triangulation is of the utmost importance in research because the more methods employed, the greater the likelihood of finding conflicting evidence and countering biases inherent in a single method. He states: "The greater the triangulation, the greater the confidence in the observed findings. The obverse is equally true" (cited in Doheny-Farina and Odell 510). E. Webb agrees: "Every data gathering class--interviews, questionnaires, observation, performance records, physical evidence--is potentially biased and has specific validity threats. Ideally, we should like to converge data from several data classes. . ." (cited in Doheny-Farina and Odell 509).

However, the variety of data-gathering methods is inevitably dictated, in part, by the degree of access to data offered by the research site to the researcher. Degree of access may depend on any number of a variety of factors, but most often depends on the community's willingness to be studied. In an ethnographic study of writing in the work-place, the researcher might be limited access to the work-place because of the time constraints of workers and the possible disruption of efficient production, the confidential

nature of its documents or activities, the belief that the

study's costs (time, disruption) will outweigh its benefits,

the lack of perceived benefits, and so on. According to

Doheny-Farina and Odell, the ideal research site is one

> in which writing and reading are significant activities
> for the participants . . . [and] that allows for some
> freedom of access. Specifically, researchers should
> look for a site that they can visit at varying times
> during the day or night, and where they can collect data
> for an indefinite length of time. They should also be
> able to take various physical perspectives within the
> site and to observe and speak with a variety of
> participants. (511)

Because of the confidential nature of Review Board

documents (findings) and activities (hearings), as well as

the members' extremely tight time constraints, my access to

certain kinds of data was limited. For example, because

findings are confidential, I was not able to interview

appellants--the finding's intended audience--about their

experience reading findings (or have any contact with them

whatsoever). And the members' time constraints limited the

amount of interaction I had with them. For example, in

contrast to precedent-setting ethnographic studies of writing

where key informants participated in a succession of

intensive interviews (cf. Odell and Goswami), I conducted

single interviewing sessions with ten members--the same

members who filled out questionnaires.

However, initially the foremost purpose of my study--and

the reason why I was granted this research opportunity--was
to facilitate the improvement of findings and to evaluate the
effects of the training. The minimum data necessary to
fulfill this purpose need not have been sought outside the
findings and the training program. Even so, the Review Board
administration agreed to allow me to conduct a questionnaire
and interview with a sample of members, in addition to
examining a sample of thirty findings and attending a writing
course. This access to data through various methods--
although limited in comparison to ideal ethnographic
situations--stimulated more rigorous research into the
finding genre and provided results that have both practical,
prescriptive value to the Review Board and theoretical,
descriptive value to this study.

My introduction to Review Board culture was through the
writing course (lectures/seminars) which was attended by
approximately twenty recently-hired members and spanned three
afternoons. There I adopted the role of "complete observer"
(cf. Gold), and wrote "observational notes"--notes which L.
Shatzman and A. Strauss describe as "contain[ing] as little
interpretation as possible, and are as reliable as the
observer can construct them" (cited in Doheny-Farina and
Odell 520). As well as recording parts of seminar
discussions and the members' responses to the course content,
I also recorded in detail the content of the lectures--the
accuracy of which I later confirmed in discussions with the

instructor.

I developed the criteria for my first evaluation of findings (the effects of the training) from these notes, combined with the written course material, discussions with the instructor and Review Board officials, and my own background knowledge of composition and effective writing. This evaluation--"Analysis 1"--uses fifteen criteria to evaluate the content, structure, language, and sentences of findings. (See Appendix A for Analysis 1.)

Now that I knew what findings should *ideally* look like-- according to the goals of the training program--I set about to examine closely what they actually looked like. After familiarizing myself with the documents, I composed a list of what I deemed the salient features of the current genre. In order to test the accuracy of my description, I composed a second evaluation--"Analysis 2"--comprised of twenty descriptive features that pertain to overall structure, paragraphs, voice, language, style, and sentences. (See Appendix B for Analysis 2.)

Of the thirty findings I was given, twenty were written by veteran members and ten by members who were hired not long before the writing course and partly on the basis of their writing competence. One half of the findings were written before the members took the writing course; the other half were written after the course and in the newly implemented standard format.

So the thirty findings were evaluated by means of two analyses that together are comprised of thirty-five questions: Analysis 1 is aimed primarily at evaluating the effects of the training; Analysis 2 aims to describe the features of the genre. Both analyses compare/contrast pre- and post-training findings and Analysis 1 also probes the differences between veteran members and those who were recently hired. I also made use of two computer discourse-analysis programs, "Grammatik III" and "Right Writer," through which I ran a sample of findings in order to determine readability levels and to measure other quantifiable features (such as the number of passive constructions, complex sentences, and jargon words).

In order to strengthen the validity of this quantitative research, I used *investigative triangulation*: the investigation of the documents was conducted by a research team rather than a single researcher. Four university-educated people with academic backgrounds in English were employed to conduct the two analyses; each of the four evaluators analyzed the same thirty documents. I conducted a full-day training session to ensure the evaluators understood, and were familiar with, the questions, and to promote a consistency in their analyses that at the same time would not bias their personal responses. I asked them to read the documents from the point of view of an educated layperson, not as an academic: they were not to depend on

their scholarly knowledge of English language and composition, nor were they to pretend that they had no post-secondary education. They were asked to evaluate the writing based on their immediate responses to it--without attending to the reasons for, and implications of, their judgements.

The evaluators completed their work over the next month. For each of the thirty documents, they answered thirty-five questions on a scale of 1 to 4: "1" represents "no", "4" represents "yes", "2" "sometimes", and "3" "often". They also identified, in the margins of the documents, passive constructions, misplaced modifiers, comma splices, awkward sentences, and the overuse of coordinate clauses. They were "blind" in that they were unaware of which findings were pre-training and which were post-training, and which were written by veterans or new members. They were also unaware of the evaluation's purpose.

The data I received from these evaluators' analyses were essentially consistent, and I calculated the numerical results in the following manner: For each question and each evaluator, I added the results for the twenty veterans' findings, the ten new members' findings and the thirty overall findings within the categories of pre-training, post-training, and overall. I then calculated the average of the evaluators' combined results for each of these categories. (See Appendices A and B for numerical results.)

To explore the reasons for these results, I went back

to the documents and examined them further. I found I was able to interpret some results through this solely textual examination. Other results directed me, in pursuit of their meaning, away from the text and toward an inquiry into the members' writing processes and contexts. Hence I employed the qualitative methodolgy of a questionnaire and interview--to which ten members responded.

The questionnaire has three sections: The first section contains sentences from findings, exemplifying jargon, wordiness, and comma splices, and my revisions of these sentences, and the respondents checked what they thought was the better version and explained their reasoning. The second section contains sentences exemplifying awkward and subject-ambiguous passive constructions which the respondents revised--if they believed revision was needed--and explained why. The third section contains questions about audience (including a list of possible readers whose importance the respondents rated on a 1-5 scale), drafting, collaboration, the standard format, and good finding-writing. (See Appendix C for the questionnaire.)

The interview widened the questions on audience and collaboration and sought personal views on the Plain Language Movement, as well as the relationships of post-hearing discussions to writing findings and the decision-making process to writing findings. Questions concerning discussion and writing probed the relationship between talking (with

others) and writing; questions concerning decision-making and writing probed the relationship between thinking and writing.

The interviews were in depth and formal--I met each interviewee privately and recorded the session on audio tape --and they were loosely structured by a set of pre-determined questions. (See Appendix D for an outline of the interview questions.) Often the interviewee influenced the shape of the interview by contributing hitherto unknown and relevant information that provoked my interest and hence changed the direction of my line of questioning. I transcribed the ten interviews and found the transcription substantial--in terms of the amount of pertinent information and insights conveyed as well as sheer volume (approximately forty pages of single-spaced text).

To describe and interpret the results from the qualitative research, I used ethnographic techniques, such as Geertz's "thick description." Geertz "argues that a culture can be 'read' not by starting with abstract concepts but by first microscopically examining the culture's most salient activities" (cited in Faigley 245). Accordingly, I "read" Review Board culture in a few salient features of the finding genre. For, as Geertz maintains, "Small facts speak to large issues" (cited in Faigley 245).

Problems in Ethnography

The data accumulated by virtue of these various methodologies spoke in various voices to the questions I asked, as well as asking some of their own. I had to be receptive to the multiple meanings the data offered, as well as discovering/creating those relevant to my purposes. The problem presented to me was that of finding a way to bring the different kinds of data into a meaningful and responsive whole, without imposing upon them an organization befitting the expectations and desires of my research while silencing the voices that might speak against my plans or offer entirely new ones. The data formed an extremely complex and vast text, demanding a careful, thorough approach and a gentle hand.

Like knowledge, data are nonfoundational. Ethnographers' data often consist of, in Geertz's terms, "our own constructions of other people's constructions of what they and their compatriots are up to," and "right down at the hardrock, in so far as there is any, of our whole enterprise, we are already explicating: and worse, explicating explications" (cited in Doheny-Farina and Odell 506). Similarly, Paul Diesing asserts, "there are no infallible data in ethnography nor anywhere in the social sciences. Observations are always in part projections of what we would expect or like to see" (cited in Dohey-Farina and Odell 506).

Even in the "hard" sciences, the notion that no evidence exists independently from the observer has been a commonplace since early this century. And, since the publication of Thomas Kuhn's *The Structure of Scientific Revolutions*, the assertion, and its implications, that (scientific) knowledge is socially constructed has become part of the philosophical discourse of many disciplines. Kuhn says that there is "no theory-independent way to reconstruct phrases like 'really there' . . . (206), and that "[s]cientific knowledge, like language, is intrinsically the common property of a group or else nothing at all" (210). Rorty agrees: "We cannot find a skyhook which lifts us out of mere coherence--mere agreement --to something like 'correspondence with reality as it is in itself'" (*Objectivity* 38). He asserts that "the only sense in which science is exemplary is that it is a model of human solidarity" (*Objectivity* 39).

Accordingly, I do not think my "views correspond to the nature of things," i.e., that my perspective of the Review Board community and its finding genre, as discussed in this study, accurately reflects their "true" natures (*Objectivity* 23). The Platonic distinction between "appearance" and "reality" does not hold here. Rather, the premise of this study has more in common with Rorty's notion of "pragmatism": "the view that there is nothing to be said about either truth or rationality apart from descriptions of the familiar procedures of justification which a given society--*ours*--uses

in one or another area of inquiry" (*Objectivity* 23).

Because I am attempting to create knowledge useful to the academic community, the procedures of justification used in this study, and the language that embodies them, are therefore those of this community. Such procedures of justification include, for example, "the giving of reasons and evidence rather than just opinions, feelings, experiences; being clear about claims and assertions rather than just implying or insinuating . . .," i.e., the "convention of explicitness" (Elbow, "Reflections" 140, 144). The assumption underlying this type of justification is that a kind of "objectivity" is possible and desirable. I have thus had to adopt an attitude of "objectivity" in my writing because such is a convention of academic discourse, i.e., it is useful to the community.

Furthermore, "the primary function of academic discourse is to create, test and communicate knowledge," and hence "the primary quality that defines academic discourse is *rigor*" (Coe, *Process* 439). However, "[g]ood academic writing is not only rigorous but relevant, original, informed, objective, sharply focused, and sophisticated in its treatment of complex subject matter" (Coe, *Process* 442). These norms of academic discourse embody the academic community's values, and so serve the functions of the community. And in order to serve the community, to create knowledge that is useful and valuable to it, I have adhered to these norms.

The problem inherent in data-analysis, and even data-gathering, is bound up with the interpretive, selective nature of perception and language, and how one goes about making meaning useful in one's community. If, as Rorty says, knowledge is constructed through the social justification of belief, and if language embodies belief (Bakhtin, Burke) and cements membership in interpretive communities, then knowledge is constructed through language. And, as Burke asserts, "even if any given terminology is a *reflection* of reality, by its very nature as a terminology it must be a *selection* of reality; and to this extent it must function also as a *deflection* of reality" (*Language* 45). He goes on to state the following:

> Not only does the nature of our terms affect the nature
> of our observations, in the sense that the terms direct
> the attention to one field rather than to another.
> Also, *many of the "observations" are but implications of
> the particular terminology in terms of which the
> observations are made.* In brief, much that we take as
> observations about "reality" may be but the spinning out
> of possibilities implicit in our particular choice of
> terms. (*Language* 46)

According to a social constructionist view, "[c]oncepts, ideas, theories, the world, reality, and facts are all language constructs generated by knowledge communities and used by them to maintain community coherence" (Bruffee 777).

So, implicit in my analysis and gathering of data on Review Board culture are my beliefs and hence terminology,

and I must view my object of study through, what Burke calls, a "terministic screen" that directs my attention. The recent academic interest in writing as a socio-cultural process and, more specifically, the relationship between non-academic genres and their professional communities, generated this study and served to focus my research and its conclusions. And the terministic screen of the composition discourse community, and academic discourse in general, directs my attention toward some aspects of the data and away from others. For instance, through the screen of composition discourse I perceive (and refer to) the Review Board as a "culture" or "community," and my data-gathering and analysis confirm this perception. My observations of Review Board *culture* are therefore bound up with, and perhaps dependent upon, my language and the "spinning out of possibilities implicit in [my] particular choice of words."

I am selecting and thus deflecting "reality" through the terministic screen of the academic discourse community of which I am a member and in which this study functions to cement my membership. I am not making "discoveries" in the data itself; rather I am creating meaning, constructing knowledge whose value lies within the parameters of the community through whose discourse it is generated.

Chapter 3

Results of the Quantitative Analyses

This chapter summarizes the results of Analyses 1 and 2, and the computer discourse-analyses. The features of findings, i.e., the results of Analysis 2 and the computer discourse-analyses, are discussed in the first section in order to provide a descriptive framework of findings for the second section. (That is, the purpose of Section I is solely descriptive. The features of findings will be discussed further in the context of discourse community in Chapter 4.) The second section describes the effects of the training, i.e., the results of Analysis 1, and the final section interprets these results and briefly notes their pedagogical implications.

Section I: Generic Features

The relationships between the generalities and particulars of a text, or its *levels of generality*, represent a text's pattern of meaning and how its meanings cohere (cf. Coe, *Grammar*, esp. 22-41). Findings begin on a high level of generality (Introduction, then Issues, then Outcome as highest) and proceed to lower levels of generality (Evidence,

then Submissions as lowest). The Law and Policy section is the highest level of generality in findings, moving to a lower level in Reasons and Findings, and higher in Conclusion (which is more or less equivalent to the beginning level of generality). The average length of a finding is five pages or 2100 words, though their lengths vary widely. (The thirty findings analyzed in this study, for example, range in length from two pages to twenty-two.)

There was an equal number of narrative and logically-structured findings written before the training. However, after the training the logically-structured findings outweighed the narratives 4 to 1. That is, the training was successful in changing the structure of findings from narrative to logical. The change from narrative to logical structure is also apparent in the slight drop in the chronological ordering of information (such as letters, submissions, evidence) after the training.

As stated earlier, in a narrative structure the member narrates the chronology of the case from the Review Board's perspective, whereas in a logical structure the writer follows the reasoning behind the decision. The kind of logic devised by Stephen Toulmin and known as *Toulmin logic* is exemplified in logically-structured findings. Toulmin "believes that most people do not try to use formal logic when they argue; instead, like judges or lawyers, they look for ways to justify claims that they want to make. Their

method is to find *data* to support their claims and *warrants* to explain them" (Hairston 65).

In Toulmin logic, as applied to composition pedagogy by Maxine Hairston, there is a *claim* followed by *data* that support the claim, a *warrant* which is "a statement of general principle that establishes the validity of the claim on the basis of its relationship to the data," and *support* that makes the data or warrant "more credible" (Hairston 65). Also included in this pattern of logic may be a *qualifier* that restricts the claim to avoid overgeneralization, a *rebuttal* that refutes possible or existing arguments against the claim, and *backing* that "validates the warrant. If the audience is likely to disagree with the warrant or if the warrant is the main component of the argument, one may need to *back up* the warrant as well as the claim" (Coe, *Process* 373).

In standard format findings the Introduction provides a context for the finding: a short description of the initial case, the parties involved, and the reason for the appeal (the events surrounding it). The Issue provides a focus for the finding, and the Outcome is the decision reached: the *claim*.

The Evidence and Submissions sections are narratives of the events of the case: they provide the *data* which support the claim. The Law and Policy section is a description of the relevant law and policy (the *warrant*) and, sometimes, its

relationship to the case; it is not sequentially ordered but follows the logic of the policy illustrated.

The majority of findings show that the Reasons and Findings section is primarily an evaluation/argument, and includes examples and summaries of events. It is the *support* which makes the data (Evidence and Submissions) and/or the warrant (Law and Policy) more credible in their relation to the claim. Like the Law and Policy section, the Reasons and Findings section is structured around the logic of the reasoning (the rhetoric used), not the sequence of events. The few exceptions to this are mainly pre-training findings that have overall narrative structures; in these cases the Reasons and Findings sections are narrative rather than logically-structured.

Paragraphs usually begin with a topic sentence and proceed to lower levels of generality (such as details, examples, etc.), and paragraphing is determined by subtopic or the chronology of narrated "chunks" of events. The average length of a paragraph is four sentences. There are at least two one-sentence paragraphs per finding, used either as transitions or for emphasis. The latter type of one-sentence paragraphs are predominantly evaluative, causative, or conclusory.

There is a marked rise from pre- to post-training findings in the number of one-sentence paragraphs. The new format's division of the text into distinct, titled sections

seems to promote more paragraphs, and one-sentence paragraphs
are often used in this format as transitions between these
paragraphs. The one-sentence paragraphs in the pre-training
findings are used mainly for emphasis and are evaluative and
conclusory, e.g., the finding's concluding statement that the
appeal is allowed or denied.

The substitution of specialized terms for common words
occurs frequently in findings, as does the use of inflated
diction. Technical language--especially legal and medical
terminology--is often used. Some legal and medical terms and
phrases occur with such regularity in findings that they are
also Review Board jargon, e.g., *congenital* (medical), and
pursuant to, therefrom, and *arose out of and in the course of
employment* (legal). (For the purposes of this study, the
term *Review Board jargon* is not restricted to, for example,
technical vocabulary that is incomprehensible to a lay
audience, but is more akin to *argot* in that it refers to
language characteristic of the discourse community, like
inflated diction.) The following exemplifies the most
frequently-used Review Board jargon:

> *advised* (or *informed*) for *said/told,*
> *indicate* for *show,*
> *finalized/finalled* (or *terminated*) for *ended,*
> *commence* for *begin,*
> *prior to* for *before,*
> *foregoing* for *preceding,*
> *cognizant* for *aware,*
> *plausible* for *possible,*
> *causative* (or *due to*) for *caused,*
> *preclude* for *prevent,*

render for *make*,
in the absence of for *without*, and
in regards to for *regarding*.

The computer discourse-analysis program "Grammatik III"

described Review Board jargon as "overstated or pretentious"

and offered the instruction, "simplify."

Evaluative terms (such as *in/correctly, dis/agree,*

deny/accept) and causative terms (such as *therefore, because,*

since, so) are prevalent throughout the majority of findings,

as are cause/result and contrast/compare types of sentences

(the former use causal and conclusory conjuncts; the latter

use evaluative terms). Evaluative terms and contrast/compare

types of sentences occur most frequently in the Reasons and

Findings section.

The shortest sentences and the most simple structures

are in the narrative sections, e.g., "[The doctor] examined

the worker on April 4, 1988" (from the Evidence and

Submissions section). Cumulative sentences are prevalent,

especially in the more complex findings and in the Reasons

and Findings section of all findings. The following example

of a cumulative sentence is from the Reasons and Findings

section of the finding quoted above:

   The Board Medical Advisor's views against the worker's
   claim was based on the facts as the Board then
   understood them, that the worker did not complain to
   [the doctor] of the right arm problem in the summer and
   fall of 1987, that [the doctor] related the right arm
   problems to overuse rather than to the May, 1987

incident, and that the worker initially did not think he
had a significant injury in the May, 1987 incident.

The average length of a sentence is twenty-five words.

The most common "clumsy" sentences are complex passive

constructions, as well as those where multiple T-units of

equal levels of generality are coordinated. Passive

constructions are used frequently, especially in descriptions

of the Workers' Compensation Board's initial (appealed)

decision (usually in the Introduction). The following

example of a "clumsy" complex passive construction is from a

finding's Introduction:

> In that letter the worker was advised that after a
> review of all the medical information and further noting
> that there was no indication in 1982 that the worker had
> nerve irritation or compression, that it was improbable
> that any disc protrusion at the present time could be
> related to the March 2, 1982 incident.

The computer discourse-analysis program "Right Writer" found

that "most sentences [in findings] contain multiple clauses,"

and recommended the writer "use more simple sentences."

Throughout all findings the writer's voice is generally

impersonal and anonymous (with the rare exception of the

personal "I" voice of the Dissent--which one member writes to

explain the reasons he/she disagrees with the rest of the

panel). Yet in the Reasons and Findings section the voice,

while remaining impersonal, is not *as* impersonal as elsewhere

in the finding, due to the evaluative and rhetorical nature
of this section. The style is formal and nominalized in all
findings, dates are prevalent throughout, and semi-colons and
dashes are rarely used.

The computer discourse-analyses found the following
major problem areas in findings: passive voice, long
sentences, wordy phrases, complex sentence structures, and
uncommon words or jargon. Both "Grammatik III" and "Right
Writer" programs determined the readability level of findings
at grade 12, based on the Flesch and Gunning methods. Both
methods calculate readability grade levels by counting the
number of syllables in words and the number of words in
sentences.

Section II: Effects of Training

The training was successful in changing the format of
findings. The veteran's findings show a great increase from
pre-to post-training in the use of headings (their pre-
training findings have no headings), the inclusion of an
Issue which follows the Introduction (six out of the ten pre-
training findings lack a statement of issue), and the
positioning of the Outcome right after the Issue (in all pre-
training findings the outcome is the conclusion). Because
the new members were hired after the implementation of the

standard format, they use this format consistently and so do not vary from pre- to post-training.

The findings written after the training also show a marked increase in the number of personal names used rather than titles of functions--especially in the veteran's findings. In most findings only commonly-used abbreviations are employed; however, there is a slight rise from pre- to post-training in this area. (A memo to members from the Chair regarding the standard format states, "Abbreviations should not be used, except those that have become part of general usage, e.g., Mr., Mrs., Ms., Dr., Ltd., etc." (Bibby 2).)

There is a small improvement after the training in the veterans' development and logic of argument, and no significant difference in the new members' pre- and post-training findings. However, overall, there is a 10% difference between the veterans and new members in this area: the new members' ability to create an adequately developed, easy-to-follow, and logical argument is generally greater.

There is a small improvement in the new members' post-training findings regarding relevance to the argument of quoted material and information (on submissions, evidence, and policy), while the veteran's post-training findings show a fairly marked drop (of 9%). The new members' findings, overall, rate 12% higher in this category than the veterans'.

There is very little difference between the veterans'

pre- and post-training findings regarding their overall coherence and paragraph unity, but the new members' post-training findings show a 9% drop. Even so, the new members' findings are 9% better in this area than the veterans' overall.

The training did not noticeably alter the frequency of Review Board jargon, but post-training findings show a slight increase in the veterans' use of lay language over technical language (such as legalese and medical terminology) and a decrease in the new members' use of lay language. The new members' use of lay language overall is, however, much greater (by 18%) than the veterans'.

Similarly, in the evaluation of a clear, rational, and authoritative--but not authoritarian--voice, the veterans' post-training findings increased slightly, while the new members' post-training findings decreased. Yet, overall, the new members' findings rate slightly higher (7%) in this area. Also, there is a fair increase in the veterans' use of the active voice after the training, and a small decrease in the new members'. However, again, the new members' findings are better overall than the veterans' in this area (by 11%).

In all findings, sentences are more often wordy and awkward than vague or ambiguous in meaning. The training had no effect on the veterans' sentences in this regard, and although the new members' sentences are much less wordy and a little less vague than the veterans' overall, they became

more wordy and vague after the training.

In conclusion, the training was successful in (1) changing the structure of the findings from narrative to logical, (2) changing the format of the findings (use of headings, inclusion of Issue, and positioning Outcome after Issue), and (3) increasing the use of personal names. On the whole, the veterans' findings improved after the training, whereas the quality of the new members' findings decreased. Even so, the new members' findings rate higher than the veterans' in all areas--i.e., the new members appear to be better writers. The only area in which the new members improve while the veterans worsen is the relevance to the argument of quoted material and information.

After the training the veterans show an increase and the new members a decrease in (1) the amount of layperson's language, (2) the clarity and rationality of the voice, and (3) the frequency of the active voice. In the creation of an adequately developed, logical argument, the veterans improved while the new members remained the same; in paragraph unity and overall coherence, the veterans remained the same while the new members worsened; and in wordiness and vagueness of sentences, the veterans remained the same while the new members worsened.

The areas where the training appeared to be the least effective, i.e., where one group was unaffected and the other worsened, are as follows: (1) wordy-awkward sentences, (2)

vague-ambiguous sentences, and (3) overall coherence. Both the veterans' and new members' findings rate the most poorly, even though some improved, in (1) lay language, (2) sentences that are not wordy and awkward, (3) coherence, and (4) active voice. This suggests that further writing instruction which focusses upon these four key areas would likely aid in improving finding-writing and making findings more accessible to their audience.

Section III: Interpretation

As seen in the above results, the training met its goals in some areas and generally improved the veterans' findings, but appeared unsuccessful in other areas-- especially in the new members' findings. I went back to the documents to examine them further in the light of these discrepancies in order to find out why they occurred.

At first, it seemed incongruous that the training session would have both positive and negative effects on the group of members who attended it, all of whom are members of the same discourse community. But, of course, there really were *two* groups of people attending the session: the veteran members and those who were recently hired. I saw as significant that the members who were relatively new to the community wrote those documents whose ratings dropped and

that the training occurred not long after their entrance into the community. Therefore, I suspected that the detriments apparently *caused* by the training were effected by other, perhaps community-related, factors.

I focussed on where ratings decreased and looked for possible reasons why in the documents and the writers' relationships to their community. Some answers that I found in the documents, as well as those arrived at through conjecture on community relationships, I later developed through the qualitative research and they are discussed in that context in Chapter 4. The following discusses the answers I found in the documents and speculates on those that lie elsewhere.

That the new members' findings rate higher, overall, than the veterans' findings in all areas is inconsequential to the effects of the training. Because these members were hired partly on the basis of their writing ability, it is not surprising that they are better writers than the veterans, who were hired when writing competence was not a criterion for appointment to the Review Board. The new members' greater writing skills are reflected in the overall results of the data-analyses, and because the reason for this is apparent, it will not be discussed further.

The above results show that the only area where the new members improve while the veterans worsen is in relevance to the argument of quoted material and information on

submissions, evidence, and policy. I examined the veterans' post-training findings which were given low ratings, and discovered information and quotation that appeared extraneous to the issue under discussion.

Because the veterans' pre-training findings are generally chronological and narrative in structure, quotations and information are ordered in the sequence of their submission to the Review Board. Hence the evaluators (or any reader) would likely deem the material relevant in an argument-by-chronology context--as indeed it would be. The training introduced the logically-structured standard format to veterans who, in these findings, were just beginning to use this format and thus changing familiar writing methods. Making the transition from a narrative to logical structure might have caused them problems in judging the relevance of information in an argument-by-logic context.

And so the veterans included material extraneous to the issue (which they had only begun to state formally, as prescribed by the standard format) but not extraneous to the chronology of the case. However, within the logical structure of these findings this material is irrelevant, as the evaluators perceived.

The new members, on the other hand, did not have to adjust familiar finding-writing methods. Their improvement in this category might therefore be due to their training and/or practice in the genre. For the veterans, further

practice in the standard format might improve their ability to judge relevant information in an argument-by-logic context, and additional instruction might aid this process.

The training did not noticeably affect the amount of Review Board jargon in findings, probably because this jargon is part of the discourse of its community: it is a distinguishing feature of the language used by community members to communicate with one other. The training did attempt, however, to decrease the members' use of their jargon. (In one training session I observed, the instructor encouraged the members to find and use their *own* voices, rather than use the voice of the Review Board.) However, because choice of words indicates belief systems, and because members of a discourse community share a system of belief, unless that system is altered the jargon will likely remain. (See Chapter 4 for a fuller discussion of this.) Until such a change in the discourse community occurs (if it indeed does), findings might be made more accessible to a lay audience by including glossaries.

As shown in the results, although the veterans' findings slightly increased in their use of lay language (over technical language like legalese and medical terminology), there is a small decrease in the amount of lay language in the new members' findings. That competent writers are aware of their readers is exemplified in the new members' much greater overall use of lay language; and their decline in

this area may be attributed to their introduction to the language/beliefs of their new discourse community and the desire to cement their membership within it. Their learning and using the discourse of their community is part of their socialization into its culture.

Similarly, in the measurement of a clear, rational, and authoritative--but not authoritarian--voice, the slight decrease in the new members' findings may be associated with the problems that are sometimes encountered in finding a suitable voice during the process of entering a new culture. And since an evaluation of voice is also an evaluation of style and concerns word-choice, overall structure, and sentence structure, the above suggestions for why new members use less lay language in findings written after the training are appropriate here as well (i.e., their learning to use the voice of their community is part of their socialization). The use of jargon is associated with lack of clarity and authoritarianism; hence it follows that a rise in the amount of jargon would also be judged as a decline in clarity of voice and as "sounding" authoritarian. (Indeed, the ratings in the jargon and voice categories reflect this association.)

Furthermore, an authori*tative* voice may be defined as one that is rational and states clearly its reasons for decisions; an authori*tarian* voice, by contrast, is one that states its decisions without showing how and why they were made. (That is, an authoritarian voice is authoritative

without being clear and rational.) The new members' ratings in the category of voice as well as the category of creating an argument that is easy to follow, adequately developed, and where *the logic used is evident* confirm these definitions of kinds of voice: their overall results in both categories are exactly the same. Additional confirmation is in the ratings of the document's coherence (i.e., it is not confusing or hard to follow/understand): these are similar to the ratings of voice.

These ratings also indicate that the evaluators were consistent in their judgements: they gave the new members similar ratings in voice, logical argument, and overall coherency--categories which, apparently, measured similar things. That the argument and coherency categories both pertain to overall structure, and the ratings in these categories are similar to those of voice, suggests that voice can be heard in overall structure.

A further confirmation of the evaluators' consistency, as well as proof that voice is indeed apparent in sentence structure, is shown in the new members' overall ratings in all three categories pertaining to sentence structure: the results in these categories are very similar to those for authoritative voice and logical argument (one is exactly the same). Specifically, the following describes the most salient features of a finding written in a clear, rational, and authoritative voice:

1. Layperson's language is used primarily, and any technical or specialized language (e.g., legalese, medical terminology, other jargon) is used only when necessary.

2. The document is coherent overall. It is not confusing or hard to follow/understand.

3. The argument is easy to follow, adequately developed, and not faulty. The logic used is evident.

4. Sentences are not wordy or awkward.

5. Sentence meaning is not vague or ambiguous.

6. The active voice is used primarily.

In the new members' overall ratings on voice, argument structure, and sentence structure may be detected a pattern of some significance: they are more evenly matched than any other ratings. This implies that a voice which is clear, rational, and authoritative is more apparent to a reader in overall structure and sentence structure (and word-choice, as discussed above) than it is in unified paragraphs and relevant information. The results in the categories of paragraph unity and information relevancy bear little resemblance to the results in the categories of voice, argument structure, and sentence structure.

The distinction to be made between where voice is apparent to a reader and where it is not so clearly heard is that of *style* and *form*. A writer's choice of words and structuring of argument and sentences are stylistic and hence imbued with the writer's voice; unity of paragraphs and relevancy of information are formal matters and although they

are *informed* by the writer's voice, they do not speak it as clearly.

The new members' results in the category of active voice--for pre- and post-training, as well as overall, findings--match exactly their results in the authoritative voice category. This indicates a correlation between a clear, rational, and authoritative voice and the use of active constructions, as does the similar ratings in these areas of the veterans' findings.

However, unlike the new members' decrease in a clear and rational voice, their decrease in active voice is not detrimental: the kinds of passive constructions the new members most often use are not ambiguous and they do not generally result in awkward constructions. The most common passives in new members' findings are those in which the real subject is the receiver of the action, e.g., "Her claim was accepted by the Workers' Compensation Board." A less common passive for new members is the kind that omits the subject, and, in many of these cases, the subject is evident in the context. The training had no noticeable effect on the kinds of passives they use.

The training, however, affected the veterans' passives in the following ways: In their pre-training findings the conclusion is usually a version of "The appeal is denied/ accepted" (passive); after the training the conclusion is usually a version of "The panel denies/accepts the appeal"

(active). The reason for this particular change is the instructor exemplified the use of the active voice in this kind of concluding statement. The veterans' increased ratings depend in part on the change from passive to active in this statement.

Also, the veterans' pre-training findings show a prevalence of passives in the Introduction, e.g., "His low back pain was . 'ncluded not to be causally related"; after the training the voice in the Introduction is more active, e.g., "The Board concluded that had Ms. Doe not sustained her second injury . . . ." The most common passives in veterans' findings are those which omit the real subject when it is a member of the Workers' Compensation Board (usually the claims adjudicator) or the Review Board, and sometimes these passives result in awkward constructions. (The former quotation exemplifies an awkward passive construction which omits the claims adjudicator as subject.) Because of its omission the subject is often ambiguous, although sometimes it is evident in the context. In the veterans' findings the frequency of this kind of passive decreases after the training.

In the evaluation of sentence meaning that is not vague or ambiguous in the veteran's findings, the results show some similarity with those on their use of active voice. However, the training had no effect on vagueness or ambiguity in veterans' findings. That is, although the veterans use a

more active voice after the training (as well as less
technical language which may be considered vague or
ambiguous), the ambiguity of their meaning does not decrease.
This is because passive constructions are not primary
contributors to vague sentence-meaning in the veterans'
findings. Rather, the documents show that their vague or
ambiguous sentences are often comprised of many coordinate
clauses of equal levels of generality which lack needed
punctuation or use incorrect punctuation, for example,

> Nonetheless, at the time the Board determined that the
> worker's permanent partial disability entitlement was
> 6.5% the Board was aware that the worker was actively
> undergoing further medical examination with suggested
> treatments being specifically addressed to the problems
> which had always been the focus of the Board's
> responsibility under this compensable injury.

The sentence's main meaning is thus diffused among the
clauses, the order of which does not help the reader to
determine the writer's emphasis. These sentences sometimes
contain misplaced modifiers or comma splices.

This kind of sentence was also judged wordy or awkward,
and the training similarly did not affect the frequency of
wordy or awkward sentences in veterans' findings. However,
the evaluators found that their sentences are more wordy or
awkward than they are vague or ambiguous. There is a fair
amount of verbosity in veterans' findings (some of which is
caused by passive constructions) that often results in

awkward sentence-structures. As James Bell and Edward Corbett say, "An awkward sentence is often the result of a writer's saying something in a ordy, roundabout way rather than in a terse, direct way" (62). The following exemplifies a wordy passive construction that the evaluators deemed awkward: "Ms. Doe was awarded a permanent partial disability pension on a loss of earnings basis effective August 4, 1981 per the decision letter of May 15, 1984 at which time there was also a functional award of 4% for Raynaud's Phenomenon."

However, a sentence may be wordy without being awkward, and this is also reflected in the results of this category. That is, included in the evaluation of wordy or awkward sentences is the wordy sentence which is not awkward but contains irrelevant or repetitive information, or redundant meanings, for example,

> At the hearing, the worker offered the opinion that since she had only been back at work for a couple of weeks subsequent to her lengthy time off as a result of her knee injuries, her body would not be used to the heavier aspects of her job, and she would therefore be more vulnerable than normal.

This kind of wordy sentence was judged in the "wordy-awkward" category, *in addition to* the awkward-vague and the awkward-wordy passive sentences described above. *Wordy* and *awkward* can describe different characteristics, and so their category may really have measured two things combined. This may also contribute to the marked difference between the

"wordy-awkward" and "vague-ambiguous" ratings: *vague* and *ambiguous* are sometimes seen as synonymous, and so this category may have measured a single quality as opposed to two. In any case, the results suggest that veterans could improve their writing at the sentence level by learning how to avoid wordy-awkward sentences and passive constructions, the overuse of coordinate clauses, and incorrect punctuation.

Upon examining the new members' findings, I discovered that the reason they increased slightly in vagueness or ambiguity of sentence-meaning is their vague sentences often contain more jargon than those which are not vague. That is, vagueness in new members' findings is more often the result of word-choice than sentence structure, as in the following example (jargon is italicized):

> The Panel accepts these *foregoing* opinions and *thereby* finds that the work activity described by Ms. Doe, that is, hanging approximately 100 pairs of drapes over a period of two days, *warrants a conclusion* that her employment had *causative significance* in producing her shoulder injury.

Furthermore, the new members' ratings in the categories of lay language and vague sentence-meaning show a similar difference between pre- and post-training. Hence the reason for their increase in vagueness may be seen in the context of their increase in jargon, and so is related to their adaptation to the language/beliefs of the discourse community.

However, the new members' increase in wordy or awkward sentences correlates with the level of complexity of some of their post-training findings. That is, the majority of post-training findings which received a higher rating than pre-training findings in this area were on especially complex cases, where the greater amount of relevant information called for particularly succinct summary. (The complexity of a case is often due to the amount of times the claim has been appealed.) These ratings thus measured the difficulty of the finding more than the writer's ability. So, for the new members, wordiness has to do with the nature of the case. Yet, wordy or awkward sentences, like vague ones, present a certain kind of voice to the reader. Style (in this case, sentence structure) and content (of the case) are thereby related: the content of the case influences the member's style.

Similarly, the content of the case appears to influence or even shape the paragraphs and overall structure of the findings. The new members' findings decreased the same amount in both the category of paragraph unity and in the overall coherence of the document. However, paragraph unity was rated much higher than overall coherence, i.e., paragraphs within a finding are more unified than the finding is coherent overall. The ratings of the overall coherence of new members' findings are very similar to that of wordy-awkward sentences, and, as with these sentences, the

complexity of the case seems to be the primary cause for lack of coherence in findings. Findings with large amounts of relevant information were often given low ratings in overall coherence, due to their wordiness, their ineffective organization of information, and to insufficient use of transitions and cohesive ties.

In examining the new members' post-training findings I found that findings which made more reference to letters were rated lower in the category of paragraphs that are unified and use effective transitions. Although letters are part of the content of the case, their number does not necessarily correlate to the case's complexity. This explains why the ratings for paragraph unity and wordy-awkward sentences are not similar. Four out of the five new members' post-training findings are rated lower than their pre-training findings: One of these contains an unusually high number of one-sentence paragraphs that do not use transitions and so seem "choppy"; two contain long paragraphs that are not unified and that contain a lot of information per paragraph; and another is comprised of both choppy and long, packed paragraphs. The majority of these paragraphs are in the narrative Evidence and Submissions section.

The post-training findings that contain short and/or long paragraphs make more mention of letters than do the pre-training findings by the same writer. (In each of the above cases, there are many more references to letters than there

are in the pre-training finding by the same writer.) Many of the opening sentences of short paragraphs concern a letter, its date, and its writer, and the rest of the paragraph describes the content of the letter. These paragraphs usually do not use transitions and so cause irregularity in the flow of the narrative. The long paragraphs in these findings are sometimes comprised of a few letter descriptions which have been strung together without transitions, creating a lack of unity within the paragraph. Hence there appears to be a correlation between the number of letters used as evidence in a case and the number of short, choppy paragraphs and long, packed paragraphs. In this way it appears that the content of the case--the number of letters--influences the transitions and unity of paragraphs.

Thus the nature of the case under appeal appears to influence the members' writing of the finding in terms of sentence structure, overall coherence, and paragraphing. This implies that members need to develop their ability to write findings on large and complex cases, and that further writing instruction should focus on how to (1) distinguish between relevant and irrelevant information, (2) summarize large amounts of information simply and succinctly, (3) organize information effectively, (4) use transitions and cohesive ties, especially when discussing letters, and (5) avoid repetition and redundancy at the sentence level.

In summary, my suspicion that the general decline in the

new members' ratings was not *caused* by the training led me to
perceive alternative reasons for it. I found that the
content of some of their post-training findings probably
contributed to their (1) wordy or awkward sentences, (2) lack
of coherence, and (3) lack of transitions and unity in
paragraphs. For the former two, content concerns the
complexity of the case; for the latter, content concerns the
number of letters used as evidence in the case. Thus, the
content of the case appears to influence the finding's style
and form.

I also surmised that the new members' recent
introduction to the discourse of the Review Board community,
and their process of learning the customs of the community,
led to their decrease in (1) lay language, (2) clear and
unambiguous sentences, (3) active voice, and (4) a clear,
rational, and authoritative voice. (Wordy or awkward
sentences and the lack of coherence in a finding may also be
regarded in the context of voice and so are related to the
members' socialization process as well as the complexity of
the finding.) The results show that these four features are
interrelated and "a clear, rational, and authoritative voice"
is a general term that encompasses them all. Because these
stylistic features may be grouped under the rubric of
"voice", I have chosen to use the finding's "voice" as a
focus for exploring the relationship between genre and
community in the next chapter.

The tacit assumption on which my socialization hypothesis rests is that the decline in the new members' post-training ratings has to do with the *timing* of the evaluation. That is, because the evaluation was conducted only a short time after the members' introduction into the Review Board community, the evaluation might really have measured the effects of processes other than the training--like socialization processes. Because the new members were in the process of learning the language, values, and customs of their new community *at the time the evaluation occurred*, the evaluation likely measured that process more than it did the effects of the training.

In order to more accurately analyze the effects of the training on this group of members, one might conduct an evaluation after their socialization process is complete and their membership in the community has been firmly cemented. This might serve to narrow the causal possibilities (helping to isolate the training as the main one), and restrict the confounding variables (socialization processes) that exist in this study. However, whether a future evaluation would indeed prove more accurate in this regard is a matter for further research and beyond the scope of this study.

Chapter 4

Voice, Genre, and Community

The results of the quantitative analyses show that one of the writing training's major goals, to change findings from subject-centered to reader-centered, was only partially successful. The genre changed formally--its structure of argument changed from narrative to logical and employed a section-heading format--but stylistically it retained many of its subject-centered characteristics. (The only significant stylistic change was the use of personal names over titles of functions.) Even though the style of veterans' findings "improved" in that they increased in the use of lay language, active constructions, and a clear and rational voice, the style of the finding genre, on the whole, was not greatly altered. Moreover, the new members, after a short time writing findings, began to adopt the veterans' style and not the style recommended in the training.

In a pedagogical context, this indicates that such changes are difficult to initiate through three-day writing courses of the kind given to Review Board members: stylistic changes are effected not only by instruction but also by practice and experience. In an ethnographic context, the stability of the stylistic characteristics indicates that they are important to the finding as a genre: they are its

features and thus function to maintain, as they reflect,
cultural norms--socially-shared assumptions and beliefs--of
the Review Board discourse community. This chapter will
explore the cultural norms embodied by the finding genre, and
how the genre shapes, and is shaped by, its discourse
community.

Even though the Review Board community is unique and
distinct, it is also part of the larger legal community, and
an interpretation of Review Board culture must also take into
account this larger context. This was made clear to me in an
interviewing session when the interviewee (a Review Board
member) asked if I was familiar with "the legislature," and
then told me I should be "because we're not writing our
decisions in a vacuum." This member also said, "First and
foremost, what we have to do is remember what we are: we're a
creature of statute. We're no more and no less. And we
can't do anything more." These comments define the
parameters of the Review Board's function: the Review Board
is part of a judiciary body and is bound by the laws and
policies of that body.

These comments also reveal a shared perception among
Review Board members about their role in the legal system:
Review Board members do not operate as individuals who,
collaboratively, decide the fates of other individuals (the
appellants). Rather members act as a judicial voice whose
authority is borrowed from formal, documented rules and

regulations and whose decisions are dictated by these rules as they apply to documented evidence. Review Board members are essentially writers or rhetoricians who, in the discourse of their community, juxtapose the appropriate legislative texts with the evidence--texts which mediate appellants' "real life" events and the Review Board community. Members form their decisions and rhetoric out of the juxtaposition of these texts, and so create findings in the image of their discourse community.

Jurisdiction in cultures with written traditions is concerned with the writing, use, and interpretation, of texts--in contrast to cultures with oral traditions wherein societal rules are not recorded on paper, and judgements of actions are reached through a social process unmediated by texts. Review Board members are "creatures of statute": their (written) selves are created by written texts (laws and policies) and function to serve those texts by creating new ones (findings) which uphold them. Their relationship to the larger legal community, to the Workers' Compensation Board, to their colleagues at the Review Board, to their findings and their audiences, is intertextual. And the complex web of intertextual relationships generates and maintains, through its symbolic artifacts, the Review Board discourse community and its finding genre.

In Dorothy A. Winsor's "Engineering Writing/Writing Engineering," she states, "communities both aid and limit

individual members in creating desirable selves. They do so through the forms of writing available to them." And, "for an engineer to be accepted as an engineer, he or she must write and speak in the already-created forms and tongues of engineering" (67). Similarly, Review Board members interpret texts in the customary language of the legal system and through the strategies their culture has sacralized, and thus their interpretations have credence and value within the community.

Yet, as the Review Board discourse community continues evolving and its cultural norms alter--in conjunction with, or separate from, the broader legal community--so might the genre (and its language and contexts) change as it formally enacts and embodies the community's beliefs. As stated earlier, although genres act as stable forms used and maintained by a culture, they are also flexible and participate in social change. My research was conducted during a period of change at the Review Board: purposes and goals were redefined, good writing was emphasized officially (for the first time), and a large number of new members were hired. The Review Board's conceptions of itself were undergoing transition, and this is reflected in the Board's deliberate attempts to modify and standardize the finding genre--to make it suit, more aptly, the community's purposes and thus enhance its usefulness.

That the genre did not change dramatically during the

time of my research is not surprising. Review Board members had only recently begun taking the writing courses which, like all pedagogies, supported a particular ideology that the members may not have been familiar with and so would not eagerly and unquestioningly adopt. In the course I observed, for example, some members resisted the instruction to state the outcome of the appeal at the beginning of the finding because they felt that the audience should "be forced" to read through the entire argument. The instructor argued that the finding is not "a mystery" and the most important information should be on the first page.

However, because the new standard format was implemented as Review Board policy, and because it prescribed predominantly formal patterns—more specifically, formatting —it was adopted more readily by members than a less easily defined and prescribed style and voice. Form and style/voice are interrelated and they help define a genre, as Bakhtin points out: "Any style is inseparably related to the utterance and to typical forms of utterances, that is, speech genres" (*Speech* 63). Therefore, style is, as Coe says, "both substantive and social, an adaption to both the requirements of subject matter and the norms of a discourse community, the expectations of readers" (*Process* 208). A format—a standard form a culture uses—is a recognizable signpost of a genre and its community; style and voice are subtle and sure embodiments of the cultural norms and assumptions that inform

the genre.

The kinds of form and style/voice of a genre are constrained by, among other things, discourse community and rhetorical context (i.e., purpose, audience, and occasion). Like all generic formats, the finding genre's format--its logical structure and titled sections--is heuristic and conventional: it organizes, generates, and constrains information (cf. Coe, "Apology") in accordance with the principles and conventions of the community, as well as rhetorical context.

For example, when I asked Review Board members whether the standard format causes them to think/ask questions in a particular way, they responded with the following (summarized from questionnaire responses): "it assists in organizing material rapidly [i.e., it *organizes* information]; it ensures all pertinent points are covered [i.e., it *generates* information]; it ensures the issue is correct and helps to weigh evidence and apply it to policy [i.e., it *constrains* choices and information], and it helps to read others' documents."

Because the format organizes and generates information, it serves the Review Board's purpose "to minimize the amount of time and labour required" in the community. Because the format ensures the issue is correct and helps to apply policy to evidence, it therefore contributes to the upholding of the Review Board's principle "to have consistency with the

legislation and regulations" and to make just decisions. And that it "helps to read others' documents" serves its varied audiences and the Review Board's intention "to provide ease of understanding" for them (Bibby 1).

The format's logical pattern of development is characteristic of good legal decision-writing that informs, persuades, and explains to, a lay audience. That is, it is indicative of the decision-writing genre as well as being appropriate to its rhetorical context. Because a logical structure serves the audience, purpose, and function of the writing, it is useful; and because it is useful--it "gets things done"--it has become a "rule" of decision-writing genres. Similarly, titled sections assist both in the members' writing, and their colleagues' and audiences' reading, of findings, and so function in accordance with the Review Board's purposes.

Voice is more difficult to define and therefore to prescribe--partly because it is not something a reader can isolate *in* a text, but rather infer *from* it. This is why when composition theorists and instructors discuss voice in writing, they usually do so in terms more easily defined, such as word choice or sentence structure.

For example, in a chapter titled "Style and Voice" in Coe's *Form and Substance*, the word *voice* is rarely mentioned. Rather Coe distinguishes the *persona*, the image "created by the style of the writing, from the actual human being who

wrote the words" (160), and discusses "style" in terms of
honesty, word choice, and sentence construction. Indeed, the
opening of the chapter's first section sets up the
identification of "a speaker's voice" and "a writer's style,"
implying that, in writing, "voice" is a metaphor: "In at
least one significant sense, a writer's style is the
equivalent of a speaker's voice. It creates tone. It
creates the image that writer will project. Thus it helps to
define the relationship between writer and reader" (159).

Voice exists through, and because of, the complex,
value-laden relationship between reader, writer, and text.
In this sense, it is dependent on social relationships, and
does not have a life of its own. Yet, paradoxically, voice
is often discussed as a mysterious, though tangible, *quality*
that pervades a piece of writing in its entirety as well as
its specific features.

The few composition theorists who have pursued a
definition of "voice" in writing describe it in a very
personal, often vague, and, sometimes, almost mystical,
manner. Peter Elbow, for instance, equates "voice" with
"power" or "juice," and admits to the "fear [he] will never
be clear about what [he] mean[s] by voice" (*Writing* 286).
Elbow excerpts a letter he received from Ellen Nold in
response to his unsuccessful explanation of voice at a
writing teachers' conference: "What is It? That's the
question Hinduism, Buddhism, Taoism are built around. The

very question is a Zen koan. . . . Quality is the same as
Voice is the same as Tao is the same as Self is the same as
Atman-Brahman is the same as . . ." (cited in Elbow, *Writing*
287).

Although Nold warns that voice "ultimately cannot be
explained . . ." (287), Elbow formulates a theory of voice
which distinguishes between writing *without voice, with
voice,* and *with real voice.* Yet although his theory defines
various characteristics of writing in these categories, voice
itself remains in a subjective realm, enshrouded in mystery:

> [W]riting *without voice* is wooden or dead because it
> lacks sound, rhythm, energy, and individuality. . . .
> Writing *with voice* is writing into which someone has
> breathed. . . . Writing with *real voice* has the power
> to make you pay attention and understand--the words go
> deep. I don't know the objective characteristics that
> distinguish writing with real voice from writing with
> mere voice. For me it is a matter of hearing resonance
> rather than being able to point to things on the page.
> (Elbow, *Writing* 299)

What is common, however, among the attempts to define
voice is the importance of the reader. That is, because
voice is heard by a reader ("the words go deep" and
resonate), it must exist through the interaction--or
participation--of a reader with a text (or at least it "helps
to define [their] relationship"). This "in-betweeness" of
voice is the reason why it cannot be adequately defined, why
it is usually discussed in the context of something else, why
it is, as Nold suggests, a Zen koan: it is neither this nor

that; it is *both* the essence (of a text) *and* the dialectic

between (reader/text) contexts.

However, this problem is not the domain of voice alone;

rather it exemplifies the difficulties facing current

composition theory and pedagogy during the recent shift in

emphasis from traditional product-centered paradigms to

process-oriented approaches. In "Dialectics of Coherence:

Toward an Integrative Theory" Louise Wetherbee Phelps states

that her "project depends on transforming a polarity of two

terms--process and product--into a dialectic between two

processes of constructing meaning, writing and reading, with

texts becoming the third or mediating term" (13). She sees

coherence as paradoxical: "[it] is at once subjective and

objective, receptive and productive, mental and textual,

experience and object, process and product" (21). Therefore

Phelps proposes an integrative theory, a "dialectics of

coherence," wherein "coherence" is defined by "[the dynamic

of] the interactions between readers and texts" (15).

Voice, like coherence, is subject to the same

subjective/objective, process/product paradoxes. And the

notion that voice does not exist in the text itself, cannot

be identified, as Elbow says, by "point[ing] to things on the

page," may be extended to include most other aspects of

communicative writing. As Bakhtin says, an utterance (or a

text) does not contain or promote meaning in and of itself.

The audience or "receiver" to whom an utterance is addressed

"completes" (but not "finalizes") the utterance; it is through the receiver, and the existing social contexts, that the utterance means: "The event of the life of the text, that is its true essence, always develops *on the boundary between two consciousnesses, two subjects*" (*Speech* 106). And furthermore,

> no utterance in general can be attributed to the speaker exclusively; it is the *product of the interaction of the interlocutors*, and, broadly speaking, the product of the whole complex *social situation* in which it has occurred. (cited in Todorov 30)

Thus, although quantitative, product-oriented analyses and qualitative, process-oriented methods are useful tools to measure and explore various elements of writing, they inevitably limit the scope of discourse. The discourse product and the discourse process must be regarded as integrated, as the same *discourse event*--and one which needs the participation of a reader to complete it and a social and rhetorical context to frame it.

As discussed in the previous chapter, the results of Analysis 1 show the writer's voice is heard in the text's stylistic features: word-choice, sentence structure, and overall structure. However, the evaluators did not "point to things on the page" and say, "This is where I hear voice." Rather, their interaction with the text through the reading process elicited an intuitive response to its voice that,

when translated to quantifiable, numerical terms in their analyses, correlated with their responses to certain stylistic features. So, in this case, my quantitative analysis did not really measure features in the text itself, but rather found correlations among the evaluators' responses to disparate features--which I interpreted as meaningful.

The meaning I constructed from these correlations is that a prevalence of jargon, passive constructions, convoluted sentences, and vagueness in a finding said something to the readers (evaluators) about the writer's approach to the finding's subject and audience: they heard in these features a tone of voice which they were not comfortable with, which claimed authority of the subject without offering clear explanation to the audience. ("Grammatik III" made a similar observation in its description of the jargon in findings as "pretentious.") And the results of Analysis 2 show that in all findings the voice is generally impersonal and anonymous. The results of each analysis are not inconsistent: an authoritarian voice is often associated with anonymity. Indeed, in one training session the instructor encouraged Review Board members to "identify" with the appellant and "humanize" their findings; he said that it is easier to "retreat into *anonymity*" by using jargon.

However, the relationship between these readers and the findings constitute a particular discourse event--one in

which the readers are educated laypeople and not members of the genre's discourse community. And since voice can only be defined in the interactive process between reader and text, in their symbolic interchange of meaning, the kind of voice described here exists in the context of this particular discourse event. That is, the Review Board voice is "authoritarian," etc. within the context and through the terministic screens and values of a lay audience--the audience for whom findings are allegedly written and whom the evaluators represented.

Findings read by other members of the Review Board, the Workers' Compensation Board, or the legal discourse community in general, would likely not hear this kind of voice, or it would speak differently to them, because they share a cultural discourse within which this voice is a normal *professional* voice. A finding within the context of a lay audience is then a *different* discourse event than the same finding read by a Review Board member. Therefore, in this study, the voice that appears "in the findings" is really in the discourse event created by the interactive, meaning-making process of the evaluators reading the findings.

In this context, then, what may be called the (current) Review Board voice was heard by the evaluators in both pre- and post-training findings, despite the training's attempts to alter it and discourage its use. That this voice is a distinguishing characteristic of the genre and hence the

present Review Board community, is evidenced not only in the stylistic features wherein it may be heard--such as passive constructions and jargon--but also in the new members' adoption of it during their socialization into the community.

Review Board members see themselves writing for the various audiences who will read the finding. And who they write for sometimes varies according to the nature of the case. For example, two members I interviewed told me the following: "there are some cases where there has been a straightforward error on the part of the adjudicator and you're writing *to him* to explain what he did wrong;" and "if it were a very specific jurisdictional thing that maybe would go to the commissioner--it's a matter of law and policy--then maybe you would be *slanting* it somewhat differently." These comments imply that findings are written in different voices, depending on the nature and audience of the decision. Indeed, some members talked about changing their voice and style to suit their audience. Yet, in the thirty findings randomly selected for this study, the evaluators did not find distinctive variations in voice or style.

Although most of the members who participated in this study said they write primarily for the particular worker who is making the claim, they also keep in mind, as they are writing, a few other readers, such as the employer, Workers' Compensation Board officers, and the claims adjudicator. When I asked a member how he managed to attend to so many

audiences at once, he explained, "What I try to do is ensure that all of [the different readers] are going to clearly understand, and that all of the facts are there." All of the members who participated in this study believe that if the argument is complete, clear, and precise, anyone who reads the finding should be able to understand it. Although most members said that writing for the worker, who might have limited skills in English, forces them to write as plainly as possible, their ultimate concern is that the document may be easily understood by anyone who reads it--that it "stands on its own."

Some members offered the following during their interviews: "What you really want is your decision to be implemented; you want to talk in as objective and as non-confrontational . . . a language as possible. . . . I'm not sure whether [the instructor] fully understood what we mean when we talk about having the decision be flat and objective"; "I write for anybody who is going to pick this thing up and read it after me"; "As long as you're laying out basic arguments in a clear and concise fashion, it applies to everybody."

So, even though members say they write findings primarily for the individual worker or other readers, depending on the nature of the case--that is, they are aware of rhetorical context--they also believe that a finding "applies to everybody," that it should be "flat and

objective"--that it is acontextual. This belief manifests in the finding genre, or is perceived by the reader, as an anonymous and impersonal "voiceless" voice. The members' problem of writing for a multiple and varied audience is thus resolved in their belief that they can write for everyone. That there are no (or little) individual variations in voice, that there is one, homogeneous Review Board voice, has to do not only with their belief in context-less writing, but also with their belief that they function as "creatures of statute" and not individuals. And these beliefs are part of the system of attitudes and values that creates, maintains, and defines the legal process and culture, i.e., the cultural norms.

However, that members *said* they were aware of rhetorical context when writing, yet wrote acontextually, might suggest that a process of change in their writing, attitudes, and community is in its early stage, probably influenced by their writing training and the Plain Language Movement (which is also in its early stage in Canada). And that members did not find discrepancies between their beliefs that they write for one audience *and* all audiences, or between what they say they do and what they apparently do, indicates the contradictions in belief and action that are not uncommon during the process of shifting from one paradigm to another (cf. Kuhn).

Yet, the voice in the findings of this discourse event speaks clearly what the members apparently fail to recognize

or, at least, articulate. This exemplifies Freed and Broadhead's claim that cultural norms are often invisible in their ordinariness to the culture's members, and that "however unseen they may be, the norms define the writer's discourse community, a context that conditions, governs, and constrains, not just the message, but the writer producing it" (162). The individuality of a member is constrained by her community when she participates in the process of the finding discourse. Members do not write in their own, individual voices because in the legal culture using the personal voice connotes subjectivity and "the law" is not subjective. The personal voice creates a personal relationship with the reader which, in the context of the legal system, implies partiality and hence precludes justice. (Justice is commonly represented in art as a *blindfolded* goddess holding scales and a sword.) This constraint is invisible to the members because it is a norm of their daily life in the culture.

For the legal system to operate, there must be objective "facts" which are measureable by cross-contextual standards. The law is not relative, is not subject to situation-specific norms or qualitative differences. In an anthropological study of "the impact of . . . the Workmen's Compensation Board on two adjacent rural communities in Newfoundland" (conducted during 1974-1975), the ethnographer finds that the Compensation Board "bureaucrat defines social

behaviour in universalistic and formal terms, and is required
to make decisions based on an impersonal administration of
codified regulations" (Leyton 70, 89). On the other hand,
the mine worker in this case study is a "traditionalist [who]
defines social relationships in personalistic terms and
expects decisions to be informed by individual and informal
qualities" (89).

Although the oral testimonial evidence of a worker at a
hearing or a witness at a court trial is by nature subjective
and qualitative, as it is processed through the legal system
it becomes objective and measureable. For example, when the
Review Board and the worker's legal representative (or, in a
court case, the judge and attorneys) decide which parts of
the testimonial are relevant and irrelevant to the case, they
are selecting/deflecting the testimonial through legal
terministic screens and thereby constructing evidence that
has value in the system, that may be juxtaposed to, and
measured by, laws and policies. So, the worker's (or
witness's) construction of "what happened" is reconstructed
through the legal system into an objectified form that that
system can then process.

At the Review Board (and the Workers' Compensation
Board), the use of specific medical criteria--that determine
if an unfit condition is compensable under the Workers'
Compensation Act--is fundamental in reconstructing the
worker's story into meaningful evidence. For example, the

Newfoundland study finds that "a victim of both industrial disease and accident has experienced continuous pain for a quarter of a century, but he received no compensation . . ." (Leyton 101). The reason for this is the "Newfoundland WCB does not compensate for pain and discomfort" (Leyton 102) because pain is difficult--if not impossible--to evaluate. Pain is a subjective experience and so is not conducive to quantitative measurement by objective standards; moreover, pain cannot be recognized in terms of this kind of measurement. Hence this aspect of the worker's testimonial was deflected through the Newfoundland Board's legal-medical terministic screens, and the worker's "pain" was not admitted into the reality or evidence that the Board constructed.

A norm of the Review Board culture--and indeed, the entire legal culture--is that it deals with objectifiable, quantitative entities, and this norm is embodied in the finding genre. It is an assumption so embedded in the legal culture that without it, the culture would cease to be what it is. In other words, it is a socially justified belief through which the culture constructs knowledge. Comments like the following are testimony to the members' shared belief in measureable and objective facts: "The logic and conclusion that flows from [the evidence] is according to a specific law and policy."

This "objective," impersonal stance is apparent in stylistic features such as passive constructions and jargon.

As the quantitative results show, the veteran members tend to omit the real subject of a sentence, the actor, when it is a member of the Workers' Compensation or Review Board, e.g., "The worker was advised that . . .," and "The claim was not accepted for a reopening and no wage loss or medical benefits were paid." By omitting the actor, members say to their readers that subjective individuals are not involved and acting on their own merits--rather there is a faceless, objective authority at work, a passive "creature of statute" who "can't do anything more."

Thus, the members' use of the passive voice is also a defense tactic, a way of protecting themselves and their own: if individuals (members) are not acting, then they cannot be held accountable for their actions and so no one is directly at fault. The use of jargon is also a kind of defense, as one member articulated in an interview:

> If people want to obfuscate their decision behind language that other individuals can't understand, it's usually because they feel uncomfortable with the decision they're writing. I think people are very comfortable writing in plain language when they allow a claim; they get a little defensive at times when they deny it. And then they start to write around, rather than saying in plain English that I don't accept your evidence or I don't believe what you say is true. It's a hard thing. And I think that people by nature don't want to be confrontational. And so they'll perhaps use the language to work their way around it, rather than say it like it should be. I think it's a defense mechanism. I really do.

The findings' passive constructions also illuminate a

special characteristic of the genre's social and rhetorical

context: that is, the "opposition" in a case may be a member

of the Review Board's larger discourse community--the claims

adjudicator (at the Workers' Compensation Board) who

initially denied the claim based on his construction of the

relationship between the evidence and the law. The members'

use of the passive voice when discussing the adjudicator

serves a political and rhetorical purpose: the opposition is

one of their own, and maintaining smooth relations within the

community is important; yet they must persuade the

adjudicator that, for example, he is wrong and they are

right. By omitting the claims adjudicator as the actor

through the use of the "non-confrontational" passive voice,

the members do not attach blame to the person or criticize

his judgement. Their finding thus avoids arousing the

emotions and defenses of the adjudicator and so heightens his

understanding of its argument and eases the finding's passage

through the system. Hence, the genre's passive constructions

reflect its special social and rhetorical context as well as

its community's assumptions about objectivity.

The findings' jargon reflects the same assumptions and

helps to define the genre's impersonal and authoritative

voice. However, it also serves, in some instances, the

members' intention to be accurate and precise in their

expression, and in doing so lessens the risk of further

appeals. When I asked members their opinions about using

plain language, three of the ten members interviewed said

that plain language may be used sometimes, but not always.

They expressed mixed feelings about the use of lay language

over jargon and believe that technical language, like medical

and legal terminology, cannot be plainly paraphrased without

changing or losing its precise meaning. One of these members

said that such inaccuracies in language are often the cause

of appeals "in the first place." Another of these members

told me that

> when you are weighing one piece of technical evidence
> against another, I think that to paraphrase that
> evidence in plain language does a disservice to
> everybody in the system. Also, you leave yourself open
> to a charge of having misinterpreted or misrepresented
> the evidence.

Another member voiced the most opposition to the Plain

Language Movement:

> One of the reasons that medical terminology, and even
> legal terminology, exists is that it is concise and
> precise. There are times when you can use plain
> language and times where you can't use plain language
> because the very nature of the appeal turns on a
> distinction between two diagnoses. I've often felt that
> the Plain Language Movement operates from a position of
> ignorance and, also, from a position of arrogance. You
> have to bear in mind what the courts have said: we have
> to be precise. And the Plain Language Movement may fail
> to recognize that you lose your preciseness by going
> into plain language. . . . To say, "don't use the
> medical term, use something else" (which will probably
> take a paragraph to explain), what have you
> accomplished? And you've just become *vague*.

This member also believes the Plain Language Movement is "paternalistic. [It implies that] those people out there, 'the great unwashed,' they really don't understand." In his experience, people come to understand legal and medical language if they have enough access to it because they have a lot at stake in understanding and using it correctly.

However, these views are not shared by most of the members interviewed. Most members said that writing in plain language is "essential": their audience--the worker--is generally not "sophisticated" or "at a high educational level," so their language should be "simple," "to the point," and "jargon-free." Some members acknowledged the difference of opinion within their community and assumed I had received "a cross-section of comments on that one."

These differences are also evident in their questionnaire responses; here, however, a minority of members practised the plain language that the majority claimed to prefer. When asked to choose the "better" version of a sentence, seven of the ten members chose a sentence from a finding which contained Review Board jargon over a plain language version of the sentence; and when asked to rewrite some sentences from findings, six of the ten members kept the jargon of the original sentences and/or used additional jargon in their revisions.

For example, when re-writing the sentence "It was estimated the worker would be disabled for a period of twelve

to twenty days," a member changed the passive construction to active, but added unnecessary Review Board jargon that makes the sentence wordy (shown in italics): "The *attending physician* estimated the worker would be disabled, *by the effects of his injury,* for a period of twelve to twenty days." (This same member told me, "I love plain language. Keep it simple.") In contrast to this revision, the following is a plain language version of the above sentence, written by a member who is, in his words, "a strong advocate of plain language": "The doctor said that she would be off work from two to three weeks."

This "advocate of plain language," when re-writing a sentence that describes a disorder as "congenital," said that the disorder is "due to a natural weakness in the body." He was the only one of the ten members who translated the term "congenital" into lay language. This shows that medical terms that can be concisely and accurately translated into lay language are often not--especially if the terms are frequently used in findings (like "congenital") and thus are part of Review Board jargon.

So, although most members believe their language should be "jargon-free," most tend to use some kind of jargon. And the jargon they use with the least discrimination is the jargon least visible to them: the jargon of the Review Board community.

Their jargon, like all languages, is the glue that holds

their culture together. It functions to maintain their community by embodying and promoting the attitude that they themselves are not the authors of their findings but channels for the voice of objective, legal authority. There is a greater likelihood of the appellant's accepting the decision and logic of an impersonal authority rather than individuals with whom one might find cause to argue. As one member said (as quoted earlier), "What you really want is your decision to be implemented; you want to talk in as objective and as non-confrontational . . . a language as possible." The appeal to objective authority, through the use of passive constructions and jargon, promotes the smooth functioning of the Review Board system by acting as a safeguard against the possibility of the appellant re-submitting the claim.

The genre's lack of individual voice, its impersonality, does not, however, project an objective, neutral image to the lay reader, i.e., the appellant (represented in this study by the evaluators). As Bakhtin says, "there are no 'neutral' words and forms--words and forms that can belong to 'no one' . . . . All words have the 'taste' of a profession, a genre, a tendency, a party, a particular work, a particular person, a generation, an age group, the day and hour" (*Dialogic* 293). In the appellant's interaction with the text, the neutral, impersonal voice is likely heard as authoritarian, and an unequal, hierarchical relationship is defined. The appellant is, in a sense, refused entry into the discourse; yet, in the

very act of reading the finding, she is already participating
in it. The appellant is thus an unacknowledged participant
in the discourse event. Wayne Booth says this kind of voice
(the "pedant's stance") "consists of ignoring or underplaying
the personal relationship of speaker and audience and
depending entirely on statements about a subject--that is,
the notion of a job to be done for a particular audience is
left out" ("Rhetorical" 111).

The grade 12 readability level of findings is thus
inappropriate for an audience like the appellant who is, in
one member's words, often "not at a high educational level."
A text with a grade 12 readability level is generally
considered difficult. Indeed, as Coe writes, "a typical
North American newspaper is on about a sixth to eighth grade
level of reading difficulty" (*Process* 161), and "[s]ince
people's *comfortable reading levels* are lower than their
maximum reading abilities, many college graduates find *The
New York Times* [which is deemed eleventh grade reading]
difficult reading" (*Form* 121). One member said, "I would
hope that anything I write is understandable to anyone at all
with a grade 5 education"; however, intentions like these do
not manifest in the writing because a member "must write in
the already-created forms and tongues" of the Review Board
and its legal society. And these "forms and tongues" are
apparently difficult to interpret for an audience who is not
highly educated.

Thus the appellant is literally refused entry into the finding discourse: if she is unable to understand it, not only will she be unable to detect possible flaws in the argument or evidence, but she will also be unable to respond to it in any meaningful or effective way. In this manner, the appellant is silenced by the finding and her right to further appeal is lost.

Review Board discourse is thus exclusionary, and may be compared in this regard to academic discourse (as portrayed by Elbow):

> in the academic [or Review Board] convention of using
> more formal language and longer and more complex
> sentences with more subordinate clauses . . ., academics
> [or Board members] are professing that they are
> professionals who do not invite conversation with
> nonprofessionals or ordinary people. ("Reflections" 146)

Elbow says the message this "discourse-stance" sends is "'We don't want to talk to you or hear from you unless you use our language'" ("Reflections" 147).

Similarly, in the Newfoundland study the ethnographer finds that the worker/claimant is often alienated by the Compensation Board bureaucracy, partly because he does not

> understand the rules of the battle: still a creature of
> a world view which conceives of power relations in
> personalistic terms, he must confront in their
> munificent offices the doctors and bureaucrats who speak
> in words he has never heard, and make decisions on the
> basis of criteria he cannot accept. The skills he
> requires for this he does not have . . . . (Leyton 107)

It follows, then, that those workers who are more familiar with the kind of rhetoric and discourse the Review Board uses (and the characteristics of the culture that that discourse embodies) have an advantage over those for whom the discourse is alien. Thus "equality" in the Workers' Compensation and Review Board justice system--defined in the Newfoundland study as "the principle of uniform scientific assessment: that all men [*sic*] should be assessed according to the same specific medical criteria" (Leyton 89-90)--is not carried into the discourse wherein tacit exclusions obtain and "all men" do not have equal access. A hierarchy of accessibility to Review Board discourse exists among the finding's varied audience and is compounded by the hierarchical relationship between the writer and the appellant created by the finding's authoritarian voice.

This authoritarian voice is constrained not only by the functions and purposes of the Review Board bureaucracy and its legal context, but also by the actual laws and policies that form the basis of the finding. The legal discourse in findings is an example of what Bakhtin calls *authoritative discourse*, and, as such, it cannot be personalized or discussed in a familiar way:

> It is not a free appropriation and assimilation of the word itself that authoritative discourse seeks to elicit from us; rather it demands our unconditional allegiance. . . . It enters our verbal consciousness as a compact and indivisible mass; one must either totally affirm it, or totally reject it. It is indissolubly fused with its

authority--with political power, an institution, a
person--and it stands and falls together with that
authority. (Bakhtin, *Dialogic* 343)

Like the statements of law and policy in findings, the

authoritative word "is, so to speak, the word of the fathers.

Its authority was already *acknowledged* in the past. It is a

prior discourse. . . . It is given (it sounds) in lofty

spheres, not those of familiar contact" (*Dialogic* 342).

In contrast to "internally persuasive discourse . . .

[that] is affirmed through assimilation, tightly interwoven

with 'one's own word'" (*Dialogic* 345), the law resists re-

telling, individual accents, and familiarity, even in the

context surrounding it: "The zone of the framing context must

likewise be distanced--no familiar contact is possible here

either" (*Dialogic* 344). Because authoritative discourse "is

hard-edged, a thing in its own right," it does not permit

"any free stylistic development in relation to it" (*Dialogic*

344). Thus, the style and voice of the finding bend to the

influence of the legal, authoritative discourse and, in a

sense, mimic it so as not to be perceived distanced from it.

The stylistic features of the finding genre are

indicative of the intertextuality through which the finding

is formed. They also embody and maintain Review Board norms

and serve some of the genre's particular rhetorical contexts.

And the genre's style obscures the individual writer's voice:

findings are, in Elbow's terms, "voiceless" because of the

constraints of the Review Board community. But what Elbow
refers to as "voiceless"--writing that "lacks . . .
individuality"--is, in the context of the finding genre, the
Review Board's professional voice. Because the finding is a
standard cultural form, it precludes being written "with
[individual] voice." As Bakhtin writes, "[t]he least
favourable conditions for reflecting individuality in
language obtain in speech genres that require a standard
form, for example, many kinds of business documents . . ."
(*Speech* 63).

In terms of this study, then, a socio-cultural
conception of voice--exemplified here by Bakhtin--is more
useful and accurate than Elbow's theory of writing without
voice, with voice, and with real voice. Elbow's distinctions
assume writing is a solely individual, cognitive, "inner-
directed" process, and fail to take into account the
constraining influence of discourse communities and social
contexts on writing. That both the veterans and new members
write in the professional Review Board voice suggests that
the Review Board culture--its discourse and norms--has a
greater influence on the members' writing *of findings* than
their varied individual backgrounds and personalities. The
view of writing as social and genres as cultural forms also
helps to explain why the computer discourse-analyses
determined a grade 12 readability level for all findings,
despite their individual authors.

The finding genre, formally and stylistically, embodies the conventions and serves the purposes of its community, and, like all genres, it arises from and maintains its discourse community's socially justified beliefs. Thus the kind of pedagogy most suited to promoting a modification in the finding genre and its voice would be one that attends to the genre as a cultural form which is part of a dynamic, intertextual web of social processes.

Such a pedagogy would be process-oriented and include strategies (e.g., heuristics) for audience-analysis and emphasize the importance of maintaining audience awareness at each step of the composing process. Focussing the members' attention on audience during the composing process might help them to acknowledge, and perhaps find a way to resolve, their conflicting beliefs that they can write for both the lay reader-appellant *and* readers within their own discourse community. And class discussion about this problem might further aid the members' process of acknowledgement and resolution.

This pedagogy would also aim to instill in the members an awareness of their cultural context and the particular constraints that shape their findings (such as those discussed in this chapter). This might help the Review Board community to develop a professional voice that is non-exclusionary but still able to serve adequately its functions and those of the broader legal society--functions which are

currently being re-examined with the growth of the Plain Language Movement in Canada. An ideal "plain language" professional voice would, for example, speak clearly to the reader who is not highly educated (by using simpler sentence structures, more active constructions, and less jargon), and be rational and authoritative (as discussed in Chapter 3), but not authoritarian and not personal.

The professional Review Board voice is impersonal because it must be in order to uphold the legal authority it embodies. This implies that an authoritative discourse would resist plain language which, in its public accessibility, would remove it from its "lofty spheres" and hence undermine its authority. Indeed, the story of the Christian Bible's translation into English is a striking example of one authoritative discourse's resistance to plain language. This resistance was, of course, overcome, and with the translation of authoritative discourse into vernacular came also the translation of religious authority to the public sphere.

Thus the call for a plain language revision of, for example, laws, is a call for a re-vision of authority and how authority is constituted. Language embodies values and beliefs, and the process of transforming legal writing into plain language is the process of re-forming the ideology of the justice system and the communities which take part in that system.

The finding genre participates in the vast intertextual

network that sustains the broader legal society. The Review Board discourse community is shaped by its texts/symbols while it, simultaneously, shapes them. And the community continues to recreate itself through its symbolic, textual (re)production.

Chapter 5

Composing Realities

Legal discourse and the genres it informs are easily recognizable as social: laws deal directly with society, are formed through social processes, and are shaped by society as much as they function to shape it. Moreover, our entire justice system is predominantly collaborative and intertextual. That the Workers' Compensation Review Board makes its decisions through a collaborative, intertextual, social process is, then, not surprising. The finding, like all legal genres, is informed by social processes. However, that these same processes also inform *all* kinds of writing is, perhaps, not so apparent. Although the finding genre embodies and maintains the symbols that define Review Board culture, the social nature of the members' writing process has as much to do with the nature and functions of language in general, and its relationship to thought and reality, as it does with their specific cultural context.

Most of the members interviewed believe that even though they write the finding, the finding is not their own but the result of collaboration among the three panel members. As one member put it, "It's not my decision; it's not my finding. It's all three of ours' finding. And I firmly believe that all three people have gone into the making of

that decision. In many cases it may be my words, but the decision is not my decision." Most members spoke of how the basic structure and content of the written finding evolves from the post-hearing discussion among their panel and how this discussion is critical to the decision-making process: one member said that "the finding flows from the notes taken" at the discussion. However, some members said that although the discussion helps to clarify or make a decision, how the writer "gets to the conclusion is up to him." Thus, the post-hearing discussion is a kind of pre-writing collaboration: for most, the collaboration contributes to the foundation for the draft; for some, it assists in the more narrow invention of a conclusion.

Another important part of the members' pre-writing collaborative process is their reading of the history of the case, i.e., the various documents in the file that are written by various people about the case. This is a collaboration of and with texts, and, as such, widens the intertextual dimension of the finding process to include not only the voice of the law and the immediate participants in the case, but also the voices of all those who were ever involved in the case as they talk with or against each other. One member said,

> The decision that is rendered is only a small part of
> the process, in my mind. When I say that, I mean it's a
> compilation not only of the events at the hearing, but
> also of all the information that has been in the file

before--the history of the case. Before I go into a
hearing, I read every piece of paper on file.

Another member spoke of the beginning of the case, the reason

for the appeal, as a document: "For some reason I always

write down what is the original piece of paper that started

it all. . . . This piece of paper starts the trail going."

The writing of the finding and the making of a decision

are aspects of the same process, of which the final draft of

the finding is the result. Members agree that the

collaborative processes in which they participate before the

actual drafting of the finding may be accurately described as

"pre-writing" and hence part of their writing process. Thus,

the process of writing a finding is collaborative and

intertextual in its various stages: from the "piece of paper

[that] starts the trail going," to the final draft of the

finding and the panel's signatures of approval--after it has

been critically reviewed by the panel and revised accordingly

by the writer-member.

Both the post-hearing discussion and the reading of the

stories in the case file are typical of the dialogic means by

which writers construct knowledge as they seek their objects.

Indeed, current composition pedagogy favours dialogic

invention techniques such as "talk-then-write" and

"brainstorming"--both of which bear resemblance to the

members' post-hearing discussion. And, of course, reading

and research in one's field of inquiry are commonly accepted

invention techniques and routes to social knowledge.

A finding usually contains many instances of, what Bakhtin calls, "another's speech" (*Dialogic* 303) that are formally distanced from the writer's voice by quotation marks--for example, passages from a doctor's report or direct quotations of law--and these speeches in the finding are the synchronic abstraction of the collaborative processes through which the finding was created. As Coe writes, "Forms are synchronic structures that function as generalized memories of (diachronic) processes" ("Apology" 19). Thus, the decision-making process both results in, and is embodied by, the finding. The process of writing the finding is the making of the decision; the textual product is the "generalized memor[y]" of that process--which, when engaged by an audience, becomes processive again during the temporal activity of reading. All texts are, in this way, both formal and processive: they are maps of their invention that the reader travels through.

The decision-making process is an invention/selection process which, like all forms of invention, is a social activity (cf. LeFevre). In addition to the collaboration among panel members, the following are also collaborators in the making of a finding: the appellant and her legal representation, her employer, the doctors she has visited, as well as the claims adjudicator and other officers at the Workers' Compensation Board.

There are many possible kinds of collaboration involved
during the invention process, as LeFevre exemplifies:

> Writers often invent by involving other people: as
> editors and evaluators . . .; as "resonators" . . .; as
> collaborators . . .; and as opponents or devil's
> advocates . . . . To create certain kinds of discourses
> such as contracts or treaties, two or more rhetors
> (often in adversarial positions) must collaborate in
> order to invent. (34)

Panel members are editors of the written finding and
resonators, collaborators, and, sometimes, devil's advocates
in its invention. (Indeed, one member I interviewed said
that he often plays the role of devil's advocate during the
post-hearing discussion.) Other parties involved present and
argue the evidence that comprises the data of the finding
from which the panel members collaboratively select--through
the template of the legislation--that which is relevant, and
invent the decision by evaluating the results of their
selection. The claims adjudicator and the appellant are
opponents whose (textual) dialogue is, in turn, dialogized by
the panel in their evaluation of it. Like all selection
processes, the panel's is evaluative, and so the persuasive
force of the evidence is a factor in their selection.
Similarly, the finding itself must persuade the adjudicator
and/or the appellant, anticipating their responses, and their
responsive reading of it becomes the rejoinder in the
dialogue between reader and text.

However, the collaborators in a finding are not only the parties involved in a particular case, but also everybody, past and present, who has contributed to the legacy of legal thought, policy, and process. (To re-quote the words of a member, "we're not writing our decisions in a vacuum.") As LeFevre asserts, "Invention builds on a foundation of knowledge accumulated from previous generations, knowledge that constitutes a social legacy of ideas, forms, and ways of thinking" (34). The decision-making/writing process is informed and constrained by the "social collective" (LeFevre 34) of the legal establishment, and, in turn, the socio-culture through which it is maintained. The making of a decision, i.e., the invention process, is thus, in LeFevre's terms, both collaborative-- "people interact to invent" (50)--and collective: "Writers do not invent in a vacuum. Expectations of society, attitudes fostered by institutions, . . . tacit rules about the nature of evidence and procedures for inquiry . . . --these are but a few examples of what influences our inventions" (78).

Hence, whether a written work is accredited to one or a group of people, it is born out of and through the symbolic interchange of many, and is, in turn, dialogized by others. In Bakhtin's words,

> The living utterance, having taken meaning and shape at
> a particular historical moment in a socially specific
> environment, cannot fail to brush up against thousands
> of living dialogic threads, woven by socio-ideological

> consciousness around the given object of an utterance;
> it cannot fail to become an active participant in social
> dialogue. After all, the utterance arises out of this
> dialogue as a continuation of it and as a rejoinder to
> it--it does not approach the object from the sidelines.
> (*Dialogic* 276-7)

That each discourse event enters into dialogue with others

preceding and following it, and so participates in a socio-

historical conversation, is the larger dynamic in which the

process/product/reader dialectic participates.

Every utterance is thus "internally dialogic": "The

dialogic orientation of discourse is a phenomenon that is, of

course, a property of *any* discourse. . . . On all its

various routes toward the object, in all its directions, the

word encounters an alien word and cannot help encountering it

in a living, tension-filled interaction" (Bakhtin, *Dialogic*

279). However, some kinds of discourse are more dialogically

oriented than others. In Tsvetan Todorov's discussion of

Bakhtin's *dialogism*, he translates the term to

intertextuality and describes Bakhtin's "inventory" of

> all the types of discourse in which the intertextual
> dimension is essential: daily conversation; law;
> religion; the human sciences (it will be recalled that
> their distinctive features lie in their having to do
> with texts, with which they enter into dialogue);
> rhetorical genres, such as political discourse; and so
> on. (63)

The finding genre is an example of legal, rhetorical

discourse and is essentially dialogic in nature and function:

in its internal dialogism common to all utterances; in its grappling with legal, authoritative discourse and the discourse of others; and in its function as the rejoinder of a dialogue between the adjudicator and the appellant, and its concurrent anticipation of their responses. Bakhtin states, "In the rhetoric of the courts . . . rhetorical discourse accuses or defends the subject of a trial, who is, of course, a speaker, and in so doing relies on his words, interprets them, polemicizes with them, creatively erecting *potential* discourses for the accused or for the defense" (*Dialogic* 353).

However, though findings are collaborative, intertextual, and dialogic in their creation, form, and function, they are styled in an attitude of objectivity and written in an anonymous voice. In Bakhtin's terms, a finding is "double-voiced" discourse within a single, "unitary" language. Double-voiced discourse "serves two speakers at the same time and expresses simultaneously two different intentions" (*Dialogic* 324). Yet unlike, for example, novelistic discourse, the finding's rhetorical discourse is not a "concentrated dialogue of two voices" which is "as yet unfolded," but a dialogue which "may be adequately unfolded into an individual dialogue, into individual argument" (*Dialogic* 325). That is, in the finding discourse, *authentically* diverse languages do not sound. According to Bakhtin,

> double-voiced discourse is very widespread in rhetorical
> genres, but even there--remaining as it does within the
> boundaries of a single language system--it is not
> fertilized by a deep-rooted connection with the forces
> of historical becoming that serve to stratify language,
> and therefore rhetorical genres are at best merely a
> distanced echo of this becoming, narrowed down to an
> individual polemic. (*Dialogic* 325)

The finding strives to subjugate the dialogism through which

it is formed by positing a unitary language and mimicking

authoritative discourse that "demands . . . unconditional

allegiance." It thus seeks to curtail, on one level, the

possibility of continued dialogue. A judgement is a closure.

(After the verdict is announced, the trial is over.)

And for a judgement to be passed, there must be

standards of right and wrong; however, standards are created

through social consensus and, as Fish says, "do not exist

apart from assumptions but follow from them" (296). The law

can "objectively" measure "facts" only because enough people

have agreed upon what constitutes (legal) evidence and

standards of right and wrong. The law is thus a *sacred text*

--to which not only Review Board members pay allegiance, but,

to a degree, the entire society through which it maintains

its sacred status. In its *sacred* nature, it cannot be

approached (in the Bakhtinian sense), interpreted, or

dialogized; however, in its nature as a *text*, not only is it

subject to interpretation, it ceases to be a static "thing"

and is meaningful only in the dynamics of dialogic

interaction within social contexts.

This dual nature of the law is reflected in the Review Board's two-fold relationship with it: on the one hand, the "sacred" law is an unquestionable authority that measures quantifiable facts; on the other hand, the legal process is not infallible (this is why Review Boards exist), and the weight of an argument for one interpretation (of evidence and law) over another is often what tips the scales of justice. Although most members insist that *they* do not influence the process in any significant way ("Facts are facts. . . . They don't change"), one of the ten members claimed that findings turn on rhetoric: "Some don't think our writing is persuasive, but it *is*." This member has been persuaded to change her decision after reading a finding in the Index File that is similar to the one she is writing but uses a different line of reasoning and comes to a different conclusion. Also, occasionally one member of the panel will not agree with the decision made by the other two, and that member will outline his reasons for dissent in the finding. Hence, in the case of a dissent, although the decision is passed by the majority, the dialogue remains open.

That differing opinions are sometimes not reconciled and that members may be persuaded to change their decisions implies that interpretation and rhetoric play a greater part in the making of a decision than Review Board members acknowledge. Moreover, the collaborative, dialogic structure of the Review Board process, and the entire legal process in

general, suggests that the mere juxtaposition of evidence and law does not result in the correct/objective decision. For if, as one member said (as quoted earlier), "the logic and conclusion that flows from [the evidence] is according to a specific law and policy" why, then, is a three-member panel necessary? Correctness and objectivity seem to rest on a mutual agreement among people who share an interpretive community (in this case, panel members at the Review Board).

Many members spoke of how their final decision (to allow or deny a claim) is sometimes made during their actual drafting of the finding. Most of the members I interviewed told me that "ninety percent of the time" they make their decision before drafting. However, "there is an occasional time when the process you go through in writing the decision will evolve a different answer or conclusion." That is, sometimes, especially in complex cases, when they are writing the finding and see the evidence "laid out," they realize they have missed a crucial point or they see something from a different perspective, and so change their decision.

This changing of perspective while one writes would seem to be a solely individual activity, occurring as it does while the member is alone, in a context apparently devoid of social interaction. Yet the member is not alone: she is engaging in a kind of dialogue with the texts and their voices in their new juxtaposition before her--as they are "laid out." She is thus participating in a discourse event

wherein her role is that of the reader, and the meaning constructed is a result of her interaction with the juxtaposed texts.

Also, the member is likely engaging in an "internal dialogue" during the process of evaluating the evidence and inventing the decision. LeFevre says,

> the internal dialogic view holds that the individual invents by carrying on an inner conversation or dialectic with another "self" that also functions as a bridge to the rest of the social world. . . . [I]nvention . . . is affected and indeed made possible by an "otherness" that is dynamically present in each I. (54)

For Booth, the individual "self" is comprised of a plurality of selves--"a field of selves"--not merely an "I" and an "other": "Even when thinking privately, 'I' can never escape the other selves which I have taken in to make 'myself,' and my thought will thus always be a dialogue" (*Dogma* 126). Thus, in these ways, while a writer is apparently alone, her perspective is nevertheless shaped through a social process that involves both her dialogue with the textual utterances (during reading) and her internal dialogue with socially constructed "others."

Furthermore, one member told me he will occasionally start drafting a finding "without knowing what [his] decision is . . . . And sometimes the very process of drafting can help you sort through in your mind--you're weighing,

evaluating as you go." Two of the ten members interviewed said they often change their minds when they are writing: "A lot of times . . . I've gone through the whole brainstorming process and have gone back to my office, ready to dictate, and I end up at the bottom line and I say, it doesn't work out; it just doesn't add up." And, "Not always, but in a lot of cases, when you finally write a decision you'll arrive at a different conclusion. . . . Writing it usually drives you to a conclusion."

These comments imply that the process of thinking and the process of writing are inextricably intertwined, that "writing . . . drives you to a conclusion" and does not merely translate into words a conclusion previously held in thought. The "very process of drafting can help you sort through in your mind" because as one writes, one is continuously selecting and deflecting reality--"weighing and evaluating" the evidence--through the words one chooses and the beliefs one holds.

Writing is a way of thinking, a way of perceiving and thus selecting from a pool of available symbols those that one chooses to realize. And the evidence and data of a case --the group of symbols--comprise only a part of the reality that Review Board members select, deflect, and shape through their language: these symbols are juxtaposed with other symbols of their (cultural) reality such as, for example, justice, legislation, and Review Board policy. And, in a

similar way, all realities--individual, cultural, and universal--and the relationships between them, may be regarded as infinitely complex groupings of juxtaposed symbols.

When one sets about to write, one begins selecting from a reservoir of symbols those "objects" one wishes to bring into the physical world. The act of writing is an act of perception, and perceiving is describing is creating. When one writes, one is creating a new configuration of symbols and thus really is bringing things into the physical world, not just mimicking them.

Writing, thinking, perceiving, talking, and reading are some of the various practices of the activity through which reality is shaped: selecting and processing symbols. And as this creative, symbolic activity occurs through social interaction and a socially-shared symbol-system (i.e., language), so is the reality that it continuously shapes and maintains socially constructed and shared. In Burke's discussion of his proposition that "things are the signs of words," he suggests that "material things [are] like outward manifestations of the forms which are imposed upon the intuiting of nature by language, and by the sociopolitical orders that are interwoven with language" (*Language* 378). Language, then, does not mirror an idea in the mind or an object in the world: it shapes and forms them. Language, in short, *describes* reality.

The words one uses are a template for the reality they create and maintain. And, as Bakhtin says,

> the word in language is half someone else's. . . .
> [T]he word does not exist in a neutral and impersonal
> language . . ., but rather it exists in other people's
> mouths, in other people's contexts, serving other
> people's intentions: it is from there that one must take
> the word, and make it one's own. (*Dialogic* 293)

According to Bakhtin, individual systems of ideas/beliefs are created through the social functions of language: "The ideological becoming of a human being . . . is the process of selectively assimilating the words of others" (*Dialogic* 341). In this view, language not only embodies beliefs, but creates them: language is the stuff that we are made of.

So one defines oneself and one's reality through the language one uses. Through the process of "selectively assimilating the words of others," one shapes one's beliefs and, by sharing discourse communities with those who speak the same language, upholds the beliefs/reality created. The "self," Booth says, "is *essentially* rhetorical, symbol exchanging, a social product in process of changing through interaction, sharing values with other selves" (*Dogma* 126). One is continuously "becoming" because one is continuously encountering new languages in daily living. During this process, one's membership in discourse communities is in flux as one travels through a variety of discourses. Also, one is not bound by the discourse and reality of one community

because one is a member of many discourse communities simultaneously (and, often, a temporary member)--communities which, like the language that describes them, are themselves in a continual process of formation.

The language-using self, then, is not solely the product of a discourse community:

> the constructive individual writer persists in a dynamic tension with social and cultural forces acting on that writer. In fact, the current buzzword, 'empowerment,' evokes a view of the writer as an agent capable of recognizing the cultural situatedness of her language use in various discourse communities and acting upon that recognition. (Berkenkotter 151)

As Burke says, even though one person "identifies" with another, is "consubstantial" with her, "at the same time he remains unique, an individual locus of motives. Thus he is both joined and separate, at once a distinct substance and consubstantial with another" (*Rhetoric* 21). In this way, even though a Review Board member is consubstantial with her colleagues, she is still an individual--her "field of selves" is uniquely composed. Burke also points out that "there are respects in which we use language 'universally.' That is, we are the kind of animal that approaches everything through modes of thought developed by the use of symbol systems . . ." (*Language* 28). Burke aligns this perspective with Samuel Taylor Coleridge's when he writes "Every man's language has, first, its *indivdualities*; secondly, the common

properties of the *class* to which he belongs; and thirdly, words and phrases of *universal* use" (Coleridge 464).

An individual is heteroglossic, is comprised of many languages and hence shares discourse with many communities, and these languages interanimate each other in a variety of unique and particular ways. One creates reality, therefore, by orienting oneself within one's personal linguistic life. This life is solely individual--as individual as one's voice --yet rests on a common, ever-shifting sea of languages. Thus are realities individual *and* cultural *and* universal.

This study is ethnographic--it focusses on a cultural reality--because the finding genre, like all genres, is a cultural form. The Review Board culture and the finding genre are interdependent: they create and maintain each other. Nevertheless, with a slight shift of focus and a concurrent adjustment of lenses, the individual or universal aspects of writing a finding may be explored and new meanings made.

Although the Review Board community constrains the individuality of its members, and shapes, ideologically, their writing selves to serve its functions, the community is nevertheless comprised of individual people whose lives include far more than their profession and who dwell in any number of discourse communities simultaneously. Their

languages and realities are individual and cultural and universal. (Indeed, this chapter has explored some of the universal aspects of writing through its claim that the social, collaborative, and intertextual nature of the finding-writing process is common to *all* kinds of writing.)

However, even if a researcher chooses to study, for example, the *individual* member-writer's cognitive process, she would, necessarily, perceive it from an "other" socio-cultural perspective. In this sense, *any* kind of (writing) research must attend to, or at least acknowledge, social context. Indeed, any understanding or attempt toward it may be regarded, as Bakhtin suggests, as a transaction between different socio-cultural contexts:

> *Creative understanding* does not renounce its self, its place in time, its culture; it does not forget anything. The chief matter of understanding is the *exotopy* of the one who does the understanding--in time, space, and culture--in relation to that which he wants to understand creatively. (cited in Todorov 109)

I explored the Review Board and its finding genre from outside their community and inside my own. And, as Bakhtin proposes, "It is only to the eyes of an *other* culture that the alien culture reveals itself more completely and more deeply (but never exhaustively, because there will come other cultures, that will see and understand even more)" (cited in Todorov 109-10). Todorov believes

> Bakhtin is intent in imposing to all reading, all
> cognition, the status of ethnology, the discipline that
> defines itself by the exotopy of its researcher in
> relation to his object--at the same time that he is
> grounding, better than the ethnologists themselves, the
> legitimacy of their discipline. (110)

In the same manner that a text is not a static,

independent object to be interpreted but rather a living

discourse event--in which the writer, words, reader, and

social contexts participate in making--so is a culture not an

independent entity whose reality may be finally measured and

described by an ethnographer. The knowledge of a

textual/cultural event is infinite because of the infinite

manners and means through which it may be made. In this

sense a description of a culture (such as that attempted in

this study)--an ethnography--is also a comparison of

cultures--an ethnology: implicit in the description of an

"alien" culture is its comparison to one's own culture.

Writing ethnographies inevitably "are themselves

examples of the activity they propose to clarify. As written

texts they are part of an institutionally maintained

discourse authorized not by their relationship to fact, but

by their participation in the rhetoric shared by their

community of readers" (Herndl 322). In a cultural context,

then, this ethnography participates in the rhetoric of the

academic discourse on composition. It is an academic genre

which is constrained by and embodies the institutionalized

norms of the academic community and thus functions to serve

its purposes--in the same way as the discourse of the finding genre is constrained by and embodies the Review Board's institutionalized norms.

And like the Review Board members who uphold their cultural norms and affirm their knowledge through their making of findings, I am engaging in the same process in my writing of this study. I constructed the evidence (through ethnographic writing-research techniques), and generated meaning from my dialogic interaction with the evidence-- conducted through my terministic screens. As an individual, my language and beliefs are shaped by the academic discourse on composition theory and by the discourses of other interpretive communities through which I have travelled and in which I hold membership. And, through the template of my language and beliefs, I am creating, in this study, the knowledge and reality I wish to see upheld.

Hence in the process of this writing, as with any, I am participating not only in the rhetoric shared by my community of readers, but in an ineffably vast and intricate social network. I am also collaborating in various ways with those voices that enable and constrain my own, for example, the quoted voices that appear in this text of both composition theorists and Review Board members; those whose work in the writing field I have read and who have contributed to shaping its discourse and knowledge; and all those with whom I have conversed on this and related subjects.

The fluid configuration of languages that compose my linguistic life, and the distinctive ways they interanimate each other, give rise to my voice, my individuality. When I use language I speak with all those whose languages inform me and with whom I have formed my language. Thus is the process of using language the process of composing oneself--and reality--through others.

Appendix A

Analysis 1 and Numerical Results

Content

1. Quoted material and information on submissions,
    evidence, and policy are relevant to the argument.

    ```
    Vets: Pre - 3.45  Post - 3.10  Overall - 3.28
    New:  Pre - 3.65  Post - 3.85  Overall - 3.75
    All:  Pre - 3.52  Post - 3.35  Overall - 3.43
    ```

2. The argument is easy to follow, adequately developed,
    and not faulty. The logic used is evident.

    ```
    Vets: Pre - 3.05  Post - 3.20  Overall - 3.13
    New:  Pre - 3.55  Post - 3.50  Overall - 3.53
    All:  Pre - 3.23  Post - 3.30  Overall - 3.26
    ```

Structure

3. Headings are used appropriately. (The basic format is
    Introduction, Issue(s), Outcome, Evidence, Submissions,
    Law and Policy, Reasons and Findings, Conclusion.
    Variations are acceptable.)

    ```
    Vets: Pre - 1.00  Post - 3.70  Overall - 2.35
    New:  Pre - 4.00  Post - 4.00  Overall - 4.00
    All:  Pre - 2.00  Post - 3.80  Overall - 2.90
    ```

4. The Introduction and Issue (i.e., their *content*) are at
    the beginning of the document. Headings may or may not
    be used.

    ```
    Vets: Pre - 3.40  Post - 4.00  Overall - 3.70
    New:  Pre - 4.00  Post - 4.00  Overall - 4.00
    All:  Pre - 3.60  Post - 4.00  Overall - 3.80
    ```

5. The Outcome (content) follows the Introduction and Issue
    at the beginning of the document.

    ```
    Vets: Pre - 1.00  Post - 3.40  Overall - 2.20
    New:  Pre - 4.00  Post - 4.00  Overall - 4.00
    All:  Pre - 2.00  Post - 3.60  Overall - 2.80
    ```

6. Information (e.g., letters, submissions, evidence) is
    ordered chronologically.

    ```
    Vets: Pre - 3.50  Post - 3.50  Overall - 3.50
    New:  Pre - 3.85  Post - 3.80  Overall - 3.82
    All:  Pre - 3.62  Post - 3.60  Overall - 3.61
    ```

7. Paragraphs are unified and effective transitions are
    used.

    ```
    Vets: Pre - 3.23  Post - 3.35  Overall - 3.29
    New:  Pre - 3.80  Post - 3.45  Overall - 3.63
    All:  Pre - 3.42  Post - 3.38  Overall - 3.40
    ```

8. The document is coherent overall. It is not confusing
    or hard to follow/understand.

    ```
    Vets: Pre - 3.20  Post - 3.10  Overall - 3.15
    New:  Pre - 3.65  Post - 3.30  Overall - 3.48
    All:  Pre - 3.33  Post - 3.17  Overall - 3.25
    ```

Language

9. Layperson's language is used primarily, and any
    technical or specialized language (e.g., legalese,
    medical terminology, other jargon) is used only when
    necessary.

    ```
    Vets: Pre - 2.38  Post - 2.48  Overall - 2.43
    New:  Pre - 3.25  Post - 3.00  Overall - 3.13
    All:  Pre - 2.73  Post - 2.72  Overall - 2.73
    ```

10. Personal names are used primarily--not titles of
functions (such as "worker," "employer," etc.).

        Vets: Pre - 1.50 Post - 3.28 Overall - 2.39
        New: Pre - 3.00 Post - 3.30 Overall - 3.15
        All: Pre - 2.22 Post - 3.50 Overall - 2.64

11. Only abbreviations of common usage are employed (such as
     Mrs., Mr., Ms., Dr., Ltd., etc.)

        Vets: Pre - 3.90 Post - 3.92 Overall - 3.91
        New: Pre - 3.90 Post - 3.95 Overall - 3.93
        All: Pre - 3.90 Post - 3.93 Overall - 3.92

12. The voice is clear, rational, and authoritative, without
     being authoritarian.

        Vets: Pre - 3.18 Post - 3.33 Overall - 3.25
        New: Pre - 3.65 Post - 3.40 Overall - 3.53
        All: Pre - 3.33 Post - 3.35 Overall - 3.34

Sentence

13. Sentences are not wordy or awkward.

        Vets: Pre - 2.83 Post - 2.83 Overall - 2.83
        New: Pre - 3.70 Post - 3.30 Overall - 3.50
        All: Pre - 3.12 Post - 2.98 Overall - 3.05

14. Sentence meaning is not vague or ambiguous.

        Vets: Pre - 3.30 Post - 3.30 Overall - 3.30
        New: Pre - 3.65 Post - 3.45 Overall - 3.55
        All: Pre - 3.42 Post - 3.35 Overall - 3.38

15. The active voice is used primarily.

        Vets: Pre - 2.95 Post - 3.28 Overall - 3.11
        New: Pre - 3.65 Post - 3.40 Overall - 3.53
        All: Pre - 3.18 Post - 3.32 Overall - 3.25

Appendix B

Analysis 2 and Numerical Results

Overall Structure

1. Findings begin on a high level of generality
   (Introduction, Issues, Outcome as highest) and proceed
   to lower levels of generality (Evidence, Submissions as
   lowest). Law and Policy is the highest level in the
   Findings, moving to a lower level in Reasons and
   Findings, and higher in Conclusion (more or less
   equivalent to the beginning level of generality).

   Pre - 3.90 Post - 3.90 Overall - 3.90

2. The general structure and pattern of development is
   either (1) narrative: the writer describes events in a
   linear, chronological fashion; or (2) logical: after the
   introduction there is a *claim* followed by *data* which
   supports the claim, followed by a *warrant* which is a
   statement of general principle that establishes the
   validity of the claim on the basis of its relationship
   to the data, followed by *support* which makes the data or
   warrant more credible.

   Pre - (1) 7, (2) 8 Post - (1) 3, (2) 12
   Overall - (1) 10, (2) 20

3. The Evidence and Submissions sections are narratives
   that provide the data which support the claim.

   Pre - 3.90 Post - 3.90 Overall - 3.90

4. The Law and Policy section is a description of the
   relevant policy and (sometimes) its relationship to the
   case; it is not sequentially ordered but follows the
   logic of the policy illustrated.

   Pre - 4.00 Post - 4.00 Overall - 4.00

5. The Reasons and Findings section is primarily an evaluation/argument, and includes examples and summaries of events. Like the Law and Policy section, the Reasons and Findings section is structured around the logic of the reasoning (the rhetoric used), not the sequence of events.

    Pre - 3.68 Post - 3.73 Overall - 3.71

Paragraph

6. Paragraphs usually begin with a topic sentence of high generality, and proceed to lower levels of generality (such as details, examples, etc.).

    Pre - 3.95 Post - 3.95 Overall - 3.95

7. Paragraphing is determined by subtopic or the chronology of narrated "chunks" of events.

    Pre - 4.00 Post - 3.75 Overall - 3.88

Voice, Language, and Style

8. The writer's voice is generally impersonal and anonymous ("We, the Panel"), with the rare exception of the personal "I" voice of the Dissent.

    Pre - 3.80 Post - 3.85 Overall - 3.83

9. In the Reasons and Findings section the voice, while remaining impersonal, is not *as* impersonal as elsewhere in the document. ("Voice" does not refer to quotations from outside sources such as doctors, etc.)

    Pre - 3.80 Post - 3.70 Overall - 3.75

10. Dates (of letters, submissions, events, etc.) are prevalent throughout Findings.

    Pre - 4.00 Post - 3.95 Overall - 3.98

11. The style is formal and nominalized.

    Pre - 3.90 Post - 4.00 Overall - 3.95

Language

12. Evaluative terms (such as *in/correctly, dis/agree, deny/accept*) and causative terms (such as *therefore, because, since, so*) are prevalent throughout Findings.

    Pre - 3.45 Post - 3.85 Overall - 3.65

13. Evaluative terms occur most frequently in the Reasons and Findings section.

    Pre - 3.80 Post - 3.75 Overall - 3.78

14. The substitution of specialized terms for common words occurs frequently. These terms may be considered Review Board jargon. (Examples are *advise* for *said,* and *indicate* for *show.*)

    Pre - 3.55 Post - 3.65 Overall - 3.60

Sentence

15. How many one-sentence paragraphs are there?

    Pre - 2.8 Post - 4.7 Overall - 3.7

16. How many one-sentence paragraphs are used as transitions?

    Pre - 1.7 Post - 3.1 Overall - 2.4

17. How many one-sentence paragraphs are used for emphasis?

    Pre - 2.1 Post - 3.3 Overall - 2.7

18. There is a prevalence of cause/result and contrast/compare types of sentences: the former use causal and conclusory conjuncts (such as *therefore, because, since, so*); the latter use evaluative terms (such as *in/correctly, dis/agree, deny/accept*).

    Pre - 3.70 Post - 3.80 Overall - 3.75

19. Contrast/compare sentences occur most frequently in the Reasons and Findings section.

    Pre - 3.85 Post - 3.85 Overall - 3.85

20. Semi-colons and dashes are rarely used.

    Pre - 4.00 Post - 4.00 Overall - 4.00

Appendix C

Questionnaire

Have you worked at the Review Board for more or less than two years?

Have you had any legal training?

Did you work at a legal or quasi-legal agency before the Review Board?

Section 1

The following are sentences and revisions of sentences from Review Board findings. Please place a check beside the better version ("a" or "b"), and explain why you think it is better. There are no "right" or "wrong" answers.

1. a) Ms. Brown stated that the first time she noticed the tingling sensation it would stop after scanning, however, after the second time she noticed the tingling persisted into the evening.

or

   b) Ms. Brown stated that the first time she noticed the tingling sensation it would stop after scanning. However, after the second time she noticed the tingling persisted into the evening.

2. a) In that letter the worker was informed that wage loss benefits would end on October 10, 1987 because her back was no longer injured.

or

b) In that letter the worker was informed that wage loss benefits would be finalled as of October 10, 1987 as her back had returned to its pre-injury status.

3. a) The worker contacted the Claims Adjudicator on September 20, 1987 to advise that he was fit for suitable employment.

or

b) The worker told the Claims Adjudicator on September 20, 1987 that he was fit for suitable employment.

4. a) The Panel is cognizant of some support from Dr. Howe to the effect that the relationship to the accident is plausible.

or

b) The Panel is aware that Dr. Howe sees a possible relationship to the accident.

5. a) This appeal was originally to be handled by an oral hearing; however, the Worker requested that the appeal be handled by a review of the file contents.

or

b) This appeal was originally to be handled by an oral hearing, however, the Worker requested that the appeal be handled by a review of the file contents.

Section II

The following sentences are from Review Board findings, and in brackets is the relevant context of each. If you think any of these sentences can be improved, please rewrite them and state, if possible, your reason for revision. If you think no revision is required, please indicate with a check.

6. She was advised that back complaints which required medical attention on May 13, 1988 were not seen to be due to an incident on March 3, 1988. (Second sentence of finding, Introduction)

7. It was estimated the worker would be disabled for a period of twelve to twenty days. (Evidence section, concerning a Physician's First Report)

8. The original injury was diagnosed as umbilical herniae which are considered congenital and the claim disallowed on this basis. (Introduction)

9. In that decision, communicated by letter, Mrs. Wright was notified that the tendinitis which she experienced on March 1, 1988, commencing with a gradual onset of pain, was not felt to be due to her work. (Introduction)

Section III

Please give brief responses to the following.

1. The following is a list of possible readers of findings. Please place a check beside the readers you are writing for, and rate each one's importance by circling a number on the 1 - 5 scales. "1" is of little importance, "2" is of some importance, "3" is of fair importance, "4" is of great importance, and "5" is of utmost importance.

Worker	1	2	3	4	5
Employer	1	2	3	4	5
WCB officers involved in case	1	2	3	4	5
Claims Adjudicator	1	2	3	4	5
Worker's representative	1	2	3	4	5
Employer's representative	1	2	3	4	5

Your fellow panel members   1 2 3 4 5

Vice Chair of your panel   1 2 3 4 5

Chairperson   1 2 3 4 5

Panel members in general, future and present 1 2 3 4 5

Vice chairs in general, future and present   1 2 3 4 5

WCB officers in general,future and present   1 2 3 4 5

Worker's physician   1 2 3 4 5

WCB's physician   1 2 3 4 5

Other (please specify)   1 2 3 4 5

2. Do you normally write a very rough draft or "freewrite" immediately after the hearing and/or discussion with fellow panel members?

3. a) Is one draft of the finding (plus minor revisions) usually sufficient?

    b) If not, how many drafts do you normally write before the finding is completed to the satisfaction of all involved?

    c) Does the number of drafts vary according to the nature of the finding or the nature of the panel or some other factor? If so, how and why?

4. a) Please describe the typical amount and kind of comments/revisions/edits your fellow panel members make on your draft.

    b) Are they useful to you? Why/Why not?

    c) Would you like more or less input from your fellow members?

5. If one of your fellow panel members is not in full agreement with you, yet does not disagree enough to write a formal dissent, is your writing of the finding affected in any way? If so, how?

6. a) Does the standard format enable your writing of findings?

   b) Does it cause you to think/ask questions in a particular way (in the pre-writing and writing stages)?

7. Please describe what you see as important qualities of a good finding.

Appendix D

Interview Outline

1. a) Can you describe your *image* of your reader(s) (who you keep in mind) as you write? For instance, it might be a combination of a few of the readers listed in the questionnaire, it might be one particular person, or it might be your high school English teacher.

   b) Does your (*image* of your) reader(s) vary with the different findings you write? How and why?

   c) How do you think your (*image* of your) reader(s) affects your writing?

   d) Does your (actual) reader(s) complicate your writing task? How and why?

2. a) How much and what kind of collaboration with other panel members is involved in your writing process?

   b) At what stages in your writing process do you collaborate with others?

   c) Do you think more or less collaboration would be better? Why?

3. a) Do you consider your post-hearing discussions with fellow panel members a kind of pre-writing collaboration?

   b) How do the discussions help/hinder your writing (if they affect it at all)?

4. Do you make your decision (on any level) as you write, or do you make it before and then "record" it in your writing?

5. What do you think of the Plain Language Movement?

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