

1982

In Doing the Ethnography of Schooling.
George Spindler (ed.) Holt, Rinehart & Winston.
N.Y.

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Susan Urmston Philips

The Language
Socialization of Lawyers:
Acquiring the "Cant"



Susan Urmston Philips

The Author

Susan Urnston Philips is an assistant professor of anthropology at the University of Arizona. Her area of specialization is linguistics, and more particularly language and culture. She is properly called a sociolinguist, because her work reflects the influence of the several disciplines that contribute to sociolinguistics. She did her graduate work at the University of Pennsylvania, receiving the Ph.D. in anthropology in 1974. She says of herself:

"I became involved in classroom research when I did my Ph.D. dissertation research. My dissertation fieldwork was concerned with ways that Indian use of English on the Warm Springs Indian Reservation was culturally distinctive. I wanted my research to be of use to the tribe. It was clear to them that their children were having difficulty in school, and the potential utility of a sociolinguistic perspective for the solution of minority educational problems had been made clear to me by Dell Hymes. So I designed my research to determine whether Indian ways of using language were involved in the Indian children's classroom difficulties. I observed and tape recorded in both Indian and Anglo classrooms at the first- and sixth-grade levels. Then, through participation in Warm Springs community activities, I sought to identify the sources of the differences I saw in the behavior of Anglo and Indian students. A book entitled *The Invisible Culture* is my analysis of the data gathered in that research.

"My initial involvement in classroom research, then, was motivated in part by the needs of the people I was interested in studying.

"Now I am involved in research on language use in American courtrooms. In both the courtroom and the classroom, question-and-answer sequences are pervasive. And those sequences are of great consequence for the parties being processed through both institutional complexes. Such comparisons of language use in different American institutional settings show me that my classroom research experiences are still very much with me in my current research."

This Chapter

Most of us, at one time or another, have encountered the "cant" of the legal profession that Susan Philips discusses in this paper. The encounter is almost always a vexing one for the layperson, for even though he or she may be articulate and generally well-read, the jargon used by lawyers will be obscure at best and opaque at worst.

In this chapter Phillips describes legal cant as a special form of communication. She places the emphasis on how it is acquired. The language socialization of law students is different in some respects from those occurring in other professional training programs, but everyone who has had advanced professional training in any field will note some similarities.

All professional training serves as an initiation into a special status in society. In the non-Western societies that anthropologists have traditionally studied, initiation ceremonies are often the single most important formal educational institution. Though initiation rites for females are found in many societies, the emphasis is usually on males. They are invariably inducted into the special non-domestic areas of male privilege, as in politics and religion. These rituals also serve to separate males from female-dominated groups and relationships and from the household of origin.

There are parallels to professional education of any kind in these initiation rituals, and particularly to professional education involving esoteric language and behavior patterns, such as in the legal profession. In any society it is the nature of nearly all formal education beyond the first years to specialize, select, and exclude. These features are increasingly questioned in modern society as we become more egalitarian and the social structure of our society more open. Traditional hierarchies and special statuses are challenged, as well as the special initiation rites leading to membership in them. The relationship between education and exclusiveness is so basic, however, that the problem may never be resolved.

Phillips' analysis makes clear the dilemma we face in a complex modern society, where educational initiations proliferate and harden as governmental bureaucracies, industrial systems, professions, and trades each require their own initiations and maintain their boundaries with their specialized "cant."

This chapter also furnishes us with a helpful commentary on ethnographic methods and how they were applied in the author's study of the law school classrooms. This demonstration further reinforces an emerging model of ethnography as applicable to any situation, anywhere. It is apparent, however, that the demonstration is successful because the ethnographer is trained in more than methodology. Phillips had an established language and culture framework within which to observe and interpret.

Introduction

My purpose here is to provide an ethnographic description and analysis of the processes through which lawyers learn how to use legal jargon.

The analysis is based on knowledge I acquired as a participant observer in the College of Law of a large Southwestern university. For one academic year I took courses in that law school as a special student, supported by a Russell Sage Residency in Law and Social Sciences.

In the discussion to follow, I will first consider how legal jargon is acquired through the process of face-to-face interaction and what we can learn about language socialization through a look at the acquisition of legal jargon.

The next section of the paper is devoted to what lawyers' language socialization can tell us about the allocation of special terminologies that embody and are a key to areas of knowledge. This concern is particularly relevant to ethnic minorities, women, and individuals who view access to certain areas of knowledge as a necessary part of their increase of control over their own lives. Legal jargon is characterized by its inaccessibility to outsiders. Thus, in addressing the issue of what makes legal language inaccessible, we will address the larger issue of what more generally causes languages and their associated areas of knowledge to be accessible to some and not to others.

The final section of the paper is devoted to consideration of the relationship between ethnographic methods of data collection and the type of analysis of language socialization provided in

the rest of the paper. Here the concern is to explicate the three-way relationship between methods of data collection, the kind of data that can and cannot be obtained through particular methods, and the sort of analysis that is and is not possible with a given body of data.

Acquiring the Cant

Legal Jargon as "Cant"

The term "cant" has been used to refer to expressions peculiar to, and generally understood only by members of, a particular sect, class, or occupation. "Cant" also conveys something more than just a special vocabulary. In addition, it has the connotation of depreciation of some aspect of the cant, its use, or its users, as in the sense one has of the phrases "thieves' cant" and "beggars' cant."

Legal jargon is generally fully understood only by lawyers and judges, so it can be said to be associated with an occupation group.¹ Lawyers are distrusted in part because it is difficult to understand their language, so users of that special language are sometimes disparaged. For these reasons, it seems appropriate to speak of the use of legal jargon as lawyers' cant.

Linguistic anthropologists have given little attention to special vocabularies that are associated with particular occupational or professional categories. Spradley's (1970) book on skid row bums and Agar's (1973) on heroin

Philips, Susan A.

1982 En "Doing the Ethnography of Schooling"

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users come close, although those subjects are not associated with activities we think of as occupations. Still less attention has focused on the use of special terminological systems, or on how people learn to use special vocabularies.

At the same time, linguistic anthropologists have been strongly influenced by Hymes' (1962) arguments for looking at language in its social context, and by the efforts of Gumperz and Hymes (1964, 1972) and Goffman (1964) to encourage anthropological attention to sociological approaches to the study of language in its social context. More specifically, sociological modes of analysis of face-to-face interaction (Goffman 1963, 1972; Garfinkel 1967; Sacks, Schegloff, and Jefferson 1974) have been taken up by anthropologists (McDermott 1974, Phillips 1976, Erickson 1979, Keenan and Schieffelin 1976).² Recently, Goodenough (1976) has focused attention on the way in which socialization occurs through the process of interaction.

Clearly sociological approaches to interaction fit well with some of the most fundamental anthropological views on language. Anthropologists see language as the key vehicle for transmission of cultural knowledge. Culture in turn is viewed as the distinctively human element in the adaptational flexibility of the human species. Communication, or the transmission of cultural information, occurs in the context of face-to-face interaction. Thus the examination of that process of communication in face-to-face interaction should tell us more about the role of language in the socialization or enculturation process.

The Nature of the Cant

Law students often say that getting through law school, particularly the first year, is chiefly a matter of learning a new language. By that the students suggest the scale on which unknown terms must be mastered, but they do not convey the nature of the language learned. Legal cant, as encountered in law school, consists of both new words and new oral and written activities in which the language is used. I will say a little about each of these in turn.

The new words consist of familiar terms with new or specialized meanings and new terms (some of them from languages other than English). In addition, there are new rules (collocation rules) for combining those terms with other already known terms.

Two examples of old terms with new meanings and uses are the words "construction" and "depose." Most of us have heard and use the word "construction" in the phrase "construction worker." The *legal* use of that term is as a noun form or nominalization of the verb "to construe" rather than the verb "to construct." Thus when one asks what construction was given to a statute one is asking how that statute was interpreted.

At some point in our classroom contact with European history, we learn that rulers can be "deposed," or taken out of their positions of authority. For legal purposes, however, the term "depose" refers to taking a deposition or oral testimony recorded by a court reporter from a witness outside the courtroom, and usually before a trial takes place. Thus new homonyms emerge as legal cant is acquired.

The new meanings of most legal terms that already have old familiar meanings are not usually so different from the old meanings. More often a general term comes to stand for a more specialized and focused concept. That is the case, for example, with the phrase "selective incorporation." One may readily infer that selective incorporation refers to a process through which some but not all of some set of things are taken in. But for legal purposes "selective incorporation" refers specifically to the position taken by some U.S. Supreme Court justices that only some, not all, of the rights in the Bill of Rights should be considered "fundamental." And only those that are considered fundamental are to be included in applying the Fourteenth Amendment of the Constitution to the states. Terms like "jurisdiction," "probable cause," "contract," and "exclusionary rule" all function in a similar manner. This source of terminology may be the one from which the greatest number of legal terms are drawn.

However, completely unfamiliar terms, not heard in daily conversation, are also numerous. Terms like "tort," "collateral estoppel," "plaintiff's intestate," "bailor," "pursuant to," and others fall into this category.

The rules for combining the new terms with other parts of speech, or in other words for contextualizing the new terms, are part of the meaning of the terms themselves.³ Law school professors may be quite explicit about the proper syntactic context for certain terms. For example, when law school students begin to speak and write about Supreme Court decisions, they must discuss actions "the Court" has taken.

Most of us have heard the term "court" used or used it ourselves as an object in utterance such as, "You can take me to court," or "I have to appear in court because of a traffic ticket." But in law school the term is used to refer to one or more justices or judges, and it appears as the subject of many utterances.

Students may be explicitly instructed that "the Court" be used with some verbs, but not others. Thus one may say that "the Court decided to restrict application of the exclusionary rule" or "the Court upheld the lower court's decision," but one must not say "the Court felt" or "the Court believed." Lawyers who eventually engage in actual courtroom practice will find "the Court" being used in still other ways there, as when a judge refers to himself as a third person subject in saying, "The Court finds that a plea of guilty has been knowingly and voluntarily made."

As I indicated at the beginning of this section, acquisition of the cant entails learning not only appropriate vocabulary and syntax, but also new forms of speech and writing that go beyond the sentence level. A brief and general characterization of law school education should convey some initial general sense of the nature of those new verbal and written forms.

Most law schools still rely on what is referred to as "the case method" for teaching the core of their curriculum. The chief or only textbook for a course is a casebook, made up of partial or whole "opinions," otherwise known as past and present "decisions" of the U.S. Supreme Court and State Supreme Courts.

Students are assigned "cases" to read and to "brief" in preparation for

class. To "brief" a case, the students extract from each opinion the key facts of the case, the legal issues in the case, the Court's holding, or main decisions, and the arguments for and against the decision.

In the law school classes that I attended, seating was fixed, in that once a student had chosen a place and committed his or her last name to that position on the professor's seating chart, that seat was taken each time. The students regularly brought to class their casebooks and their briefs, as well as their notebooks.

Where the classic law school format for teaching appears in the *classroom*, it is referred to as "the Socratic method." In my own experience, the application of that method was consistent: the teacher would call on a student, by title and last name (e.g., Ms. Smith), whether or not she or he had volunteered to speak, and ask that student a series of questions. Each question was structurally and topically dependent on the student's last answer or response, rather than having been planned out beforehand as part of predetermined sequence. Anthropologists will recognize that law school professors used "open-ended" questioning. The teacher might ask one student one or several questions before moving on to the next student.

When the teachers took up new cases, the first student asked to speak on such a case was often required to present information quite directly from the brief. Thus that student might be asked to present the facts of the case or the reasons for the Court's holding. As the questioning proceeded, it was more likely to depart from the focus of the

brief. This is a very normative view, of course, and variations in this process will be discussed further on.

The *specialized forms of speech and writing* in the law school student's training are closely associated with appellate (case) law and practice. The students become familiar with written Supreme Court "opinions" and one form of the "brief." Their briefs are both like and unlike the briefs used in appealing lower court decisions to a higher court, as will be discussed in further detail later on.

Through classroom interaction, the students are given the opportunity to hear the words they first encountered in their casebooks used by the teacher in new utterances, new constructions. They are also required to use the terms themselves in responding to the professor's questions, and to hear one another's uses responded to by the teacher as meaningful or not.

The students also become familiar with an *interactional format* used often in open court, where the judge has the opportunity to question lawyers in a manner similar to the way that law professors question students.⁴ The interactional analogy between the law school classroom and the courtroom will also be discussed in further detail later on. For now, let it suffice to point out that where speaking rather than writing is involved, training does not focus on learning how to handle specific verbal formats, such as how to give an opening or closing statement at a trial, or how to handle a divorce case. Instead, for the most part, verbal training involves preparation for a verbal role differentiation that is generally relevant for most courtroom interaction—namely,

the differentiation between lawyer and judge.

In sum, legal jargon is itself constrained by syntactic rules, by specialized forms of writing, and by specialized verbal role differentiations. And, as we shall see in the sections to follow, the acquisition of legal cant basically involves learning how to speak and write in specific ways that require the use of legal terms, but that go considerably beyond knowledge of the dictionary meaning of the terms themselves.

Here I have described some linguistic and sociolinguistic characteristics of legal cant. The terms and phrases linked together by collocation rules are embedded in written and spoken forms of speech. The students learn to take part in verbal interaction using the legal language. And through that interaction they organize their language in a role-differentiated manner. The most crucial aspect of that socializing process is probably the great amount of talk by students in the law school classroom.

From this brief characterization of the cant and the process through which use of the cant is acquired, we will turn to a closer examination of the processes through which law school students learn *verbal* usage of the cant.

The Structural Segregation of Law School Students: Talking to One Another

Although I have suggested in general that it is through the talk by students in the *classroom* that they learn to use the cant, such classroom learning is supported by an external environment in

which students talk to one another, using legal terminology.

It may seem commonplace to say that the students talk to one another, and hardly less so that they sometimes talk law. But unlike college students, law students are initiating that process whereby they eventually become unintelligible to the rest of us when they speak to one another. Unlike the graduate students or professors of any given academic discipline, law students or lawyers are numerous in our society. Lawyers run an entire set of legal institutions that are by definition supposed to be responsible and responsive to the public. Those institutions are not in fact accessible to the public, however, in part because the language used in the interaction that maintains them is impenetrable. We ask here how that process begins.

In the university where I was a law school student, and probably at others as well, structural segregation of the law school contributed to the creation of an environment in which students talked to each other and not to people who were not law students. Law schools often have autonomous bureaucracies and their own buildings, so that they are organizationally and physically distinct. This means there is also spatial and interactional segregation of people involved with the law school. My law school ran on a slightly different academic calendar than the rest of the university, as well. Classes began sooner in the fall and ended sooner than in the other colleges. Final exams came sooner and there was, of course, a separate exam schedule for the law school. Spring break was held at a different time than the break for the rest

of the university. Individual teachers rescheduled their classes without regard to activities outside the law school.

For all these reasons, few students from outside the law school were taking law school courses. And some of these features also limited the law student's ability to take courses outside the law school. Thus law school students encountered mainly one another in their courses.

The law school student body political organizations were also structurally autonomous, or separated from those of the rest of the university. At the law school's fall orientation meetings for first year students, representatives from a number of law student organizations described their activities. There was a student body organization with elected officers, the law review, a law school newspaper, law school versions of chapters of the American Bar Association and the Lawyers Guild, legal fraternities, a women's organization, and an organization for spouses of law students.

In such ways law students are provided with ample opportunity to engage in the structured interactions with one another that sustain these voluntary associations. Such associations reflect the structures and functions of some of the "real" professional associations the students will later become involved with as practicing attorneys. Accordingly, the law school organizations give the students ways of relating to one another that they will draw upon again and again later in professional life.

In sum, the structural segregation of the law school, which is manifested in its autonomous bureaucracy, its autonomous student social organization, and its physical autonomy, contributes sig-

nificantly to a situation where law students see no one but other law students and, if they seek them out, law faculty. Accordingly, they talk primarily to one another. This interactional segregation is probably especially great in private universities that draw a number of out-of-state students lacking the community ties that in-state students sometimes have.

It does not follow from this structural segregation that the law school students, who literally cannot avoid one another, will talk about law to one another. Indeed, some faculty members in my law school believed that students do not talk about law much and that when they do they misinform one another. But there is a second set of factors beyond those contributing to structural segregation that encourage the students to talk law to one another, and those factors are part of or present in the nature of the educational process itself.

First, the curriculum for the law students at most law schools is organized in such a way that they have a high degree of shared knowledge, which in itself fosters and eases talk on the topics for which there is such a sharedness. All of the first-year students take exactly the same courses and are in all of the same teachers' classes with some of their class members. Where I was a student, the classes were organized so that all of the first year students had to be at the law school for a large portion of each day, yet were free from classtime during some of the middle hours. While most of the classes had over 100 students in them, and were held in the traditional law school arenas, there were some small classes that indirectly fostered students' talking to one another.

Each first-year student had one

small class of less than 30 during the first semester which was linked to the research methods course taught by the head law school librarian. Thus those who had a small class for Civil Procedure would work on research assignments on Civil Procedure topics. It was my experience that a great deal of talk went on around the research assignments handled through that small class, throughout the semester. Students looking up cases in the library invariably ran into other students in the course looking up the exact same cases, and they puzzled together over the relevance of the cases to the assignment at hand. It was my impression that the Moot Court course of the spring semester fostered similar dialogue among the students.

Moreover, there was a tradition of forming study groups to prepare for the sole exam in each course at the end of the semester. Those study groups also provided a basis for much talk about law among the students.

Through all of the processes just described, the students acquire a great deal of shared knowledge that allows them to develop a very contextualized way of speaking to one another. That is, in conversation they are able to draw upon or refer cryptically to both shared information and the shared meaning of legal terminology. It is perhaps the sharing of the terminology and the syntactic and conversational rules associated with the terminology that distinguishes this process among law students from the same process among any set of persons in a relatively closed and overlapping network of persons and contexts.

But while the students may in fact benefit in many ways from exchanging

information about their assigned coursework, they also benefit greatly from the exchange of more practical information that can best be characterized as "survival" information. It is exchanged among students constantly on all university campuses, and is to some extent concealed from faculty members, particularly when it is about the faculty. In general, such information consists of course and professor reputations—what courses are good or bad and why, and what professors are good and bad and why.

In the law school, there are several other specific sorts of information that are regularly exchanged. First and foremost is information about study aids. As I indicated earlier, the main textbook used in law classes is a casebook, made up of edited opinions from the U.S. and state Supreme Courts. Sometimes Horn books are recommended as sources, although readings from them are not assigned. Horn books are treatises on the essential law of a given subject written by highly regarded legal scholars whose specialties are the topics they write on. The Horn books provide the general principles that the students are supposed to learn to abstract from the individual cases they are assigned to read.

But law professors rarely recommend other sources of information to their students. Thus while a law dictionary is a necessity for first encounters with the new terminology, teachers do not urge its use on students. And some professors explicitly direct their students not to use some other sorts of written sources. The two most often forbidden sources are published outlines that briefly summarize the contents of courses like those the students

are taking, and published "canned briefs," or briefs of the cases students are most likely to be reading for their courses.

Yet in practice virtually all of the students use these study aids, and the further on they are in a semester, the more they rely on them. The students learn from their fellow students that these aids exist, and they also learn from their peers which aids are thought to be the best ones for particular courses. While the outlines and canned briefs just described are published sources sold by the book store, student-produced outlines of courses in the law school are also circulated among the students.

A second type of necessary information obtained primarily from other students in the particular law school I attended, which may not be necessary in all law schools, was information about class scheduling. Classes were much more often cancelled and rescheduled in the law school than in college and graduate school courses. Law school professors may find it easier to accomplish such rescheduling than those who teach courses in the rest of the university, because they are obliged to avoid only the other courses that their colleagues are teaching. In other words, whereas teachers of college-level courses encounter quite diverse student schedules, and feel they must reschedule classes only for times when all or almost all of the students in the class may come, the orientation of the law professors is somewhat different. They feel obliged to avoid only the other law school courses that students in their courses might be taking.

Moreover the teachers in law school

courses did not feel obliged to inform the students of class cancellations and reschedulings directly, during an earlier class. Often notices of such changes were simply posted on a bulletin board outside the largest law school classroom, where each day the greatest numbers of students passed. The fact that such a posting was considered adequate notice of class changes indicated the extent to which an effective informal network of student information exchange was assumed by the faculty.

In general, then, law school students have both the shared knowledge that facilitates contextualized conversation and the need to acquire the knowledge that can be gotten only from other students. Those conditions lead to their talking about law in a variety of styles or ways of speaking. The legal jargon that they encounter first in their casebooks and then in the classroom is also used in their encounters with one another, although given terms will appear with different frequencies and in different syntactic combinations in each of these learning environments.

Furthermore, the conditions in law school that give rise to students' talking to one another about the law in structurally segregated contexts will continue to exist throughout their professional careers, allowing for the further elaboration of talk that is mutually intelligible only to members and unintelligible to those outside the profession.

The sort of peer interaction that I have been discussing continues through lawyers' careers in much the same fashion that one sees among students: lawyers who work in the same office or who meet in the halls and offices of court buildings will pause to talk shop

and exchange information with one another in their pursuit of individual tasks, even though such information and the ways of speaking about it may be little valued or subject to conscious control or evaluation.

The organization of such peer talk and the attitudes surrounding it differ markedly from the organization of and attitudes toward talk in the more formal setting of the courtroom, in which the work of lawyers is most available to the public. For a better understanding of how students learn to use the cant *in the courtroom*, it is necessary to look more closely at the organization of interaction in the law school classroom.

***The Organization of Interaction
in the Law School Classroom:
The Appellate Courtroom as a
Model***

In the law school classroom, legal cant is embedded in verbal interaction between the instructor and individual students. Through that interaction the law students learn how to use the language in relating to judges in the courtroom. In other words, the role differentiation of teacher and student parallels the role differentiation between judge and lawyer in the courtroom, particularly the appellate courtroom.

When cases from lower trial courts are appealed to higher courts, there are two basic stages in the review process that lawyers must go through. The first is the submission of a written brief to the Court. In this type of brief, the lawyer lays out the facts of the case, the points of law which he or she wishes to establish, the legal arguments and legal authorities for those points, and rebut-

tals to the arguments in the brief of the opposing counsel.

The second stage of the appellate review is the "oral argument" in the presence of the justices who comprise the appellate court. In this stage, both lawyers appear before the court so that they may each give time-limited oral presentations of the legal arguments laid out in their written briefs, and rebut the arguments of the opposing counsel. There the lawyers focus on what they consider to be the crucial points they wish the Court to give greatest attention to, and on any new authorities (decisions that may be cited as precedents) or arguments that have become relevant since the briefs were submitted. The lawyers try to present their crispest points in the clearest fashion.

At the same time, the lawyers must anticipate that their presentations may be interrupted at any time by questions from the Court on points raised in either the written brief or the oral argument. Thus a lawyer may be questioned repeatedly by a judge, and then be allowed to pick up the ordered presentation again, only to be questioned again by that same judge or another judge on the bench. All of the time allotted to the lawyer may be consumed by this impromptu questioning by the judges.

For a lawyer to be effective in this context of verbal interaction, she or he must be able to bring forth immediately the relevant legal arguments and citations of the earlier appellate opinions that constitute the legal precedents or authorities, in response to the justices' questioning. At the same time, the lawyer should be able to return readily to

a planned discussion of the arguments in the written brief, and even to omit material covered by the justices' questioning, without allowing the presentation to lose coherence. It is also desirable that this be done in clear English with as few incomplete, rephrased, or awkward utterances as possible.

As can be imagined, keeping one's verbal "cool" in this context is difficult, and those who are able to do so are highly regarded. At the same time, it is never clear how much difference an effective verbal performance will make to the Court as it arrives at a decision. Nevertheless, since an effective verbal performance might make a difference in getting across the relevant arguments, the lawyers who give verbal performances before appellate Courts make an effort to be coherent and fluent in their use of language.

The particular relationship between the lawyer and the judge that I have just described for the appellate courtroom also exists in the trial courtroom in some proceedings. In other words, it is often the case in the trial courtroom that each of two opposing lawyers will present arguments for her or his position to the judge. The judge is free to interrupt at any point with questions to the lawyer that will provide information of use in deciding how to rule on the issue.

For example, in the Initial Appearance, when defendants are brought before a judge for the first time and told what they are charged with, the judge must decide whether those who have been arrested and held in custody at the local county jail should be let out of jail, and under what conditions such a release should occur.

This process is referred to as "determining the conditions of release." For this purpose the defendant's lawyer may give the judge reasons why the defendant should be released with little or no bond money put up to insure that he or she will show up for later proceedings, and with few or no restrictions on activities while out of jail. The attorney for the state, on the other hand, may give the judge reasons why the defendant should be kept in jail, given a high bond to meet, or given certain restrictive conditions of release that dictate where the defendant must live or with whom she or he may or may not associate. It is up to the judge to decide how much of any of this to listen to and what further information to elicit from the lawyers, before deciding on the conditions of release.

One observes the same process of arguments from lawyers and questions from the judge when pretrial motions are presented before the judge. In a criminal trial, the attorney for the state may wish to introduce evidence that the defense attorney feels is irrelevant, or so inflammatory or prejudicial that it will unfairly bias any jury against the defendant. In such an instance, the defense attorney will give reasons why the evidence *should not* be allowed to be presented to the jury and the attorney for the state will give reasons why the information *should* be allowed to be presented. Once again the judge may interrupt either lawyer at any time with questions, or cut the lawyer off, having decided that she or he has heard enough on which to base a decision regarding whether to allow the evidence to be presented to the jury.

There are repeatedly situations

where this pattern occurs at the trial level in courtroom interaction. However, it is important to bear in mind that a good deal which goes on in a trial courtroom is *not* represented in the appellate courtroom. Specifically, the trial court interactional relationships that the lawyer has with witnesses, with plaintiffs and defendants, and with the jury have no counterpart in the appellate courtroom. As we will see, those relationships between lawyer and courtroom personnel other than the judge are not a focus of socialization in the law school classroom.⁵

Although law students learn to use legal jargon in a particular role relationship that has characteristics of the relationship between the appellate judge and the individual lawyer, it is important to bear in mind that this role socialization takes place within the broader context of a general emphasis on appellate law in law school socialization. Accordingly, before going on to specify some of the ways in which the teacher-student relationship in the law classroom is like that of the judge-lawyer relationship in the appellate courtroom, it may be useful to describe the ways in which law schools focus on appellate law, and why this is done.

First, the focus on appellate law should already be apparent from the earlier characterization of the case method through which law students are introduced to legal terminology. Casebooks are edited collections of the "opinions" or decisions appellate courts produce in response to the briefs and oral arguments of attorneys, presented in the matter described earlier. Often those opinions draw very heavily on the briefs provided by the lawyers, or more

precisely on the arguments presented in those briefs. Often, too, the written opinions of both the federal and state supreme courts address those arguments without explaining them or identifying them. This is done as if the lawyers' briefs had been read by every reader of the opinion and provided a context for that opinion, when in fact that obviously does not occur.

While law students may not initially recognize the contribution of the lawyers to the Courts' written opinions, they very soon become aware of those contributions through their Moot Court course. This is a required course taken by first-year students in their second semester, in which students are required to go through the same process lawyers do when taking a case to a court of highest appeal. They are given a case that has gone through a trial court and are asked to appeal the lower court's decision by doing library research on cases that may provide precedents or authorities for their positions, writing a brief laying out those arguments, and presenting oral arguments to a mock appellate court made up of second- or third-year law students. That court then decides which side has the more convincing arguments.

There is also an annual Moot Court competition, in which law school students compete with one another in the presentation of oral argument. In addition, the State Supreme Court holds court at the law school twice a year, so the students have the opportunity to see the process of oral argument as it normally occurs.

Before the case method was introduced at Harvard in 1870 by Christopher Langdell and disseminated from

there (Dente 1974), law school courses followed the format used in the Horn books: the general principles underlying or reflected in myriad individual court opinions were laid out for the students, while cases were used to illustrate those principles, rather than being used to derive the principles as they are today.

There are at least two reasons why the case method was thought to be preferable to the approach the Horn books use. Langdell believed the case method would enable law students to see how the law undergoes change through the decision-making process of the appellate courts. One can thus see, in the opinions the students must read, how notions of the nature of courts' "jurisdiction over the person" have changed over the past 100 years, or how rapidly the U.S. Supreme Court extended the Fourteenth Amendment's requirement of due process to the States during the 1960s. And it is probably no accident that Langdell was arguing for the importance of knowledge of legal change just at the time that change through case law was beginning to occur at a more rapid pace, while the stability of precedent gave way.

More importantly, many law professors believe the cases and the classroom dialogue about them teach the students how to *think* like lawyers. Ultimately the students should be able to envision how they as lawyers can play an important role in bringing about legal change, through their anticipation of the ways in which matters being handled at the trial level may entail a basis for appeal at a later date.

The fact that the law school teachers are concerned with conveying a mode

of thinking through their classroom activities does not necessarily mean that they are all consciously trying to get their students to act like lawyers in the courtroom, except insofar as acting like lawyers involves demonstrating through talk that one can think like a lawyer. Nevertheless, some teachers do deliberately try to generate a courtroom atmosphere, and there are basic similarities between the way the teachers relate to their students and the way appellate judges relate to the lawyers who appear before them.

I have already described those similarities in my initial characterization of the case method, but a brief recapitulation may be useful here. First, lawyers often enter the appellate courtroom assuming that the judges have read their briefs, and present their arguments in a manner that uses those briefs as a context for their remarks. Similarly, students enter the classroom assuming that they and the professor share the cases assigned as readings as background knowledge that can provide a context to refer to during the classroom discussion.

Second, just as lawyers must come into the appellate courtroom with "briefs" of their own briefs, from which they must be prepared to give a presentation to the Court, so law students come to class with a brief of each judicial opinion assigned as class reading, from which they are prepared to present information to the teacher.

Third, while lawyers begin their presentations by speaking from a brief, they may expect to be interrupted repeatedly by questions from any of the judges on the bench. And these questions often take the form of extended

dialogues with each individual judge. Similarly, in the law school classroom, while teachers may begin by asking a student to deliver some information from a brief, they will usually then depart from the formal order of the brief, to ask a series of related questions about the case. Again, it is common to engage in a series of exchanges with a single student before moving on to another student.

Finally, in both the appellate courtroom and the law school classroom, the abilities to think quickly and clearly about issues raised at the moment and to deliver a coherent opinion on those issues are highly valued.

While the parallels between courtroom and classroom may appear fortuitous, a comparison between the law school class and the usual college lecture class reveals the ways in which classroom interaction in the law school is distinctive. First, in the usual college lecture course, the student is not expected to use knowledge shared with the teacher as the basis for contextualized discussion in the classroom. The teacher is expected to deliver *new* information in the classroom. Often (to the students' dismay) the lecture is not even closely related to the material the students have been reading.

Second, students do not usually come to their college lecture classes prepared to deliver information to their teachers. New information is not imparted through dialogue between student and teacher, but rather through the teacher's delivery of a lecture.

Third, teachers in regular college lecture courses do not typically question their students, although this sometimes does occur. Instead, the students

are occasionally given the opportunity to question their teachers. Whenever questioning does occur in the usual college classroom, it is unusual for a dialogue between an individual student and the teacher to involve more than one or two exchanges, the way it so often does in the law school classroom.

In sum, the student's role in the average college lecture class is verbally a relatively passive one, when compared with that of the law school student.

Nevertheless, it would not be appropriate to suggest that law school classes are like higher-level seminars for graduate students in other fields. Seminars may provide the students with the opportunity to assume a role similar to the teacher's position in the lecture course, by allowing them turns at giving formal lecture presentations. Seminars may also involve a relaxation of the teacher's control over turns at talk and the general classroom pattern of students addressing the teacher, so that students talk more spontaneously and address one another rather than just the teacher. Such courses are for higher-level students, who are assumed to know something about what they are discussing, and law schools have such courses for their higher-level students also.

In general, then, it should be evident that the classic format for law school classes is quite distinctive in ways that parallel the organization of interaction in the courtroom.

There is one crucial way in which the organization of interaction in the law school classroom does share a great deal with the organization of interaction in most classrooms that reflect the Western mode of formal education.

Classroom interaction prepares people for the assumption of bureaucratic roles in our society (Sieber 1978). The law school classroom may be seen as a variant of the general classroom model of role differentiation that prepares people for the courtroom rather than for some other bureaucratic setting.

The law school classroom accordingly shares certain characteristics with other classrooms:

1. There is always one person, namely the teacher, in a structural position of control over the interaction of all present. The teacher determines who will talk when about what.
2. The remaining people, the students, are structurally undifferentiated in that they all have basically the same relationship with the teacher. Any differentiation among students is created by the teacher or emerges through the process of interaction that causes some students to be perceived as smarter, more aggressive, or more favored than others.
3. Verbal exchange is between the teacher and the individual student. As a rule, students do not respond to one another, but to the teacher. Where students are allowed to address one another directly, as we all do in conversation, such address is usually mediated through the teacher, who determines who may speak next.

The teacher's control, the lack of differentiation among students, and the restriction of the exchange of talk to that between teacher and individual student

are often reflected in the pattern of spatial organization of the classroom where the teacher faces the students and the students face the teacher, but the students do not face one another.

The many years that students spend engaged in classroom interaction where the format just described predominates, prepare them for the assumption of bureaucratically organized positions in the occupational sphere. More specifically, those years prepare them for the positionally based status-differentiated relationships of superior and inferior, in which the superior controls the interaction. But those years most particularly train students to function effectively in focused interactions involving many people where a single person controls the talk of others. Most often that format is used in what we refer to as "meetings."

The *law school* classroom is distinctive in that it socializes students for the courtroom, where one key characteristic of the status differentiation is that the person in control, namely the judge, asks repeated questions of the person under control, who must answer those questions in a highly specialized language.

What I have provided up to this point is a very normative view of the law school classroom. There is, in fact, considerable variation in the extent to which the classic format that I have described is used.

In all of the law classes that I have observed, the teachers have used cases as the basic reading material. They have presupposed the cases have been read and briefed, so that the teacher's talk cannot really be comprehended without having read the cases. And on

does not regularly encounter lectures based on material that is not in the case-books.

In addition, all law professors ask their students more questions than professors in the other academic disciplines, even though some ask more questions than others. All the law professors I have observed return to the same student repeatedly in questioning, so that extended dialogues take place in the presence of the rest of the class. However, teachers vary in the extent to which they engage in such dialogues, and the individual teacher varies in which students this is done with, and the purposes for which such dialogues are used.

Finally, there are no law professors who do nothing but ask the students questions. All of the teachers ask some questions from students, but they differ in the amount of time they devote to answering questions.

All of the law school professors that I observed spend some time lecturing, although much less than in college and graduate lecture courses. Towards the end of the semester it is not unusual for a professor to switch from the Socratic method to lecturing, as a way of cramming in material before time runs out. Younger law school teachers may have a tendency to lecture, and in other ways to teach in a manner more like that of college and graduate school teachers. This may be a result of their critical view of the Socratic process. The younger teachers may also have had more exposure to college and graduate school courses than the older teachers.

One key source of variation that affects the students a great deal is the ex-

tent to which the teacher calls on students without their volunteering. When we enter school as first graders, we are often *required* to participate. One sees compulsory participation, for example, in reading circles, where each child in turn is required to read aloud from a story. Over the years, compulsory participation is used less and less by teachers, and students increasingly are given the choice between volunteering and not volunteering to participate. The return to compulsory participation in the law school classroom is viewed as a hardship and a humiliation by many law school students.

Compulsory participation is probably required less often than it used to be generally, and younger law professors are probably less likely than older law professors to call on students who have not volunteered to participate. Decreased use of compulsory participation is due to its being viewed as part of an authoritarian teaching style that was criticized by students in the late 1960s and early 1970s.⁶

Compulsory participation is used more in the first-year courses than it is in second- and third-year courses. One common pattern is for the instructor to let the students know that they will be called on whether or not they raise their hands, but to require compulsory response with any frequency only at the beginning of the course. Then only when voluntary participation lags will the teacher require individuals to speak.

If we say that law school teachers are authoritarian in their teaching style, then we will most surely say that judges are authoritarian in the courtroom, because clearly lawyers are com-

pelled to answer judges' questions. Thus, regardless of one's attitude toward the law school style, it is still true that it prepares lawyers for what they will encounter in the courtroom.

From this discussion of the parallels between the law school classroom and the courtroom, it should be apparent that students learn a social organizational format of language use, or part of one, as they learn the legal cant. They can then apply that knowledge by mapping it onto a variety of procedural and substantive contexts where there is interaction between judge and lawyer. Other relational aspects of the trial courtroom (e.g., the relationship between lawyer and client, or lawyer and witness) are acquired at a later time. The language forms specific to particular procedures, for example initial appearances, preliminary hearings, the taking of a deposition, or the questioning of a witness, are also acquired at a later time.

A Summary of Basic Features of the Language Socialization of Lawyers

Legal cant involves an interaction between written and spoken communication that sends students cycling through first one and then the other repeatedly in the acquisition of legal terminology.

Students learn the *verbal* use of the cant by talking about law in contexts where they can hear others use terms correctly and hear others use them incorrectly and be corrected, and by experiencing both of those processes themselves. They also hear the terms being used in a variety of syntactic combinations and find themselves strug-

gling to produce sentences in which the terms occur in acceptable combinations.

It is probably generally true that one does not typically learn the *verbal* use of special terminologies from reading alone. One must have access to contexts in which the terms are *verbally used*, and participate in those contexts. It is the peculiar segregatedness of the learning contexts the law students have access to that causes us to describe the jargon as cant, and thus to convey the sense that it is mutually intelligible only among the initiated, and not to outsiders. Of this more will be said in the next section.

It is probably also generally true that the acquisition of language, whether we refer to language in general or to special languages or terminologies, cannot be separated from the acquisition of social roles, so that all language use and training for language use is to some degree role differentiated as it is in the classroom.

Yet we cannot assume that special language socialization will reflect the common denominator in the users' experience with the cant. Law school focuses on appellate law, and on the interactional format associated with that tradition, yet few lawyers will ever spend very much of their time in an appellate court. Thus we see in legal instruction not the most common activities, but rather the most influential activities of the profession.

Practical Implications

The ways in which law school students learn to use legal cant can tell us a good deal about the factors that generally de-

termine how cultural knowledge is distributed among members of a given society.

Interest in this issue is motivated here by the very practical educational concern that some segments of our society are barred from access to areas of knowledge which are associated with control over positions of power and authority. Thus both minorities and women feel barred from access to power, in part because they do not acquire the same kinds of knowledge that white males do; they are, in other words, socialized differently. In addition, many individuals see the specialized knowledge of certain professions, particularly the medical and legal professions, as controlled by the professionals. The lawyer's control over knowledge makes it difficult for a person who is not a member of the profession to acquire that knowledge and the control over certain spheres of activity in one's life associated with the knowledge.

To gain access to legal knowledge, one must learn the legal cant, for by acquiring the cant, one acquires the concepts that are conveyed through this special language. Legal language is viewed by many as more difficult to penetrate, or to acquire, than other special occupational languages. In this section, attention will be given to some of the factors contributing to its impenetrability, and to the features of the language socialization process that cause the code to be intelligible only to members of the legal profession. The purpose of the discussion will be to identify processes that create barriers to the wider dissemination of knowledge, with the long-range goal of eliminating such barriers.

When legal cant is characterized as impenetrable, we may be dealing with the perception of the casual eavesdropper at a cocktail party, the observer in the courtroom, the policeman, bailiff, or reporter who knows some of the jargon, or the client who is doling out money for legal services without fully understanding what the attorney is doing or why.

There are a number of reasons why legal talk is difficult to comprehend. The knowledge brought to bear by those engaged in legal talk is often highly specialized and complex. The legal cant itself may also be more complex and extensive than other special occupational or technical languages. There may be a larger special vocabulary. More of the terms (like *res judicata*, and "plaintiff's intestate") may have primary legal meanings, rather than drawing in part from meanings known by the general populace, the way terms like "target population" and "cultural adaptation" do. Legal terminology may range across a greater number of word classes than other occupational jargons. Thus, in addition to numerous special nouns, there may also be either numerous special verbs and adverbs or verbal forms of the nouns, with associated rules for combining them with words from other classes. And legal language may also be associated with a greater range of special written and spoken procedures than other occupational languages in our society—for example, with written contracts, deeds, licenses, plea agreements, briefs, and statutes, each with its own special rules of format, order, and phrasing.

The legal socialization process also contributes to the impenetrability of

legal cant. Most generally, the structural segregatedness of that socialization process creates an environment where it is possible to use an unusually complex special language and still be understood by those with whom one speaks. We will now consider that structural segregation in greater detail.

One characteristic of the acquisition of legal cant is that it is almost necessary to go to law school to learn how to use the language. As was indicated earlier, it is difficult for students from outside the law school to take law courses and get credit for them, because of the bureaucratic autonomy of the law school and the specific policies that discourage outsiders from taking the law school courses. When students *are* able to take the law school courses, they may have difficulty understanding the content of those courses because of the extent to which the courses build on one another, so that comprehension in one course depends on having taken other courses.

One who desires simply to acquire some working knowledge of the vocabulary associated with a particular area of law, like tax law or contract law, will acquire little simply by "sitting in" on the classes, because the class discussion is highly contextualized; the shared knowledge of the case readings may simply be referred to rather than explicated during the class discussion.

Finally, the person who aspires to learning the law on his or her own through the study of written materials will find a fragmented literature held together only by the verbal interaction of the classroom. In other words, the basic text, the casebook, tells one very little if it is used by itself, and the

reader has no feedback regarding the extent to which the identification of key issues or key word meanings is accurate. The Horn books, probably the most likely source for the independent learner, lack what the case method was designed to convey—that crucial sense of the way in which change in the legal system comes about, and the ability to identify key issues, as one must later on as an individual practitioner, seeking precedents and ways of framing issues that will be immediately useful to the client at hand. An effort to approach the literature without the classroom verbal interaction that enlightens that literature heightens our awareness of the continued importance of the transmission of cultural knowledge through the direct process of face-to-face interaction.

Because law school students are so segregated from others in their socialization, and encounter so few students from other disciplines in their courses, they have less opportunity and less need than they would otherwise have to attempt to speak about the law in an intelligible manner to those who have not been trained to be lawyers. In their classroom interaction and in their peer interactions outside the classroom, those they must talk to are overwhelmingly lawyers or law students like themselves. Law students have no need to alter or change their mode of discourse from one that is heavily laced with jargon so that others can understand them, because there are no others that they are compelled to talk to about law.

In addition, the method of teaching encourages the students to learn how to apply the terms and the analytical distinctions underlying those terms, but

not how to explain them to others. Thus in the classroom a teacher might ask, "What was the 'cause of action' in this case?" rather than asking a student to explain what is meant by the phrase "cause of action."

The mode of testing at the end of each semester or school year uses a similar approach. The standard exam relies almost exclusively on the presentation of hypothetical factual situations to which legal principles are applied. Thus for example, a Criminal Procedure exam may describe the commission of a crime and the arrest of a criminal, and ask the student to explain what evidence is admissible and what evidence must be excluded under "the exclusionary rule," which forbids use in court of evidence obtained in violation of the defendant's Constitutional rights. One is not asked, "What is the exclusionary rule?" The same exam process may be illustrated by the Legal Profession course, where lawyers' professional ethical obligations under the American Bar Association's Code of Professional Responsibility are reviewed. In the exam, various actions by lawyers may be described, and the students will be asked whether such actions are deemed ethical. While both the mode of teaching and the mode of testing are compatible with practicing lawyers' need to identify legal issues in their own clients' factual circumstances, those modes will not enable lawyers to explain to clients what they are doing.

Nor are members of the legal profession encouraged to believe that it is necessary or desirable to explain to outsiders what they are doing. Many of the American Bar Association's policies are

motivated by the belief that the professional activities of lawyers are too complex to be understood by the average layman. Thus, for example, there is nothing outside our regular criminal statutes to assure that lawyers will behave in an ethical manner towards their clients, other than the aforementioned Code of Professional Responsibility. Enforcement of the code is in the hands of the local State Bar Associations, and ultimately the Supreme Court of each state. Members of the American Bar Association acknowledge that many infringements of the Code are not acted upon in any way (ABA 1970), and that more effective means for enforcing the code are needed. However, the ABA is reluctant to seek public tax funds for that purpose, because this might lead to *public* involvement in assuring ethical behavior on the part of lawyers. Lawyers generally assume that the public cannot understand legal matters well enough to be able to judge lawyers' behavior in a satisfactory manner.

The American Bar Association resistance to advertising by lawyers has similarly been based in part on the view that laymen are incapable of evaluating the relative skills of those who advertise, or of picking a good product. And the ABA's advocacy of a "merit" selection system for the recruitment of judges, through which judges are initially selected by governor-appointed commissions rather than by voters, is in part similarly motivated.

Lawyers obviously have a vested interest in believing that what they do cannot be transmitted to others, because if it could, they might be out of a job. But the point here is that their own

abilities and experiences also encourage them to believe their knowledge is too difficult to transmit. Not only have they themselves come by the knowledge in a somewhat agonized manner by struggling over the casebooks, but they also have not been taught how to explain the material to others. It is little wonder, then, that lawyers find it so difficult to explain to others what they do.

Discussion

If we consider the features of law school socialization that contribute to the impenetrability of legal cant, it is possible to identify some processes that may be generally relevant to our efforts to understand what aspects of socialization create barriers to general access to particular areas of cultural knowledge.

Cultural knowledge is acquired through the process of communication in face-to-face interaction. Yet until recently little attention has been given to that process by anthropologists interested in socialization. Such lack of attention may be due to our preoccupation with socialization in reading and writing. We tend to view reading and writing as communicative skills which transcend the interactional limits of space and time. In other words, we of the literate society are inclined to see writing as freeing us from the need for face-to-face interaction in acquiring cultural knowledge.

In fact, however, *all* of our formal educational processes involve some face-to-face interaction between teacher and students as a crucial part of the learning experience. Moreover, most of the things we teach through the

process of interaction are rarely learned without that process. In other words, just as it is rare to learn law without experiencing the classroom interaction of law school courses, so too is it rare to learn grade school social studies, college algebra, or graduate school research methodology simply by reading books.

The law school socialization experience I have described demonstrates the importance of interaction with the teacher in the classroom and with peers outside the classroom in acquiring the crucial ability to use the legal cant. The special organization of law school classroom interaction further demonstrates the shaping effect of face-to-face interaction organized in a particular fashion.

Most importantly for our concern with the causes of barriers to the dissemination of knowledge, we see that *the transmission of knowledge follows the lines of interaction*. Those who are cut off from the interactional contexts through which information is disseminated will have little access to that information in other contexts.

We are talking, then, about segregation—about the inclusion of *some* in the crucial learning environments (which are not just limited to the classroom) and the exclusion of *others*.

As anthropologists are well aware, segregation is a common tool of socialization. There are numerous cross-cultural examples of the segregation of particular segments of a society for the purpose of focused and concentrated socialization of those segments. The best known examples in the anthropological literature are probably those from African societies where the mem-

bers of a given male adolescent age grade are isolated from their village, instructed in knowledge associated with manhood, and declared to be men at the end of the period of socialization.

The segregation intensifies the learning experience, so that the attention of the learners is not distracted by other activities and is focused on the material to be learned. Segregated learning also heightens awareness of the aspect of one's social identity that is associated with the knowledge being acquired. Thus our African adolescent males will have a surer sense of their manhood by being the only ones who have the knowledge associated with the social identity of "man." The knowledge may also be associated with exclusive access to positions of power and authority within the social system.

Where there is a concern to allow persons other than those segregated for socialization to have access to the knowledge, so that they may have access to the power, the social organization of face-to-face interaction must be altered to change the pattern of segregation.

At the same time, it is important to keep in mind that such reorganization is also likely to change the patterns of social identification within the society. Thus while some members of ethnic minority groups would like their children to acquire the knowledge necessary for upward social mobility, they also fear that the new knowledge may replace ethnic knowledge and weaken the students' sense of identity with the minority group. And in the women's movement there is a tension between the goal of acquiring knowledge that males have in order to acquire some of

the same sorts of power men have, and the goal of elaborating the knowledge that women have as a way of strengthening women's sense of self worth and identity as women.

Yet the law school experience should tell us that the reorganization of face-to-face interaction would not be enough to change who has access to what information. The belief of lawyers that their knowledge is too complex to be transmitted to others otherwise than through a law school curriculum is only a slightly clearer and stronger version of similar beliefs among other professional groups in this country. Notably, educators believe that the issues they face are so complex that they cannot be explained at the local community level to the parents of ethnic minority children. That complexity is then taken as a reason for failing to involve local communities in educational decisions which affect their children.

From another point of view, we must say that educators are skilled only in certain modes of transmission of knowledge in certain contexts, and have come to consider those modes and contexts as the only ones possible. Thus educators' belief that minority parents cannot understand is, when taken in another light, an admission of their own failure to develop new teaching techniques.

Finally, to the degree that a body of knowledge is transmitted in part through a special language, and the complexity of the language is facilitated by the structural segregation of those being socialized, the language itself should change if the organization of face-to-face interaction is changed.

In sum, we see that the transmission

of cultural knowledge is dependent upon and shaped by the organization of communication in face-to-face interaction. Reorganization of interaction can alter the pattern of allocation of knowledge, but the attitudes towards who can learn what and the language used to transmit knowledge must also undergo modification, if knowledge is to be redistributed.

Lacking ethnographic methodology, it would not have been possible to articulate this organization of the transmission of culture through communication in face-to-face interaction. The final section of this paper considers the contribution of ethnography to the research process.

Methodology

Introduction

In this section I want to consider the relation between data collection methods and the type of analysis of the data that is carried out. More specifically, attention will focus on the relation between the use of ethnographic research techniques and the analysis of the role of face-to-face interaction in language socialization. My purpose here is to contribute to our understanding of the role of ethnography in the study of classroom interaction.

This section is divided into two parts. The first part reviews the changes in the meaning of the term "ethnography," as that term has been used by anthropologists, and identifies some key research techniques associated with ethnography as a research methodol-

ogy. The second part discusses the use of various ethnographic techniques in the study of classroom interaction, including my own use of participant observation as the basis for the analysis offered in this paper.

Ethnography

Since the turn of the century and the professionalization of anthropology under the influence of Franz Boas, ethnography has basically referred to the description of activities in a single society. From that time to the present, ethnography and ethnology have been contrasted as two conceptually rather different aspects of anthropological inquiry. Ethnology is the process of comparing and contrasting societies on the basis of ethnographic descriptions of each individual society. Viewed in this way, ethnography is the more workmanlike and less intellectually challenging or theoretically sophisticated activity.

The work of Goodenough (1956a, 1956b, 1957) altered the view of ethnography. Goodenough made the crucial point that ethnographic descriptions themselves are always accomplished through the employment of some sort of analytical and comparative framework developed by the anthropologist. He argued that we should take as our initial descriptive goal the characterization of culture from the natives' point of view, with greatest attention to the cognitive distinctions made by the members of the culture being studied. Those distinctions would be added to the pool of distinctions made by the social scientists, and later comparisons

could be made among the cognitive distinctions used by members of different societies. Thus, while priority was given to the point of view of the members of societies over the point of view of the anthropologist, Goodenough's fundamental notion that a description always entails a selective focus and an implicit theoretical framework altered the anthropological view of ethnography.

Recently, ethnography has been discussed less as a theoretical construct and more as a methodology for gathering data. This is in part due to the introduction of ethnographic field techniques into contexts of study where they have not been used on a large scale before, most notably the context of the American classroom.

There are several general ways in which "ethnography" as a research methodology differs from other major traditions of research methodology. First, and most notably for the study described here, ethnography involves the direct and face-to-face encountering of the social processes being studied. Anthropologists go to the societies they are interested in studying and directly perceive the people and their activities that are the focus of research. That direct approach contrasts markedly with research based on what others have written, and with research based on questionnaires mailed to the subjects to be studied or to someone who has known them.

A second characteristic of ethnography is the concern to avoid altering or disrupting the social system being studied, particularly while the study is going on. That key aspect of ethnographic method contrasts most mark-

edly with the experimental approach, which involves arranging or setting up social activities so that those activities may be studied.

A third methodological feature of ethnography is the concern to obtain what might best be called in-depth knowledge of the situation being studied (Geertz 1973, Schieffelin 1979). At the most general level, that priority is reflected in the expectation that field studies in other societies be given a minimum of a full year's full-time data collection. On a more concrete level, the typical ethnographic approach to any activity is to find out about it from a number of points of view. Thus a ritual that is the focus of study will not merely be observed. It will be repeatedly observed, and both those involved in the ritual and those who observed it may be interviewed about why activities were carried out in the way they were, and how and why particular individuals were involved in the ways they were. Nor will this information simply be allowed to pass through the anthropologist's head as background information. Instead, the information is recorded in detail in field notes taken on a regular basis before it fades from mind.

A fourth feature of ethnographic methodology is the evolving nature of the methodology (Hymes 1978). Thus whereas some disciplines have their research format laid out precisely before they begin their data collection, and do not deviate from it during the process of data collection, it is understood that various approaches may be tried and abandoned in the quest for the one most appropriate to ethnographic data

collection. An evolving methodology has been most necessary in cross-cultural research where anthropologists could not readily determine in advance what they would be able to do among people in a society they knew very little about.

There are several specific methods associated with ethnography that are particularly compatible with the concern to have direct contact with the phenomenon being studied and the concern to avoid disrupting the processes being studied. The method most closely associated with anthropological inquiry is "participant observation."

In the strictest sense of its meaning, participant observation refers to the simultaneous occupation of a structural position within a social system and study of that system. Anthropologists, for example, sometimes are assigned positions within the kinship systems of the local communities they live in. We speak of participating and observing what we participate in at the same time.

While that is the central conceptualization of "participant observation," in practice the term is used to refer loosely to a variety of activities, ranging from living among the people studied, as Malinowski did, to engaging in the same activities as the people studied are engaged in.

"Observation" is distinguished from participant observation by the fact that interactionally the observer's role is more one of reception of communicative behavior than the participant observer's role. Therein lies its chief virtue: it is possible to receive more information when one is not obliged to produce it. It is, of course, necessary that an observer's role be culturally

permissible and socially appropriate for that mode of data collection to be used.

Recordings of various sorts, including audiotapes, videotapes, and films, can be seen as tools of observation of face-to-face interaction. Although some people assume recorders cause those recorded to alter their behavior, in fact those observed can't do what they are there for if they change much. Recording as a method of data collection is consequently very compatible with the anthropological emphasis on the need to disrupt the social process as little as possible while studying it.

Those who focus on classroom interaction as a phenomenon (e.g., Mehan 1979; Cazden 1970; Cazden, et al. 1977; Erickson and Mohatt MS; McDermott 1976; Phillips 1979) do so because they believe that the educational process is located in face-to-face interaction. They also believe that an understanding of educational "problems" is to be derived from the study of classroom interaction. Both of those beliefs suggest that sociologists have succeeded in convincing people interested in the educational process that what goes on in face-to-face interaction somehow matters.

The Present Study

The data on which this paper is based are primarily from a gathering of information through participant observation. In the rest of this section, I will discuss my experiences as a participant observer, focusing on the relation between the mode of data collection I used and the kind of analysis of interaction that was possible with that data. I will also consider the sort of analysis

that would have been possible had I relied more heavily on other modes of data collection.

My primary purpose in attending law school was to acquire enough knowledge of the law to do research on language use in courtrooms. I wanted to do research that I felt could not be done without such knowledge.

Much of what I had seen and heard during my first exploratory courtroom observations in the fall of 1975 was incomprehensible to varying degrees. I couldn't tell how much of my noncomprehension was due to my not knowing what law schools teach. My efforts to question lawyers about what I had seen led them repeatedly into explanations *they* had gotten in law school. It seemed more efficient to get such information from law school itself.

I had already decided I wanted to study judges' use of language in the courtroom. I expected to acquire knowledge in law school that would have bearing on that research. For example, I was interested in the relationship between judges' behavior in the courtroom and the way they are perceived and evaluated by lawyers. Accordingly, I hoped to learn what sorts of attitudes towards judges are conveyed through law school socialization.

Once I began to attend first-year law school classes, mainly in first-year courses, I found myself thinking more generally about the socialization of lawyers and about the contribution of the organization of classroom interaction to that process. Such a focus was stimulated in part by my earlier research on the organization of interaction in North American Indian classrooms (Philips 1979).

I envisioned myself as a participant observer, in the sense of being one who occupied a position in the structure of the social process I was studying from the beginning of my year (1977-78) as a law student. Mehan (1979) and Cazden (1977) had just completed a year-long study of a classroom in which Mehan and his students had functioned as observers and Cazden had functioned as a participant observer in the role of the classroom teacher, so it was natural for me to think of myself in this light. Accordingly, I tried to act like a student as much as possible.

At the same time, there were some limits to my functioning as a student. Although I took the courses for credit and grades as a way of making myself do the work, I had not applied to be a law student through the regular selection process, but rather received permission to take courses as a special student. I did not receive the mailed information from the law school bureaucracy that the regular students did and was not included in class rank calculations. I chose my courses and instructors rather than being required to take particular courses from particular teachers.

Almost invariably my status as a special student came out when first-year students assumed, by virtue of my status as a first-year student, that I shared information with them which I did not in fact have, because my experience was different from theirs. This might come out through as simple a question as "Who do you have for Property?" when I wasn't taking the Property course.

By virtue of my conscious efforts to be a participant observer, my behavior

was different from what it would otherwise have been, but only in a limited number of ways. I attended the orientation sessions for first-year students at the beginning of the school year to see more of the first-year students' experience than I would have otherwise. I went to the first meetings of student organizations in which I would have had an interest or did have an interest as a student. And I continued to participate in the activities of the Law Women's organization through the first semester, because I enjoyed it.

For a few months I kept a journal in which I wrote down both descriptive material and analysis of the socialization process in which I was involved. During class time, I wrote down as many verbatim question and answer sequences as I could without losing the substance or content of what was being said. But after the first half of the semester, this activity was carried out only in fits and starts rather than with any systematicity.

I frequented the coffee room and law library in the law school building and talked to law students. But I participated very little in the off-campus social life of the law school students. I did not know how to do that with ease. Moreover, my need to sustain my own social and professional networks in the community left me without strong motivation to become involved in student social life.

Yet, as a student, I became less of an observer and more of a participant as the year went on. I experienced the feelings of inadequacy as a law student that many students talked about. I expressed privately to other students my dissatisfaction that there was so little

room in the classroom for the expression of simple moral outrage where the direction of the law was in conflict with one's own political ideology. Like many law students, I came to have a favorite U.S. Supreme Court Justice (Harlan), whose written opinions I relished for their elegance and clarity. I did *not* devote mental energy to trying to decide whether I really wanted to be a lawyer, as some students did. I knew I didn't want to be a lawyer. However, I recognized the process as one I had gone through as a graduate student.

As the pressure mounted to devote more time to getting the actual daily school work for my courses done, I felt I had to make a choice between my primary and secondary purposes in going to law school. I had to choose between absorbing whatever the teachers thought I should absorb and analyzing what was going on from a sociolinguistic perspective. I chose to give priority to that primary concern with making myself into as much of a lawyer as I could in one year.

Thus, after one semester, data collection that I would have pursued, had I given priority to my role as a researcher and observer, was not pursued. For example, I wished to explore further, but did not, the nature of the variation in the process of questioning and answering in the classroom. I wanted to try to determine what could account for or explain that variation. I would have liked to explain variation from one teacher to another and variation in the ways the teachers interacted with different students.

Examination of such variation would have required some systematic tape-recording and transcription of classroom

interaction. That process would have required time which I wanted to use for acquiring the substance of the materials in the law school courses. More research on the law school classroom would also have deterred me from my initial commitment to a study of judges' use of language in the courtroom. Accordingly, I did not undertake the further research on the smaller-scale level of classroom organization.

It may be useful at this point to compare the advantages and disadvantages of participant observation as against observation and recording in the analysis of classroom interaction, assuming that in any classroom research greater or lesser time will be spent in one form of data gathering than in another.

It is clear that participant observation does enable the investigator to see things from at least one structural position of membership in the system being studied and to acquire in-depth knowledge of whatever persons in that position must know to maintain the position.

In my own research, I was not concerned to function in the interpretive mode of the Geertzian tradition of anthropology, through which the anthropologist conveys to anthropologists and others how the culturally distinctive population studied manages and views daily life. Nor was I focused on the sociological and phenomenological concern to identify the interpretive procedures used by members of the social category I occupied, to make sense out of the actions of others.

However, I did benefit considerably from the in-depth access to the socialization process that my position as a student allowed. There were certain fea-

tures of the socialization process that would not have been available to me or present in my analysis of that process, had I not labored diligently as a student. I would not have been able to understand how the different ways in which students are exposed to the legal cant mesh together. The relation between the written and spoken sources of knowledge would not have been as readily available to me. I would not have understood the briefing process used in courses to cover case materials, or the role of that process in the replication of courtroom interaction. If I hadn't been a student in the classrooms I observed, I would not have had the contextualized shared knowledge that made verbal interaction intelligible and comprehensible.

At the same time, I was limited in my inquiry as a participant observer by my need to fulfill my role as a *participant*. I was unable to analyze interactional structure at its more microcosmic levels because I did not carry out recording and spend time examining the record and questioning participants about it.

On the other hand, I was able to carry out analysis of a higher or more general level of the structure of socialization for language use through interaction than would have been available by examination of audio and video tapes alone.

In the use of recordings for the analysis of the structure of interaction, it is important to be sure that one is not trying to analyze a phenomenon of which there is only one instance recorded or analyzed. Harvey Sacks (1967) was able to use a single therapy session between a therapist and several adolescent males to illustrate certain

properties of conversation because those properties were evident over and over again in a single encounter. Had he tried instead to delineate the nature of group therapy sessions from a single session, he would have faced a much higher probability of mistaking features of limited occurrence for features of more general occurrence.

One of the ways in which that problem of too limited a data base can be overcome is to combine firsthand participant observation and observation with the analysis of recordings. The investigator who mixes data collection methods has the advantage of the diverse perspectives they offer. Yet each researcher will give priority to some data sources over others on the basis of the level of structure focused upon and the type of analysis to be carried out.

In the present instance, the heavy reliance on participant observation facilitated a broader and more integrated

view of the language socialization process, but limited the opportunity for close scrutiny of the structure of the interaction, which would have been afforded greater scope by more observation and by recording.

Summary

The sociological tradition of the study of social interaction focuses on the naturalistic description of interaction and the interpretive procedures used to make sense of interaction. Ethnographic research procedures are compatible with those concerns because the procedures are oriented toward non-manipulative direct perception of the processes being studied. And the ethnographic study of face-to-face interaction enables us to learn more about how language socialization and, more generally, the transmission of culture are accomplished through interaction.

Notes

¹ Legal cant is partially known to clerks, bailiffs, court reporters, legal secretaries, and police officers. Those legal co-workers, however, also find large portions of legal cant inaccessible.

² Cicourel (1970) in turn has conveyed the anthropological orientation of Goodenough, Hymes, and Gumperz to sociologists.

³ This information can be represented in a grammar by the lexical entry of each lexical item, but only in part.

⁴ The format entails both verbal and nonverbal role-differentiated behavior.

⁵ Note that the *pairing* of adversaries which pervades the courts is also lacking in the law school classroom, except in the Moot Court course.

⁶ One law school professor has suggested that the younger teachers may not in fact differ that much from the older teachers, because they must follow *some* model of teaching, and they follow their own older teachers.

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