

BARRING THE UNSOUND:
KNOWLEDGE, LANGUAGE, AND AGENCY IN THE EVALUATION OF LAW
STUDENTS IN MOCK TRIAL COMPETITIONS

by

Joon-Beom Chu

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As members of the Dissertation Committee, we certify that we have read the dissertation prepared by Joon-Beom Chu, titled “Barring the Unsound: Knowledge, Language, and Agency in the Evaluation of Law Students in Mock Trial Competitions,” and recommend that it be accepted as fulfilling the dissertation requirement for the Degree of Doctor of Philosophy.

_____ Date: 6 April 2015
Norma C. Mendoza-Denton

_____ Date: 6 April 2015
Jennifer Roth-Gordon

_____ Date: 6 April 2015
Qing Z. Mcfatter

Final approval and acceptance of this dissertation is contingent upon the candidate’s submission of the final copies of the dissertation to the Graduate College.

I hereby certify that I have read this dissertation prepared under my direction and recommend that it be accepted as fulfilling the dissertation requirement.

_____ Date: 10 August 2015
Dissertation Director: Norma C. Mendoza-Denton

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SIGNED: Joon-Beom Chu

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ABSTRACT

This dissertation explores verbal interactions in mock trial competitions at a US law school, in order to explore the ways that law students are taught the proper ways of speaking like advocates in adversarial speech settings. Learning to prevail in adversarial settings entails the use of conversational linguistic features whose primary function is pragmatic rather than referential. The proper use of these pragmatic markers enables lawyers to achieve desired effects in legal interaction and impression management, while maintaining intact the denotational content of their utterances. This dissertation examines in depth the feedback-mediated practices through which law students learn to use three prominent pragmatic markers in mock trials: tag questions, the declarative falling intonation, and using reported speech to cite legal authority. The metapragmatic discourses that constitute these practices socialize law students to use pragmatic markers in light of their ability to sway institutional decision-makers to favor their interpretation of the facts. The dissertation argues that these metapragmatic discourses articulate an institutional technology for the management of competing claims to propositional truth. How they justify the use of these pragmatic markers reveals, furthermore, that these technologies of truth are dialogic. Pragmatic markers allow legal advocates to project social voicing contrasts in adversarial settings, allowing them to associate the utterances of their courtroom rivals with the voice of dubious social characters, reducing the propositional value of their claims to truth. An analysis of metapragmatic discourses thus reveals the dialogic dimensions of the language of the law that relate language, agency, and power in the verbal constructions of institutional knowledge. It clarifies the ways that law students, as legal advocates, learn to incorporate broadly circulating ideologies of linguistic differentiation in their legal discourse.

Chapter 1. The Language of the Law and the Language of Legal Advocacy

Learning the language of the law is different than learning the language of legal advocacy. Legal words and phrases provide minimal guidance on which linguistic expressions and strategies lawyers must use in an adversarial setting. How do law students learn to identify key legal issues with relevant facts and convince judges or jurors to adopt their argument of the case?

The problem is that the case-based, adversarial system of the common law in most US states gives lawyers great creative latitude to shape the interpretation of law and facts in the courtroom. But their creativity is counter-balanced by competing, and equally compelling, arguments by the opposing lawyers. The “register” of the legal language does not guide lawyers on how to make legal expressions that will make them prevail in the face of competing claims to knowledge and truth in the courtroom.

For example, does a person lose his “reasonable expectation of privacy” when the smartphone in his breast pocket makes an accidental “pocket-dial” call?¹ Is this more closely related to a homeowner who does not cover a window with drapes? Or more like heat from a narcotics plant garden in the attic melting snow off the roof? How do lawyers argue in the courtroom for either interpretation of legal doctrine?

In legal advocacy, lawyers confront the fundamental issue of referential creativity, that is, of constructing a definite construal of the underlying events, people, and things which will guide the final outcome of the case in their favor. In a criminal trial where the defendant is charged with murder with “intent,” for example, lawyers must convince the jurors on their portrayals of the defendant: either the defendant is “a jealous, vengeful husband”; or he is an

¹ Bertha Mae Huff ; James Harold Huff v. Carol Spaw. No 14-5123, 2015 U.S. App. (6th Cir. Jul. 21, 2015).

ordinary man who happened to be in the wrong place at the wrong time. As legal advocates, law students must learn to fashion social worlds and social beings out of legal documents, making them relevant to the case at hand.

Reforms in legal education over the past decade have established the teaching of lawyering skills, including trial advocacy, as an integral element of curricula across all accredited law schools in the US (ABA Section of Legal Education and Admissions to the Bar 2015:3; ABA Section of Legal Education and Admissions to the Bar 2015:1-2). It is not unusual for law schools today to offer rigorous, extended programs incorporating legal research, reasoning, writing, and advocacy in a comprehensive, lawyering skills-training package. Through lawyering skills, law students learn to apply their mastery of legal doctrine in adversarial settings. Student advocates learn to strategically incorporate authoritative legal texts in the course of legal proceedings to win their case. This dissertation explores how law students acquire the linguistic tools they will need to harness the power of legal texts to prevail in an adversarial legal setting such as a jury trial.

The main chapters analyze words, sounds, and expressions that constitute a general class of “pragmatic markers” which contextualize the law students’ utterances in legal interaction. Pragmatic markers supplement the denotational meaning of linguistic expressions² by having them relate to the interactional proceedings at hand (Fischer 2006). Generally, pragmatic markers in conversation ground the expression of meaning as purposeful (that is, pragmatic), social and institutional action (Lempert 2005; Mendoza-Denton 2008:287-288 ; Tiersma 1999Urban 1988). The proper use of the pragmatic markers

² **Appendix A** lists a sample of the lexical categories compiled by Tiersma (1999) which form the building blocks of the technical language of the law.

examined in this dissertation helps law students manage the utterance of legal actors and the flow of legal documents in the course of a courtroom trial. When mock trial judges teach law students to end their question in a certain way (Chapter 4), use a falling tone (Chapter 5), and quote documents to keep wayward witnesses in line (Chapter 6), they convey a linguistic technique of information flow management that law students incorporate into their repertoire of “talking like a lawyer.” Pragmatic markers thus play a central role in the language socialization of law students as legal advocates.

Referential Disambiguation of Legal Expressions

This dissertation argues that focusing on how law students learn to speak like a legal advocate reveals a “congeries of semiotic practices” (Lempert 2012:35) highlighting the operations of multiple mechanisms or “technologies” involved in the construction of legal knowledge and truth. Most prior research on language socialization in law schools has focused on the processes involved in reading and interpreting written legal texts such as appellate cases. But the technologies involved in the language of legal advocacy are different than those involved in reading and interpreting written legal texts. As the theoretical framework in Chapter 2 elaborates, speaking and hearing the language of legal advocacy is a fundamentally “dialogical” process, involving both legal and social norms of meaning creation and interpretation. This dialogical dimension of speech is the primary mechanism by which lawyers mobilize legal texts to construct legally authoritative social realities in legal spaces. Furthermore, this capacity to articulate social realities in a legal framework depends on the lawyer’s ability to influence the social imagination of legal decision makers.

It is seldom the case that the diverse legal documents and items of evidence in a legal case unequivocally and uniformly point to a single, definitive reading of “what happened.” The legal advocate’s task is to identify the “material facts” among the available pieces of

evidence, and connect them to produce the desired imagination of the key events that will conclude the case in favor of the advocate’s client. A judge in a mock trial competition described the legal advocate’s role as a referential “beacon” in the courtroom, organizing the available information into a coherent, holographic reproduction of the original events:

. . . you have to ask yourself . . . when they invoke the fourth amendment during a seizure of the person and take them out, what we do is . . . we stop right then. We stop right then, and we act like a beacon. A beacon that circles around and surveys all available information in justification of the seizure. Okay?³

Legal advocates deploy pragmatic markers during interaction to filter or “disambiguate” for the addressees their interpretation and evaluation of the evidential materials presented in the courtroom. They achieve this referential disambiguation by projecting its objects—witnesses, defendants, key events, key artifacts—across shared social imaginations of people, events, and things. The pragmatic markers examined in this dissertation “trigger” these social associations of courtroom utterances, by expanding their “referential scaling capacity.” A “scaled” reproduction of an original artifact, such as an airplane, will share key perceptual resemblances, but their degree of resemblance will vary across individual features. Whereas certain features, such as the shape of the hull, may be reproduced with a high degree of precision, other features may be reproduced with lower accuracy, while other features may be discarded altogether in the scaled replica. Similarly, as the lawyer’s utterances present evidential material in the courtroom, they “scale” the referential content of the evidence to highlight, modify, and discard features of the referent and thus enhance the legal resonance of the information in light of the lawyer’s overall theory of “what happened.”

³ **Appendix B** describes the transcription conventions used in this dissertation.

But more than pragmatically “marking” certain utterances with legal importance and relevance, pragmatic markers show attorneys engaging in a cultural labor that transcends the immediate, interactional work in the courtroom. At the same time that these pragmatic markers achieve their interactional functions, their legally “scaled” imaginations of things, events, and people can potentially distort, and replace—displace—the original “signified” when these courtroom discourses are ratified by legal decision-makers, encoded in authoritative documents, and circulated through print and electronic media. As these documents circulate beyond their immediate interactional surround across other legal settings and public spaces, they can powerfully reshape shared understandings of the world, influencing the material relations that people have with particular things (such as where they carry their smartphones), particular events, and other people.

Pragmatic markers allow lawyers to relate legal texts to broader cultural frameworks in the construction of legal truths. Establishing an authoritative reading of “the facts” entails the naturalization of things and people referred to in legal texts as they are animated through courtroom interaction.

Learning to Speak Like an Advocate

As law students learn to apply the language of the law in specialized areas of legal practice, their language of legal communication takes on a double dimension. On the one hand, their knowledge and mastery of legal terms, legal phrases, and other legal norms of expression and argumentation allow them to achieve the immediate, practical tasks at hand in daily work as lawyers. On the other hand, to accomplish these specialized, legal tasks, lawyers draw on their social awareness of language to locate their institutional utterances in a cultural framework of meaning and interpretation. As such, law students implicitly learn that the immediate, interactional tasks of legal advocacy entail closely monitoring, and calibrating,

the social meanings of their legal expressions. Law students learn that, to the extent that their utterances materialize in legal spaces and become inscribed in authoritative legal documents, lawyers play a central role in making institutional processes articulate broader social worldviews. The speech of legal advocacy thus drives the social power of legal discourse by institutionally inscribing, encoding, and licensing particular, “referentially scaled” perceptions of social order and reality. And law students learn the language of legal advocacy with an awareness of their social power to affect larger visions of the world through their legal utterances.

In light of these insights, the dissertation addresses the following issue: How do law schools teach, and law students learn, to properly articulate these socially dialogical, “translinguistic” (Morson and Emerson 1990:131) dimensions of legal speech to achieve pragmatic, institutional ends? The dissertation argues that metapragmatic discourses on the use and utility of pragmatic markers broaden the language consciousness of law students as legal advocates, enabling them to mediate socio-cultural conceptualizations of people, things, and events in adversarial settings. But the creativity of the law students is regimented by the referentialist ideologies of knowledge that dominate legal analysis and interpretation. Mock trial judges thus teach pragmatic markers in a meta-language that values socio-cultural notions of rationality and people who speak “reference.” Their metapragmatic discourses set up a rigid boundary between rational-referential and irrational-“phatic” (Jakobson 1990:77) conversations, spaces, and people, which becomes the cultural template for the voicing contrasts that law students will deploy in the courtroom through their use of pragmatic markers.

Chapter Summaries

This dissertation demonstrates the dialogic ways that the meta-language of pragmatic markers structure and mobilize cultural presuppositions that underlie the verbal constructions of institutional knowledge and truth in adversarial settings. **Chapter 2** provides the theoretical framework that explains the entrenchment of the denotational ideology of language in the structures of legal analysis and interpretation; the metadiscourses of legal advocacy incorporating broader socio-cultural frameworks into the pragmatics of language use in the courtroom; the dialogical nature of the metapragmatics of mock trial discourses; and the politics of metapragmatic discourse and the relations of social power that they embed into institutional language. **Chapter 3** introduces the ethnographic field site—Bramble Law School—and the nature of the mock trial competitions that make them fertile grounds for probing the socialization aspects of legal advocacy. **Chapter 4** examines how evaluations of the students’ use of tag questions enact and reinforce socio-cultural notions of control and rationality. **Chapter 5** analyzes the suprasegmental dimensions of language socialization in law schools, that is, of making law students “sound” like lawyers. It focuses on evaluations of the law students’ falling intonation, showing that acoustic sound perception is filtered through historically contingent, ideological imaginations of the lawyer’s ideal voice. **Chapter 6** examines the reporting of legal documents as intertextual strategies of referential control in the courtroom. This chapter shows that, in addition to underwriting the authority of the lawyer to take over the meaning of witnesses’ utterances, intertextual strategies also enact and organize a social hierarchy of conversational events, spaces, and speakers. The referential value of the lawyer’s courtroom utterances is magnified by having witnesses project stereotypically non-referential and emotional voices.

Taken together, the multiple ideological frameworks underlying the institutional use of pragmatic markers reveal the continuing cultural socialization of students in US law schools. They constitute the cultural foundation of the law students' professional identity and their future practice as legal advocates. As law students increase their mastery of the legal language, they gradually demystify the cultural logics of legal advocacy that turns them into effective lawyers. The Conclusion discusses the implications of the dissertation's findings on US law school socialization. It also discusses as the relationship between language and institutional knowledge that powerfully mediate legal processes and social order. Continued examination of the language of legal advocacy will reveal the complex interplay between institutional language, conceptualizations of knowledge and truth, and the dialogical limits of creativity in the naturalization of social difference, and the legitimation of material relations of power.

Chapter 2. Theoretical Framework and Arguments

The law is a universe of propositions, composed of grammatical, semantic-referential statements about legal concepts linked in formal, hierarchical relations with the propositional content of other legal documents (Mertz 2007). Law students are initiated into this universe by learning to articulate legal propositions in their speech, first in the large lecture classrooms where law students are called on to recite the court's decision on a case and its reasoning (Chase 1979; Neufeld 2005:519), and later in moot court, for example, where students argue before a panel of judges to adopt their interpretation of a legal issue. Law students also learn to write legal documents with specialized structures of presentation and argumentation (Enquist 2005; Romantz and Vinson 2009; Temple 2006).

Taken together, these pedagogical experiences socialize law students to conceptualize legal categories and structure their legal reasoning along the semantic-referential dimensions of language. As they learn and practice the logic of legal argumentation across various linguistic settings and modes of legal practice, law students are also socialized into a narrowly semantic-referential orientation towards situated language use. The presumed identity between the propositional logics of legal analysis—of “thinking like a lawyer”—and the practical, event-bound language of legal communication—of “talking like a lawyer”—creates an empowering effect on legal speech. It gives the impression that lawyers accomplish their everyday legal tasks and, when the occasion arises, prevail in legal conflict against other legal adversaries by a well-ordered, grammatical articulation of the law. Language socialization in law school thus becomes the basis for the production of an institutional consciousness that shapes the law students' expectation of legal practice:

I think that the purpose of formal legal education, if any, was to reproduce in the law student a certain sort of “consciousness,” a certain set of expectations as to how the world worked and how he fit in. For this, the inculcation of paradox—“training”

lawyers by insulating them from what they were being trained for, “educating” them by subjecting them to ever-more rigid analyses of selected minutiae—was absolutely essential. [Freund 1982:4]

This institutional empowerment or mystification of legal language reflects, in part, the dominant language ideology of Western, rational discourse which reifies the denotational, referential function of linguistic signs as the basis for all other functions of language, including its socio-pragmatic functions (Silverstein 1976:19). But it also constitutes the backbone of contemporary US legal education conceived as a well-structured program constructed out of layered chains of case law which in turn is presumed to reflect the uniformity of legal reasoning in the courts (Gilmore 1977:56). Today, the institutional homogeneity of this ideological foundation conceals the considerable struggle among diverse, competing visions of legal education, legal institutions, and the place of the legal profession and of lawyers in society, (Corbin 1915-1922; Reed 1921; Stevens 1973; 1987). The ever-continuing efforts at legal education reform (ABA Section of Legal Education and Admissions to the Bar 1992; Devitt 1979; ABA Section of Legal Education and the Bar 2007; Stuckey 2007) and criticisms of the political economic arrangements of the law school market (First 1978; Tamanaha 2012) indicate, however, that the ideological work of legal education is never complete. This institutional instability reflects the inherent dynamism that is built into the core philosophy of legal reasoning inculcated in law schools. While, on the one hand, the structure of legal reasoning enables students to harness the referential bias of “rational” language to enact the power of legal institutions in practice, on the other hand, the monologic force of legal language, its “centripetal” gravity (Hill 1985:728), is put into motion in a common law system where legal principles are constructed one case at a time.

The give-and-take dialogue between the law student and the professor in the lecture classroom, and between the law student and the other legal actors in the courtroom, iconically embody, and experientially project to the law students, the dynamic nature of legal principles as an organic “growth” embodied in the individual actions and interactions that constitute each legal case:

Law, considered as a science, consists of certain principles or doctrines. To have such a mastery of these as to be able to apply them with constant facility and certainty to the ever-tangled skein of human affairs, is what constitutes a true lawyer; and hence to acquire that mastery should be the business of every earnest student of law. Each of these doctrines has arrived at its present state by slow degrees; in other words, it is a growth, extending in many cases through centuries. This growth is to be traced in the main through a series of cases; and . . . the only way of mastering the doctrine effectually is by studying the cases in which it is embodied. [Langdell 1879:viii]

In order to trace the path of legal principles across these individual cases, law students must learn to reconcile individual cases by articulating the common grounds upon which they stand. The interaction format of legal education teaches law students that these common grounds are located in the propositional links that they create strategically, rather than recovered in abstraction. Through the implicit role-play of classroom interactions, law students learn to pronounce legal principles in the form of linguistic expressions embodied in the voice of interested legal actors (Burns 1987). The embodiment of legal principles in grammatical expressions, and their articulation by legal actors across individual cases, reflects the dominant ideology of procedural rationality in US law schools (Lasswell and McDougal 1943:233; Mertz 2007:57; Stevens 1987:56; Tiersma 1999:153). By grounding legal principles in the procedural development of the case law over pure doctrine, this prevailing discourse of US law school education ensures that law students associate the institutional power of legal principles with their referential, as opposed to their theoretical, political, or moral, value. In other words, law students learn that legal principles are valuable

because they enable them to make and prevail in legal cases on behalf of particular representations of the world.

This means that, in practical terms, the life of the law is maintained by legal actors reproducing its propositional content in their linguistic labor as legal advocates (The Law Quarterly Review 1887:120), pronouncing its authority over the interpretation of things, people, and events. To prevail in legal action over issues of law and of fact, students learn to recite the law, harnessing the authority of the law by its very recitation. Legal practice, and legal advocacy in particular, constructs a legal discourse in which legal principles are immanent in the textual materiality of the legal actor's expressive legal utterances, spoken or written. The institutional value of legal principles is established in turn by the intertextual transmission of their material utterances and expressions across legal actions and transactions.

But the recitation of legal utterances in the here-and-now moment of legal action is only half the equation. For the final ratification of the lawyer's arguments hinges on its uptake by figures whose utterances are vested with institutional authority—the judges and the jurors. Their decisive utterances ensure that the lawyer's arguments will resonate with the denotational transparency of legal propositional “truth”—the institutional pronouncements of “what happened” or “what is the law.” In the adversarial atmosphere of legal conflict, this institutional uptake cannot be taken for granted, however, as rival actors vie for propositional dominance and denotational transparency. Co-extensive with voicing the authority of the law, legal advocacy also entails the strategic obfuscation of rival utterances, rendering their voice defective, corrupting it one turn (Gnisci and Pontecorvo 2004), one lexical element at a time (Cotterill 2004).

Law school and legal profession research have focused on the centripetal aspects of legal education and its detrimental impact on the academic, professional, social, cultural, and psychological life of law students and legal practitioners (Beck and Burns 1979-1980; Carrington and Conley 1977; Dinovitzer and Garth 2007; Guinier, Fine and Balin 1994; Kennedy 1970-1971; Krieger 2002; Neufeld 2005; Stevens 1973). But the perpetual linguistic struggle that law students and early-career lawyers learn is the nature of legal advocacy presents, to the law student and lawyers as well as to legal scholars, a less considered, dialogical question, an irrepressible dialogical anxiety lurking inside the monologic power of legal discourse: after legal discourse absorbs, black-hole like, every “indexical” and “functional” dimension of linguistic expression in its referential sentence-prison (Woolard 1989), how—and for how long—can legal agents keep it captive? How do law students learn to keep other ways of thinking and other ways of speaking at bay, keeping them under the sentential weight of legal recitations and declarations?

Step one of the answer is that law students must learn to spot “centrifugal” leakages of expression from their rivals. This dissertation shows that they learn to do so by learning to spot the dialogic leakages of their own voices. This sensitivity is distributed across multiple channels of linguistic perception—grammatical, but also pragmatic and acoustic—finely tuned to register minuscule variations in expressive utterances of often short duration. How do law students learn to monitor and micro-configure these multiple modalities of expression in their speech and in the speech of others? How do legal socializers identify “defects” of expressive communication? Why are these configurations identified as “defects” in the first place, in need of rectification? Or, does the surveillance of these “defects” hide deliberate leakages in legal discourse, revealing it to be just one way of thinking and one way of

speaking among many, keeping, for the time being, a stronghold on the ways of reciting and “sounding” the law—implementing by possession of sacred recitations and sacred sounds “the relations of power in the production of discourses of truth” (Foucault 1986:229). In order to answer these questions, the dissertation explores in depth the second part of learning to speak the language of legal advocacy: After spotting, law students must learn to exploit the other’s words.

Scripting Legal Acts and Coding Legal Truths

The lesson that law school classes do not tell their students, but that law students learn as they participate in moot court and mock trials, and as they partake in the gossips, jokes, stories, and myths exchanged in the informal chatter of hallways, student club offices, and coffee tables, is that the law is as much about following rules and formulating proper legal arguments as it is about making the linguistic life of their opponents miserable. They throw conversational wrenches in the course of legal proceedings that make things go wrong for people, things, and utterances in the courtroom, such as by objecting to the opposing lawyer’s questions or the admission of a piece of evidence, impeaching an adverse witness’s statement with their own prior depositions, etc. Rival opponents will do the same thing to break them, their evidence, and their words. In the rarefied linguistic atmosphere of the courtroom, this battle is fought over simple propositions, irreconcilable in the referential simplicity of its terms. This is how a mock trial judge explains this “war of propositions” in a trial involving criminal charges against “George” for cocaine possession with intent to distribute:

But here's the thing on cases like this. You have **two warring propositions**. One, George knew the cocaine was there and he's in the business. Two, George had no idea the cocaine was there, and is not in the business. That's what the case is about when the issues crystalize. It's about nothing else other than that. If George is connected, to this level of cocaine it's an easy step. . . . It's an easy slide, from possession, to

attempt to deliver. Easy. The tough part is establishing the possession. Who's in possession of this cocaine. What are our options. Both of'em? Just Matthew, George, or somebody that works for the company. Okay?

So the **two warring propositions**. The two warring propositions can knock their heads together for ever. And nothing comes off it. **What you look at, is what holds up the warring propositions. What supports them from beneath**. Okay? And as defense, and as prosecutor, you have to catalogue those things in your mind and make that choice clear for the jury. . . .

Either George knew about the cocaine or he did not know about the cocaine: the battle for possession of the jury's truth is drawn along this propositional line. The lawyer's sole objective in the courtroom is to proclaim the propositional truth of "what happened" by claiming denotational transparency with the underlying referential object: George's knowledge. They claim such transparency by augmenting the institutional "status" of their utterances with a smoothly, perfectly executed legal performance—while pulling the performative rug out from beneath their rivals' utterances.

The War of Infelicities

At a fundamental level, all legal procedures depend on a scripted description and explanation of social phenomena: the doings of people and happenings of events; accounting for prior, present, and possible future relationships and states of affairs; tracing things exchanged, broken, or missing; and so forth. Like the ritualized speech of myth-telling and liturgy, the epistemologically privileged status of legal descriptions and explanations is established by the structural regularities of linguistic practice. Such structural regularity "nominally" stipulates a presumed alignment between institutional meaning production and the "law like regularities" of social meaning (Silverstein 1992:136). Successful performances of referential scripts superimpose a transcendent layer on the utterances of institutional agents, "blasting" the moment out from under their utterances (Benjamin 1968:262). To the extent that this transcendent "blasting" of referential meaning is realized in the smooth

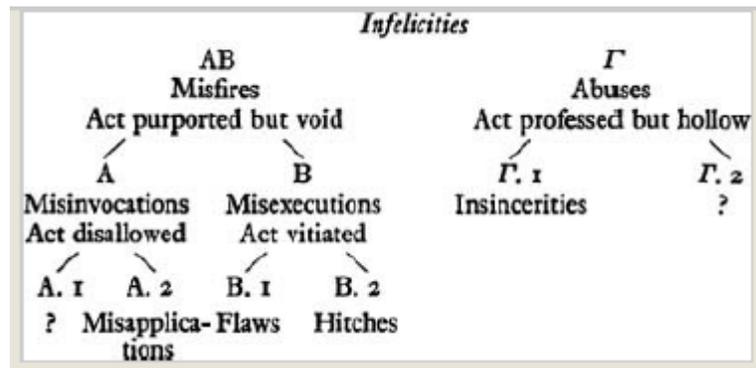
linguistic flow of legal proceedings, law students learn that the determination of propositional “truth” ultimately hinges on making sure that they do not mess up their linguistic representation of the case.

There are many things that can go wrong in the course of a mock trial that can jeopardize the law students’ presentation of their case. When interactions become choppy and go off track, judges comment on the communication breakdown and explain their causes in certain patterned ways. As the excerpts throughout the dissertation show that these metapragmatic discourses can be divided into two types. One spots errors in the script: utterances deviating from the “nomic” rules of expression, interaction, and role-assignments in the courtroom. The other spots sabotage and subterfuge by the insertion, virus-like, of a *different* script: utterances revealing the feelings, thoughts, and motives of speakers not oriented to or incapable of playing by the rules of the legal game, or playing by other rules.

These two metadiscourses correspond to Austin’s “Doctrine of Infelicities” (1975[1962]:14). Even though Austin’s philosophy as originally conceived enjoys a dubious existence as the inspiration and “butt” of linguistic anthropological discussions on language, performance, and social practice (Rosaldo 1982:203; Bauman 1975:292-293; 1977:9-10; Bauman and Briggs 1990:62-66; Hill 2000; Rosaldo 1973:212-213), nevertheless it is useful to treat this schematic as an ethnographic text which might reveal important cultural insights about why people talk the way they do, especially about how people do things right and wrong with words. Mock trial metadiscourses culturally correspond with Austin’s scheme because, first, the latter is construed to apply to formal, “highly developed explicit” performances such as those that occur in courtrooms (1975[1962]:14). More importantly, they both share the semantic-referential bias of thinking about, talking about, categorizing,

and rationalizing language and language use in the West (Silverstein 1976:14). This institutional and cultural correspondence between conventional pragmatic theory and metapragmatics makes Austin’s schematic of things going wrong in formal interaction a useful meta-cultural starting point for analyzing the pragmatic markers and their metapragmatic discourses.

Austin presents his “doctrine of infelicities” in the scheme below:



[Austin 1975[1962:18]

Things can go wrong either because utterances “misfire” or there is some kind of “abuse.” Misfires involves errors in script. “Misinvocations” (Branch AB—A) involve using the wrong script by mistake. In mock trials for example, novice law students frequently confuse the formal steps involved in reciting documents to “refresh” a witness’s recollection (common when law students playing witnesses forget their line), and those involved to impeach a witness’s testimony. “Misexecutions” (Branch AB—B) involve correct scripts not smoothly played out. For example, law students are taught to use “leading questions” when they cross-examine witnesses, thereby limiting their utterances to simple, Yes/No answers. A great source of in-court frustration for novice law students is their inability to keep witnesses on track, as witnesses elaborate on, justify, or condition their answers, ask for clarification, or do not answer whatsoever.

Abuses (Branch Γ) involve a viral insidiousness lurking under a professed observance of scripts. In the cultural grammar of Western metadiscourse, it involves pointing the cause of unhappy breakdowns to “insincere” people who have no true interest in playing by the rules;

(Γ . 1) Where, as often, the procedure is designed for use by persons having certain thoughts or feelings, or for the inauguration of certain consequential conduct on the part of any participant, then a person participating in and so invoking the procedure must in fact have those thoughts or feelings, and the participants must intend so to conduct themselves . . . [Austin 1975:15]

In mock trials, this cultural expectation of sincerity in formal events is ritually expressed when witnesses are sworn in by the Judge:

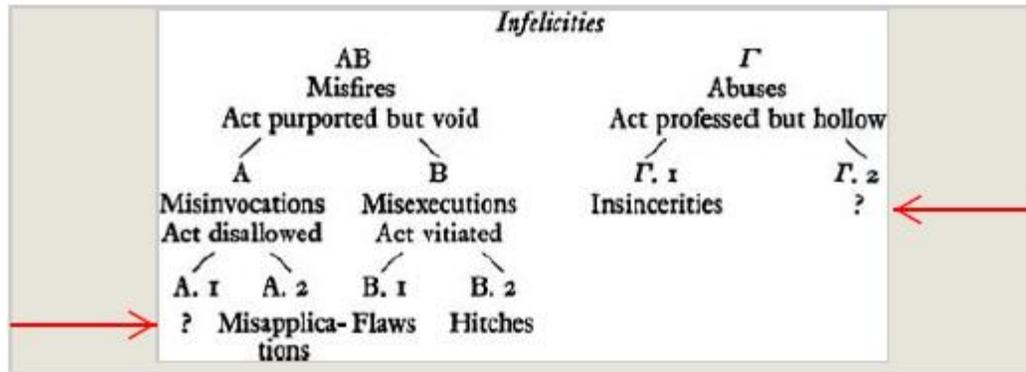
Judge: ((Holding right forearm palm facing out)) “Do you swear to tell the truth, the whole truth, and nothing but the truth?”
Witness: ((Holding right forearm palm facing out)) “I do.”

In the battle of starkly opposite propositions (“George knew about the cocaine”; “George didn’t know about the cocaine”), it is impossible for rival witnesses and attorneys to verbalize the same propositional “truth.” The idioms of “insincerity” are institutionalized mechanisms for degrading the propositional value of rival utterances by transforming the rivals into dubious characters. As such, “truth” and “insincerity” articulate a cultural ideology of personalism (Cohen 2015:329; Duranti 1993; Hill 2008:45) that anchors the referential value of propositional language in their spokespersons: the truth of propositional meaning is contingent on the “true” beliefs, intentions, and orientations of speakers. Conversely, speakers hang their honesty, responsibility, reliability, etc., in the propositional truthfulness of their expressions. This personalist alignment of propositional truth is deeply imbricated in the practice of legal advocacy. It constitutes a powerful, cultural framework by which the

institutional language consciousness of the law students impacts the development of their professional identity as legal advocates.

The cultural framework of personalism may incorporate an indexical sensitivity that re-anchors the decontextualized, “blasted” words and expressions into social categorizations of intentions, selfhood, and responsibility. But the referential morpho-syntax of the English language does not index categories of moral personhood in the same way that it indexes temporal categories (e.g., past, present, future tense), for example. This means that, while listeners are “sensible” to the characterological morality of speakers by listening to their referential utterances, and can talk about their speech in such moral terms, they cannot cite a grammatical feature in speech to justify their moral evaluation.

When listeners spot linguistic signs of “abuse” in the referential utterances of their rivals, a need arises to repress those signs to ensure that the legal proceedings do not break down or become corrupted. But since these signs cannot be represented in referential expressions, a problem emerges: how does one identify and repress signs that cannot be represented? Referring back to Austin’s schematic, two question marks (indicated by the horizontal arrows below) reveal the incomplete resolving power of the semantic-referential perspective of speech acts. “A. 1” and “T. 2” represent blind spots in Austin metapragmatic representation of communication breakdown, marking utterance elements that it cannot account for.



Interestingly, both metadiscursive blind spots involve the materiality of language and the social life language. “Γ. 2” interrogates the material signs of “insincerities,” utterance fragments showing that participants do not “**actually** so conduct themselves subsequently” in accordance with the proper inner dispositions of “Γ. 1” (Austin 1975[1962]:15). It prompts addressees to consider: What words, phrases, expressions, and other “diacritical” (Agha 2005:4; 2007:8-9) quirks and twitches of linguistic delivery mark insincere thoughts or emotions? “A.1” interrogates other scripts invoked by error or by deliberate, strategic design, other scripts that imply the existence of other structured, ritual actions and interactions. It prompts the question: What kinds of potentially evil, surreptitious scripts do these surface disturbances reveal—who are the architects behind these scripts serving what other rituals, out there? They generate an irresistible urge to debunk these shadow conversations (Irvine 1996), or to discard the scheme altogether. (Austin thus assures the audience immediately after he presents this diagram: “I expect some doubts will be entertained about A. i and Γ. 2; but we will postpone them for detailed consideration shortly” (1975[1962]:18).)

Together, these questions suggest that the referential mode of language representation cannot fully account for, pre-empt, and contain the sheer social materiality of language. They represent the translinguistic “excess” of linguistic signs that inheres in all expressions and

utterances, which put even the most official scripts and signs on always-unsettled, dialogical grounds: “Language itself, even in its official version, excludes and marginalizes aspects of being that return to haunt that official version both politically and aesthetically. Carnival acts as a wedge that potentially opens up a space in which we are apt to catch a glimpse of excess.” (Bernard-Donals 1998:118). Metadiscourses of truth and insincerity in legal institutions represent institutionalized efforts to address and stabilize this excess of meaning—without a resort to “carnival acts.” Not for “institutions” alone, however. Law students are taught that prevailing in the war of propositions in the courtroom is contingent upon their careful management of these dialogic excesses by exploiting them in the social materiality of their courtroom rivals. That is, law students learn that the propositional value of their utterances is contingent upon their successful “mining the conversational lode,” of learning to spot in the expressions of their rivals “not only messages but sentiments, not only participant roles but personalities, and . . . *social* roles in the business at hand” (Haviland 1986:264). And they learn to spot and exploit these social excesses by being themselves spotted and exploited in the metadiscourses of socialization.

The Dialogical Feedback Loop

Legal advocates speak a disturbing language, producing meanings in a precarious balancing act at the fading junction of two referential cantilevers that extend back to opposing ideological anchors. While the dominant semantic-referential ideology of legal discourse orients lawyers to the propositional truth of their legal expressions, the personalist ideology that attaches moral values to referential expressions impresses on the importance of attending to “how language makes people feel” (Silverstein 1979:40). Like opposing propositional values, law students transitioning into practice find themselves immersed in metalinguistic instructions that seem to contradict each other, seeming to call for

contradictory expressions of knowledge and meaning. As students learn the real work of lawyering, students realize that the confusion of the language of the law is not much due to its specialized, esoteric nature as it is due to a dialogicality that always throws a parenthetical, sideways glance at the legal register. This is a dialogic twitch which lawyers develop in due course. This habit is something that not everybody takes in equal stride, however:

But how much of the work itself? Rules, always rules—or decisions—in the forefront of attention. (Yet a brief in due course, will call for composition, poetry and style). Clearly, legally artificial, dehumanized thinking—a touch of policy; but how much? (Yet trial or appeal in due course, will call also for “atmosphere,” and some attention to what legislatures may have ordered.) The “issue” in legalistically procedural terms. (Yet life, in due course, will call no less for understanding human conflict, and the drama of human conflict.) Meanwhile some kid regrets that he has no time for piano practice; another yearns to compare Millay and MacLeish; the third knows none of these, and cannot understand the connection. [Llewellyn 1935:653]

Lawyers live a complex linguistic life. The professed “discourse of truth” (Hill 2000:260) is lost in a linguistic consciousness that is too complex to absorb it as a plain measure of propositional truth. In the strategic, adversarial setting of the courtroom, complexity is channeled into suspicion, as lawyers probe their rival’s utterances for signs of hidden purposes. In addition to effectively building a legal theory of the case, a skillful management of communication in the courtroom also “reveals” the hidden designs of their adversaries or at least their strategies. A skillful revelation can sink the moral value of their rivals as honest, reliable speakers, and thereby degrade the propositional quality of their utterances. Law students learn that this skill to reveal is not a matter of looking at language as grammar, however: they cannot *name* hidden designs because the basis for their detection is not wholly propositional. “Did you kill your wife.” “No I did not kill my wife.” “You’re lying!” “No I’m not.” They learn to resort to other linguistic means to devalue the moral status of speakers in referential events.

Referential Contrasts and Voicing Contrasts

This dissertation explores the strategies that law students learn to use for harnessing the referential indexicalities of personhood to reduce the propositional value of their rivals' utterances in the courtroom. Law students learn to use those things that make up the dialogical question marks in Austin's metapragmatic scheme of performance infelicities—the noises, word fragments, and other codes in the speech stream that contribute nothing to the referential event at hand—to manage controlled communication breakdowns for strategic ends. In other words, law students realize the power of legal discourse in its dialogical, as opposed to its monological, dimensions. Through these dialogical strategies, law students implicate and lift out other contexts by separating multiple, and duplicitous, voices in their rivals' utterances. Through voicing contrasts, law students learn to win the war of propositions by refashioning it into contests of “inner moral conflict” (Keane 2011:171). The “internal politics” of syntax dialogically shape its “external politics” (Morson and Emerson 1990:130). As a result, law students are socialized to become skillful recontextualizers of the speech of others. In addition, they become skillful naturalizers of the presupposed and imagined social contexts realized in the linguistic material of courtroom interaction. They materialize the imprint of shadowy worlds as they point to shadow conversations, making the rival's loss of propositional status appear to be a natural consequence of shadowy inner dispositions revealed by words exchanged with the lawyer.

Because law students cannot direct attention to the moral implicatures of a rival speaker's propositional utterances by using propositional meta-statements, they learn to use mechanisms of speech representation to highlight those revealing cues. In this, they have access to a wide range of “reflexive” social practices of language use, conversational routines

whereby one's utterances bounce off another's utterances, projecting back social revelations. A common form of such revelatory social practice is the use of reported speech, of speech quoting and/or reporting the speech of somebody else (Voloshinov 1973). The pragmatic markers explored in this dissertation represent different conversational mechanisms for representing the other's speech in some revelatory fashion.

Representations of speech, inasmuch as they are imbedded in events of speaking, are purposeful rather than neutral, intended to achieve certain interactionally and communicatively relevant effects. Purposeful and strategic representations of speech are critical in legal advocacy because of the Janus-faced nature of referential speech in the courtroom. On the one hand, the "default" metapragmatics of communication (Silverstein 1998:128) in the courtroom, governed by semantic-referential ideologies of propositional truth, contextualizes legal discourse as a specialized procedure for organizing and presenting referential legal texts to achieve textual coherence and authority (Mertz 1996:236; Philips 1982:194). In the courtroom, a determination of "what happened" is wholly achieved by the ordered presentation of referential legal texts, in a textual displacement of legal actors that renders them "agentless" (Philips 1998:50). On the other hand, legal advocates need to proportionately weigh the propositional value of these referential legal texts so that their texts prevail over their rivals'.

In jury trials and other legal proceedings where lawyers must prompt referential legal texts from the utterances of others for the benefit of still other participants in a minimally triadic interaction structure (Atkinson and Drew 1979; Cotteril 2003), law students learn to exploit the symbolically "duplex" nature of referential speech (Silverstein 1976:24; Silverstein 1998) to achieve referential "recasting." Somehow, law students learn to use

speech representations to characterize what their rival is doing without literally naming it, i.e., that he or she is lying, or at least there is good grounds to suspect that he or she may not be telling “the whole truth . . . and nothing but the truth.” This judgment draws upon the implicit, metapragmatic function (Silverstein 1992) of speech representations, whereby law students “bring images of narrated participants into dialogic interaction with images of current participants (including their self-images)” (Agha 2005:50). Through a conversational move that purports to repeat or “echo” their rivals’ utterances (Gordon 2012), law students manage to “duplex” referential utterances by separating their voice from their propositional content. A rival speaker’s voice is recast in re-presented referential speech, and recast in a way that does not harmonize with the speaker’s referential self-presentation in the courtroom. By managing this indexical distortion of self- and other-projections, linguistic technologies of speech representations allow law students achieve to decrease the propositional truth-value of the rival speaker’s utterances.

“Let the Record Reflect . . . Many Voices”

The linguistic features examined in this dissertation, non-referential though they may be, interactionally function as referential indexes. By their use, law students learn to manage the referential inferences that legal decision-makers make out of their utterances in relation to the utterances of their rivals. They constitute the conversational mechanisms that represents the relative, propositional “status” of speaker utterances, indicating for the other courtroom participants the truth value encoded in the semantic-referential stream of speech (Silverstein 1976:25). These pragmatic markers thus achieve similar referential-indexical functions, at the plane of conversation structure, as tense, deixis, and other lexical markers in the morpho-syntactic plane of referential meaningfulness.

Yet unlike the morpho-syntactic “shifters” of referential expressions, an analysis of the latter’s relationship with “conversational shifters” cannot adequately proceed on the assumption that they are structurally isofunctional, that is, that they constitute identical structural building blocks for the indexical construction of referential speech. While conversational shifters may also function indexically to anchor referential utterances to immediate contextual features of speech (location, time, speaker, truth, etc.), the distribution of speech among more multiple persons in interaction means that the interpretation of referential meaning must account for the referential contribution made by each speech participant. Their referential contribution in turn is dependent on their specific role-assignment in the speech event—whether they are speaking as biographical selves or enacting a stereotypical, conventional role such as a lawyer or witness (Agha 2005; 2007:148). Conversational shifters thus anchor referential utterances to role alignments or “footings” (Goffman 1981:128).

Conversational shifters “shift” because behavioral responses to their display can effect changes in how speech participants come to relate one to another—from attorney-witness to man-woman to law professor-law student, etc. Because shifts in role alignment are not structurally predetermined—conversational structures do not dictate when and where shifters occur, and to which ends—the extent to which they serve referential ends, that is, to indicate (or index) the propositional truth value of a speaker’s utterance, is not an isofunctional feature of the structures of conversational speech events. Rather, to the extent that changes of footing reconfigure the contextual parameters of conversation (who is speaking to whom for what kinds of effects—a joke at another’s expense to induce laughter, a lesson to students to convey knowledge, or an argument to jurors to acquit a criminal

defendant), the referential indexicalities of conversation appear to be contingent on the ways that speakers deploy these conversational shifters to reconstitute the contextual grounds of referential utterances.

Why These Sounds? The Dialogical Scaling of Referential Speech

Referential utterances meet the indexical “felicities” of propositional truth when speakers properly contextualize them in conversation. The ideological presuppositions of personalism that inform discourses of truth and referential speech events in mainstream, Western societies indicate that proper contextualization entails, foremost, reconstituting referential utterances in figures characterologically or stereotypically endowed with “positive” dispositions towards “truth.” Often, these characterological attributes are projected by speakers through a diverse array of symbolic signs that align their utterances with widely circulating modes of speech in referential speech events (Agha 2003). By extension, these modes are associated with social models of persons presumed to speak in such way. These widely-circulating, metapragmatic discourses therefore play an important role in the construction of whole socio-cultural categorizations of people who “speak reference.” Namely, these are speakers whose referential speech displays the “rationality proper to the communicative practice of everyday life” (McCarthy 1984:17-18). Referential speech becomes the “voice” (Agha 2005:38; Bakhtin 1981) of rational social beings, “rationality” being the ideological framework underwriting the propositional truth of their utterances. Rationality is the same underlying ideological framework that reduces individuals’ identity into conversationally informative, truthful, relevant, and clear beings (Grice 1975; Rosaldo 1982:230; Silverstein 1992:41). The pragmatic markers examined in this dissertation constitute such ideologically-mediated symbolic signs. They succeed in indexing the

propositional truth of speakers' utterances because they allow speakers to properly overlay their speech with "the referential voice."

Conversely, metapragmatic discourses that contextualize speech forms with characterological voices structure the proper frameworks for perceiving and interpreting behavioral deviation in referential speech events with the proper, desired (negative) inferences. These inferences draw a dialogical infrastructure by means of which listeners recover the excesses of meaning in referential utterances. Here and mentioned elsewhere, dialogism refers to Bakhtinian dialogism, "the hybrid semantic infrastructure that comes out of the clash of different voices or points of view" (Nielsen 2000:144). By triggering a shift in the speaker's linguistic behavior, pragmatic markers effect a shift in footing, which by definition shifts the speaker's "voice." This dissertation shows that law students learn to deploy these pragmatic markers to "shift" rival speakers' utterances to a "voice" with a reduced referential speaking capacity. Though these sub-referential "voices" may be stereotypically associated with socially devalued speech forms, the primary objective of pragmatic markers is not to orient perceptual attention to the "social" indexicalities of speech. Rather than directly "mark" the speech of rivals socially, pragmatic markers distribute speaker utterances along a spectrum of referential value marked by two kinds of "voices." Speakers may engage in a dialogue of "referential voices" at one moment. A shift in footing achieved by the use of pragmatic markers may "shift" the referential stream into a dialogue with "nonreferential voices." By mobilizing referential contrasts through voicing contrasts, courtroom utterances and their conversational echoes invoke many events, situations, anxieties, and predicaments where "nonreferential voices" prevail, animating speech events where being truthful is not the primary concern for the speakers involved. A skillful use of

pragmatic markers in conversation, such as reported speech, can re-contextualize rival speaker's utterances, creating a voicing contrast between the "nonreferential voice" of the reported speech and the "referential voice" of the speaker's linguistic self-presentation in the courtroom.

These interactional strategies thus presuppose and mobilize broader ideological regimes of linguistic differentiation. They reveal that the construction of meaning and knowledge in the courtroom are ideologically "scaled," or organized in a socially organized, and thus dialectic, hierarchy of meanings, "in a kind of spiral figurement up the planar orders of indexicality" (Silverstein 1998:130-131).

Metapragmatic Socialization: Rites of Linguistic Auto-Exploitation

In order for listeners to register the proper, desired referential inference from voicing contrasts, speakers must assume the existence of a shared, metalinguistic "argot of inferences" (Mendoza-Denton 2008:287-288), which further implies that their "contemplation of language" is regulated by a broader symbolic framework that informs people's fundamental conceptualizations of social order (Silverstein 1988). As such, the strategies of voicing contrasts documented in this dissertation reveals the dialectics of power in the determinations of referential value, to the extent that such determinations are contingent on the "relentless metalinguistic dislocations and relocations" (Inoue 2003:316) of named and un-named social voices. These metalinguistic dislocations depend on and reinforce a larger symbolic order that distribute language forms across social formations, forms that materialize them in metalinguistic discourses and naturalize them in the process. The metadiscourses of mock trial competitions, where mock trial judges comment upon and evaluate the law student competitors' verbal performance in the courtroom, constitute such ideological sites of social formations. More than teaching law students the pragmatic technologies of speech in the

courtroom, mock trial speech evaluations regiment law students to manage the dialogicality of courtroom speech for practical ends. They learn to manage the pragmatic features of conversation to project contrasts of linguistic expression the perception of which depend on social stereotypes of speech and associated speech-event. Pragmatic markers allow law students to displace the utterances of their rivals into non-referential voices, hence devaluing the propositional worth of their courtroom utterances by rendering “counterfeit” the rival’s purportedly referential voice.

How do law students learn the dialogical power of legal discourse? An analysis of mock trial competitions and feedback discourses on the use and misuse of pragmatic markers suggests that they play an important role in engendering the dialogic consciousness of law students. But frequently, this dialogic consciousness is developed at the law students’ own expense. Law students learn to use pragmatic markers properly in the courtroom through implicit and explicit metapragmatic discourses (Silverstein 1992), featuring shifts in footing and participant alignments that function to recast the law student’s courtroom utterances into non-referential voices or even into sounds of non-language (Inoue 2003:163; Hill and Mannheim 1992:382-383). A side effect of these metapragmatic discourses is that it impacts the law students’ identity as lawyers, whose competence as legal actors becomes associated with their social identity with truthful, rational persons.

Chapter 3. Bramble Law School and Mock Trial Competitions

This chapter sets up the fieldwork site of the mock trial competitions at Bramble Law School (BLS). It outlines the structure of the competitions and the multiple discourses informing the pedagogical and socialization goals of the competitions articulated by the core, executive members of the Mock Trial (MT) student club.

Bramble Law School (BLS) is located in southeast Michigan, within an hour's driving distance from downtown Detroit. Most of the students attending BLS are residents from the surrounding suburban areas, even though BLS administrators and professors do not characterize BLS as a local or regional law school. The student population at BLS is variable. Running on a trimester system admitting students at all terms, an entering class can vary from over one-hundred students to twenty students. According to interviews with mock trial competitors, many students drop out during or after their first term in law school. Given the frequent law student turnover and the relatively high attrition rates, the law student population at any given time remains fairly small, and the standard, curricular categorizations and divisions of law students in other law schools—first-year (1L), second-year (2L), and third-year (3L)—do not apply at BLS. Law students at BLS do not categorize themselves or others in such terms. In fact, the law school population is small enough, according to the student interviews, that students are friends with peers from different entering classes and, if not friends, at least become intimately familiar with everybody else's academic and social lives through networks of social gossip.

Curriculum-wise, as the law students complete the requisite lecture-based classes during their first three- to four-terms in law school, the law students have the option to declare a specialized field of “concentration,” offering a pre-packaged set of courses and extra-curricular activities that offer in-depth knowledge and practical experience in a

specialized field of legal practice. Students interested in pursuing a career in litigation advocacy can opt to declare a “litigation” concentration which, as the name implies, is designed to socialize and train law students to the craft of trial advocacy. In addition to prescribing courses such as evidence, pretrial advocacy, and court rules and procedures, the litigation concentration expands the experiential learning of law students by giving them the opportunity to perform legal advocacy in various simulated trial settings. This experiential component of legal education is not exclusive to law students who declare concentration in an area that involves frequent visits to local courts, however. In fact, Bramble Law School has a reputation among local practitioners for being a “practice-oriented” law school. Even in lecture-based classrooms, law students at BLS are variously socialized to experience the substance of the law through performance, not by merely reading and reciting texts, but by putting these texts “in motion,” as explained by an Evidence professor.

It's actually **evidence in motion**. And I found myself incorporating a lot of things to make the students better able to appreciate that, and to learn to know how to use the rules of evidence in a trial setting in an effective way, to represent their client whoever it is they were representing.

As this excerpt suggests, the pedagogical philosophy at BLS orients the teaching of legal doctrine towards its application in practice by future lawyers, embedding the inculcation of legal language and knowledge within a broader project of producing legal advocates. Law school administrators and professors emphasize this tight integration between the language of legal knowledge and the language of legal advocacy. One of the most visible manifestations of this linguistic integration of legal knowledge and legal advocacy are the mock trial competitions. Mock trials serve a core ideological function in BLS’s practice-oriented pedagogical mission. The experience-based learning platform that mock trials provide brings this mission at the forefront of the educational experience of the

law students, serving as the primary means by which BLS transmits its philosophy of legal language as the language of advocacy. At a fundamental level, the administrators, professors, and students at BLS articulate an integrated ideology of law school education as the inculcation of language-in-practice, making lawyers who are always ready to be “in-court” linguistically even if their specific areas of practice make it unlikely that they will physically step inside a real courtroom.

The Mock Trial Competitions at Bramble Law School

Mock trial competitions constitute the most structured, organized, and ritualized manifestation at BLS of the pedagogical ideology of teaching legal language through the language of legal advocacy. The MT club organizes three different mock trial competitions during the academic year: the First-Year Competition (FYC); the Evidence Competition; and the Invitational competition. The requirements for participation at each competition is broken down as follows.

Table 3.01 Eligibility Requirements for the Mock Trial Competitions

Competition	Class Status	Courses/Experience
First-Year	First- to Third-Term Student	Is not enrolled in Evidence
Evidence	Open	Is taking/has taken Evidence; Is not enrolled in Trial Advocacy
Invitational	“Best-of-the-best” student litigators at BLS	By Invitation Only; has taken Trial Advocacy

The FYCs are organized for each of the three terms of the academic year. Evidence competitions are organized during the fall and spring terms; while the Invitational competitions are organized during the summer terms. As such, the MT Board minimally organizes two mock trial competitions each semester. In addition to these regular competitions, the MT Board helps in the preparation of BLS teams training to participate in

national mock trial competitions. It also organizes several charity events, such as having BLS professors with a background in litigation to stage mock trials against each other, in order to raise money for local shelters and legal service providers. Finally, the MT club invites leading practitioners in the area to run training seminars for law students on important aspects of trial advocacy. The core MT club members participate in local high school mock trial competitions as judges, and adjudicate “student courts” where high school students decide on the disciplinary action (real disciplinary action!) imposed on students who breaking a school regulation. They also develop and teach trial advocacy courses in the Council on Legal Education Opportunity (CLEO) Summer Institute at BLS, a six-week, pre-law program for minority and low-income students interested in attending law school. These are in addition to the MT Board members’ work as clerks and externs at local trial courts, prosecutor’s or public defender’s offices, and in local trial law firms.

The format of the three regular competitions are comparable, with the exception that only in the FYC law students can participate in teams of two. Individual law students compete individually in the Evidence and Invitational competitions. The competitions are divided into three rounds. The first round is divided into two round-robin rounds where the competitors have the opportunity to represent both sides of the case, prosecution and defense. The opponents and the judge for each round at this stage are randomly assigned. After the first round, the law students with the highest scores move on to the knock-off rounds, which depending on the number of students can vary from one to three sub-rounds, before the final round where the winner is determined. During these knock-off rounds, students are seeded according to the first-round scores and assigned accordingly, the lowest-seeded competitor/team paired up with the highest-seeded competitor/team, etc. Sides are randomly

assigned to the competitors, so that a competitor might represent the defendant solely or the prosecutor solely throughout the advancing rounds.

Each competitor can pick up a hard copy at the MT club office or download a competition packet from the BLS website. The packet contains modified rules of trial procedure, evidence, and the substantive applicable law. It also includes the evidentiary materials texts—the exhibits—that familiarize the competitors with the case at hand and the parties involved. One core member of the MT club creates the case, enrolling for “Directed Study” credits through which the MT club member works with the MT club faculty advisor. For the FYC, the facts always involve a murder. But for the Evidence and Invitational competitions, the criminal charges charged against the defendant do not need to involve death. Thus in the Invitational competition at the time of the fieldwork, the case involved alleged cocaine transactions between coffee stores and suppliers near the US-Canadian border.

The mock trial competitions are tiered along a gradual progression of technical specialization and complexity. MT club members explain the competitions as introducing the basic, “procedural” building blocks of a criminal trial during the FYC, building upon these fundamental courtroom skills in the latter competitions, fine-tuning the law students’ performance as they become more experienced and comfortable with the rules and norms of courtroom talk and interaction. With a few technical differences, the score-sheets and feedback sheets in all competitions express the same evaluation criteria despite their different levels of difficulty. Elaborate guidelines in the packet, downloadable PowerPoint and handouts from the MT club website and workshops, and “judge panel” rehearsals provide law students with more concrete ideas of how the MT competitors will be evaluated.

Interviews with MT club members and mock trial judges provide the following evaluation criteria for each mock trial competition.

During the First Year Competition law students learn the procedural “Building Blocks” of a criminal trial”:

- “each and every step of trial”; “you wanna make sure you can do a great opening closing direct and cross”;
- “get the foundation and the rules behind how each of those sections work”;
- “getting the basics . . . fine-tuned . . . we want to have perfect basics”;
- Teach basic rhetorical strategies: “theme, talk about that law, give us a story”

During the Evidence Competition, the law students have probably participated in the FYC, although that is not a requirement for participation. Either way, the Evidence Competition incorporates more procedural stages of a trial, and teaches law students the basic advocacy strategies in courtroom talk and interaction.

- Incorporate more trial stages: motions in limine, evidential objections, motion for directed verdict;
- “Strategize”; “Test their type of questioning and their knowledge of evidence”;
- “work on substantive questioning . . . dive into the material”

Students who take the Trial Advocacy Course in order to participate in the Invitational Competition or try out for the National Moot Court Team receive “Real-World Advice” from professors and practicing judges and attorneys visiting BLS as guest lecturers. Law students are confronted with “real-world” courtroom situations.

- Incorporate “much more in-depth” trial stages; e.g., voir dire
- “Real-world advice” from faculty and guest judges and attorneys;
- Real-world strategy: “get around . . . a witness being difficult”; deal with “a rule of evidence that’s . . . blocking you from asking a certain type of question”

Finally, students “invited” to participate in the Invitational Competition face “Everything, The Whole Thing.” All the applicable rules of evidence and procedure, as well as the substantive law, are available for the student advocates. With the exception of real-life

witnesses, victims, and jurors, every component of the trial is designed to be virtually identical to a real-life case. As such, Invitational Competition rounds are very intense and often last for many hours.

- “you kind of put it together”; “everything goes”; “everything, everything, the whole thing”;
- “real life trial simulation”; “pretty much be as close to real-life trial as we can get”;
- “a very intricate problem”; “complicated evidence, evidentiary issues”; “testimonies are long the witnesses are long”;
- “we get real attorneys and judges to come, so we get some real-life feedback”

No matter how elaborate the Invitational Competition might be, it is still framed as a learning experience, and real-life judges who participate in the competition rounds adjust their courtroom management and post-round commentaries accordingly.

As such, all the mock trials have a compressed character to them. Even though they are temporally separated into three distinct events, from the perspective of the MT club organizers the competitions constitute an ongoing progression along a continuous timeline of technical development and professional growth. From their first ever mock trial, law students traverse along a path of incremental knowledge acquisition as they advance through the rounds and through competitions

Law students who perform well during the FYCs are invited to join the executive board of the MT club (the Eboard). Once they join the MT Board, they can volunteer to judge for the mock trial competitions. As such, even law students still in their first year of law school can be judging other first-year law students at a later FYC. This is particularly the case during the summer term, when many first-year students find sufficient time away from their lecture-based courses to participate in the competition. Table 3.02 below shows a breakdown of judges who participate during the various rounds of the three mock trial

competitions. Most of the practicing attorneys who volunteer for the competitions are former BLS graduates who were members of the MT Board and/or represented BLS in national mock trial competitions. Some but not all of the real-life judges graduated from BLS. They work in various circuit courts in the area, usually with a BLS student extern or a BLS graduate clerk working for them or in the court house.

Table 3.02 Distribution of Mock Trial Judge Duties

Competition	First Two Rounds	Knock-Off Rounds	Final
First-Year	MB Board	“Executive” Board	Professor/Attorney/Judge
Evidence	“Executive” Board/Attorneys	“Executive” Board/Attorneys	Professor/Attorney/Judge
Invitational	Attorneys/Judges	Attorneys/Judges	Judge

From an expanded chronological perspective, most of the people who participate in the mock trial competitions in a judging and evaluating capacity belong to the same broad, locally-knit network of practitioners, judges and clerks. The institutional knowledge, norms, conceptualizations, and ideologies that they express have a shared nature to the extent that they circulate along these professional and pedagogical networks and are transmitted through to the freshest MT club members and mock trial participants. The ways that mock trial competition judges evaluate the law student participants are therefore informed by a shared framework of legal knowledge, a shared framework of understanding how legal advocacy works in the surrounding communities that judges articulate and further circulate at BLS during mock trial feedback sessions.

Chapter 4. “Tagging” the Voice of Reason

Lawyers play a specific role in the interactional ecology of the courtroom. In order to elicit evidence in the courtroom, they must induce them from the utterances of other actors, mainly witnesses. They must establish the legitimacy and relevance of the evidence by recruiting verbal ratification from witnesses. Conversely, lawyers must learn to undermine the testimonial presentation of their rivals through cross-examination. All of these conversational activities for establishing the “facts” through displays and shot-downs of evidence are driven through a question-and-answer conversation format where lawyers are pre-assigned the role of questioners to which their addressees are obliged to provide relevant response. During cross-examination, lawyers face the issue of addressee resistance, as witnesses are aware that lawyers aim to undermine the accuracy or truthfulness of their testimony. In order to ensure that this conversational tension achieves its function of balancing the presentation of evidence while not jeopardizing the entirety of the legal proceedings, institutional discourses have codified different rules of conversation during cross-examination. By allowing lawyers to use “leading questions,” these institutional rules allow lawyers to maintain conversational control over un-cooperative addressees, allowing lawyers to verbalize their grounds for undermining the addressees’ prior testimonial utterances without obtaining their full ratification.

Tag questions constitute the main conversational linguistic feature that lawyers and law professors articulate as “leading questions.” This chapter argues that, in addition to this institutional discourse, mock trial evaluators also draw upon ready-made, social discourses of “control” associated with tag question forms. These social discourses combine with institutional discourses in the metapragmatic consciousness of the law students that associates the proper use of tag questions with desired attributes of the institutional agent,

whose linguistic "control" of others manifests the inner self-control of people who do not buckle under pressure. The ideology of personalism bridges these institutional and social discourses, revealing that the metadiscourses in mock trial are the product of multiple ideologies expressed one in relation to the other. The articulation of these ideological links in the socialization of law students reveals to them the social consequentiality of legal processes and the social power of their actions as legal advocates.

Tag Questions in English

Syntactically, English tag questions consist of a full clause (the anchor or matrix clause), containing a subject, predicate, and its mood (e.g., declarative, indicative, interrogative, imperative, or exclamative), plus an interrogative tag (McGregor 1994:94). English tag questions, like comparable constructions in most other languages, can be simple, invariant, and "rote-learned" (Weeks 1992:31).

*You're coming with us, **eh?** / **no?** / **right?***

Tag questions can be syntactically more complex. "Canonical" tags in English (Andersen 1998) are reduced from the main clause:

Jay_i ate the cookie, didn't he_i?

The personal pronoun of the tag in the sentence above, "didn't *he*," is bound to the subject of the main clause, "*Jay* ate the cookie." This personal pronoun is preceded by an auxiliary verb (BE; DO; HAVE) or a modal verb (e.g., *can, may, must, will*) that marks for tense, aspect, mood, and/or voice (Huddleston and Pullum 2005:296). The polarity of the auxiliary or modal verb may be identical or the reverse to that of the main clause:

Positive polarity: *you are going, are you?*

Negative polarity: *you are going, aren't you?* [McGregor 1994:116]

Complex, canonical tag constructions in which the tag component is a bound, reduced full clause with altering polarity is unique to the English language (Hudson 1975:23). Such complexity opens up a vast pragmatic arena in which the context-independent aspects of language (*e.g.*, “case, transitivity relations, number, denotation of lexical items—the interpretation of the world” (Davies 1979:15)) interact with the context-dependent aspects of language, such as speaker attitude and sociolinguistic roles, to yield a vast array of interactional meanings in an utterance. To the extent that tag questions convey a variety of pragmatic messages to the hearer, they constitute an important pragmatic marker in interactional speech.

English “Pseudo-Tags”

A third type of English tag questions which lies between invariant tags and canonical tags in its degree of syntactical complexity is what Lowndes (2003) identifies as “pseudo tags.” In this construction, a main clause is followed by a tag which must contain the following syntactic elements: the non-modal auxiliary verb *is*, with variable polarity (*is* or *isn't*); a demonstrative pronoun *that*, *is*, and *this* which do not necessarily need to be bound to the main clause; and a predicative adjective that expresses factuality, such as *correct*, *right*, *true*, *accurate*, and *fair* (Lowndes 2003:180-81).

You have two dogs, is that right?

You have two dogs, isn't that true?

The tag portion of a pseudo-tag construction can exhibit an ellipsis of its demonstrative pronoun; canonical tags do not exhibit ellipses of the bound pronoun:

You have two dogs, [is that] correct?

**You have two dogs, don't [you]?*

Lawyers frequently use pseudo-tag questions in the courtroom. For example, they exploit the unbounded characteristics of the demonstrative pronouns such as “that” in tags to create indexical uncertainty, since “that” in tag constructions does not specify exactly what in the previous flow of verbal interaction the attorney is referring to (Lowndes 2003:188).

The Use of Tag Questions in US Courtrooms

The tag question in courtroom interaction as a pragmatic marker has been researched by academic scholars (*e.g.*, Berg-Seligson 1999; Matoesian 1993; Rigney 1999; Woodbury 1984) and noted in trial advocacy texts (*e.g.*, Hamlin 1998:537; Lubet 2004:108; Mauet 2007:259; Moore, Bergman, and Binder 1996:161; Rose 2007:129).

In her study of seven civil court cases in the Royal Courts of Justice in Belfast, Northern Ireland, Lowndes (2003:193) found that the attorneys used a higher number of tag questions during their cross-examination of witnesses than during direct examination, and more pseudo-tags than canonical tags overall. This pattern is unsurprising given the fact that, during cross-examination, an attorney interrogates witnesses from the opposing party. During cross-examination “the opposing party has the opportunity to test the witness’s credibility and the reliability of the facts elicited from the witness on direct examination” (Rice 2000:3). By cross-examining the opposing party’s witness, attorneys seek to undermine that witness’s credibility and reliability. Tag questions play a central role in achieving this objective during the cross-examination process because they allow the cross-examining attorney to maintain control of the conversational flow, in which the attorney re-phrases aspects of the testimony that the witness offered during direct examination in ways that attack the witness’s “honesty, probity, peacefulness, character, or background” (Lubet 2004:101) and force the witness to limit his or her answer to a confirmation utterance (*yes* or *no*):

Any question you pose on cross-examination should be in the form of a leading question, unless you are absolutely sure that you know the answer. Never ask “how” or “why” questions. If the other side’s witness answers your “yes” or “no” questions with an explanation, either remind the witness of the rules or ask the judge for assistance. [Abdo, Cunningham, and Onofry 2008:32]

The use of tag questions allows the attorney to establish uncontroversial, “common grounds” (Andersen 1998:9; Jucker and Smith 1996:5) with the witness during cross-examination, which allows the attorney to subsequently retell the witness’s story in the attorney’s favor while not necessarily appearing overtly dominant:

. . . when a participant takes to himself the right to choose what to talk about, this is an important aspect of dominating a conversation. This remains true even where the teller role is transferred and the addressee assigned the role of knower It is for this reason that, for example, a policeman interviewing a subject could remain highly dominant in the verbal interaction while using only interrogative constructions; and an examiner using them does not lose the initiative to the candidate. [Davies 1979:65-6]

Canonical tag questions and pseudo-tag questions play different interactional roles in this respect. Attorneys utilize pseudo-tags to compel the cross-examined witness to agree upon the attorney’s re-interpretation of facts relevant to the witness’s testimony during cross-examination (Lowndes 2003:200). Canonical tag questions, by contrast, tend to appear less frequently and are more strategically placed, often at the end of the cross-examination or a line of argumentation, which allows the attorney to end the point “with a zinger” (Lubet 2004:101). Below is an example of such a “zinger,” from a trial advocacy textbook (Mauet 2007:259):

- A. Cross-examination sample with a canonical “zinger” tag
- Q. Ms Jones, the robbery happened around 9:00 P.M.?
- A. Yes.
- Q. It was dark?
- A. It was nighttime.
- Q. The sun was down?
- A. Yes.
- Q. Stores were closed?

- A. Yes.
Q. Not many cars driving around?
A. Not many.
Q. You said there were lights from the street lights?
A. Yes.
Q. And they were at the street corners?
A. Yes.
Q. But there weren't any street lights in the middle of the block?
A. No.
Q. And that's where the robbery happened, **didn't it**?
A. Yes.

In this example, the defendant's attorney is building up the relevant facts of the robbery case to argue that the witness being cross-examined could not have accurately seen the robber because the incident took place in an unlit portion of the street. Because they directly challenge the facts as the witness put forth during direct examination, canonical tag questions have the additional effect of damaging the witness's face, casting a negative light on the witness's truthfulness:

Quite often the proposition preceding the tag is making a comment on the witness's veracity or putting arguments that counter their claim. The witness's claims are being negated and the grammatical [or canonical] tags have the underlying message 'that's not true,' 'you're lying,' etc. [Lowndes 2003:202]

As such, canonical and pseudo-tag questions are highly "conductive" forms of interrogatives which constrain the interlocutor to produce a particular answer (Cameron 2001:102). Because they tend to limit the possible answer to a *yes* or a *no*, tag questions can be considered to be a variant of Yes-No questions, as several scholars have noted (McGregor 1994:97; Philips 1984:239).

Yet conducive questions forms do not undermine the addressee *per se*. Holmes (1995) identified three affective categories of tag questions: facilitative, softening, and challenging.

The first two categories are politeness devices which are addressee-centered because they seek to minimize the negative impact an utterance may have on the addressee. In their research of tag questions in the Longman Spoken American Corpus (LSAC, 5 million words), Tottie and Hoffman (2006) found that 50% of the canonical tag constructions used by American English speakers in the contexts of informal, everyday conversation were positive politeness devices, inviting the addressee to contribute:

Host to a guest at her dinner party: You've got a new job Tom, haven't you? [Tottie and Hoffman 2006:298]

In this example, the tag construction does not restrict the addressee (the dinner party guest) to a strict Yes/No answer. 30% of the tag questions used by speakers in the LSAC corpus used them as a confirmatory vehicle, indicating that the questioner is not sure of what he or she is saying and wants confirmation. Confirmatory tags are neither restricted to a Yes/No answer:

A: I'm gonna try to go walking for a little bit. I don't need a jacket, do I?
B: No, it's still pleasant. [Tottie and Hoffman 2006:300]

In contrast to both politeness and confirmative uses of tag questions, constituting 80% of tag questions used in everyday conversation among American English speakers, canonical tag questions used in court are "peremptory" in nature:

A peremptory tag immediately follows a statement of obvious or universal truth, with which it is practically impossible to disagree . . . the speaker considers the conversation about it at an end . . . The tag is . . . often a put-down of the addressee. [Algeo 1990:447-8]

The tag question in the "zinger" example above is peremptory in this sense because the inference prompted by the question is meant to derive logically from the facts established in the prior flow of conversational interaction. Tottie and Hoffman (2006) found that, in the LSAC, only 1% of tag questions used by speakers had such peremptory uses. The fact that

tag questions used in legal settings are conducive in ways that they are ordinarily not in informal, everyday conversation suggests that attorneys' peremptory uses of tag questions may be intimately linked to the contexts use, that is on the attorneys' understanding of the nature of the institutional space in which they utter tag questions, and of the addressees to whom they ask tag questions. The law school is an important location in which future attorneys are socialized into this background legal context. And this socialization occurs in the particular forms by which the metadiscourses of tag questions as "leading questions" are conveyed to law students.

Elaborating on the Pragmatic Markers of "Leading Questions"

Question forms are one of the most talked about pragmatic features during mock trial evaluations. The question forms that law students used during mock trial are picked up, cited, reproduced, and explicitly commented on by the evaluators during these feedback sessions. Mock trial judges, like most trial advocacy textbooks (Mauet 2007:259), do not identify tag questions in such terms but use the institutional term, "leading questions" to discuss tags. In fact, tag questions have a distinguished status in repertoire of the legal register because are the only specific pragmatic markers that are metalinguistically codified by the lawn. Rule 611, section (c) of the Federal Rules of Evidence (FRE) regulates the use of "Leading Questions" during witness interrogation:

- (c) LEADING QUESTIONS. Leading questions should not be used on direct examination except as necessary to develop the witness's testimony. Ordinarily, the court should allow leading questions:
 - (1) on cross-examination; and
 - (2) when a party calls a hostile witness, an adverse party, or a witness identified with an adverse party. [The Committee on the Judiciary, US House of Representatives 2014]

Short of regulating the use of "Leading Questions," however, the Federal Rules do not specify which linguistic forms constitute "leading questions." They leave that for lawyers

and judges to elaborate. In mock trials, "leading questions" are one of the first things that law students learn. In fact, it is a prominent topic of discussion in all mock trial competitions.

Excerpt 4.01 First Year Competition Round 1B 1h21m

- Judge (Ben): [o] Direct and [o'] cross-examination, it's an art. On [o] direct, you wanna ask [v] who what when why how and where. Every question should pretty much start off with that, until you get comfortable asking [v] open-ended questions that [π] you let the witness talk He's the star. The witness is the star. So [v] who what when why ha- try not to lead on [o] direct. On [o'] cross-examination, you want to [v'] lead, every single question is a [v'] **leading question**. (π') You're telling the answer. (π') Mr. [Law Student], right?
- Law Student: Yes sir.
- Judge (Ben): You guys did some phenomenal [o] direct examination. You asked [o] who what when where questions. A couple of [v'] **leading questions** kinda slipped in there by accident, but [π] you let the witness talk, which is important. [π] You wanna hear the witness talk on [o] direct but not on [o'] cross. On [o'] cross [π'] you want . . . the lawyer to talk.

In this excerpt, Ben a third-year law student member of the Eboard acting as the sitting judge, draws up a schematic configuration relating (v) question type; (o) witness status; (π) and projected utterance source. For an attorney's direct examination of his or her own witness, Ben lays out the following utterance configuration scheme:

- (v) **Question Type**: "open-ended questions": "you wanna ask who what when why how and where."
- (o) **Witness Status**: non-"adverse party" (FRE Rule 611(c)(2); i.e., a witness in the attorney's favor), a default status of witnesses during "direct examination."
- (π) **Projected Utterance Source**: Even though the testimonial narrative is ultimately controlled by the attorney, by having the witness animate the bulk of the co-constructed narrative, the attorney manages to impress upon the jury that the witness is the primary author of the constituent utterances: "you let the witness talk, which is important."

During the cross-examination of an opposing or adverse witness, "leading questions" emerge in the following configuration:

(v') **Question Type:** "leading questions": "you want to lead, every single question is a leading question."

(o') **Witness Status:** "adverse party," usually the opposing party's witness, a default status of witnesses during "cross-examination."

(π') **Projected Utterance Source:** the co-constructed utterance is unified in the voice of the cross-examining attorney: "You're telling the answer"; "why don't you tell him I mean he can only say yes or no. And who cares what he says."

While Ben's meta-discourses articulate the pragmatic ends of "leading questions"—namely, to limit the adverse witness's role to a mono-syllabic, yes-no utterance responder, he does not define what linguistic forms "leading questions" take, as he did for "open-ended questions": "Who what when why how and where" are true, *wh*-interrogatives cataphorically pointing to the utterance source (the Witness) who will provide the missing information marked by the *wh*-question form (Archer 2005:25). The only intimation of a comparably concrete illustration of a syntactic form associated with "leading questions" is indirectly provided by Ben's utterance of a question tag as he seeks the Law Student addressee's uptake confirmation, in Excerpt 4.01 above: "Mr. [Law Student], **right?**" "Yes sir." The question-and-answer, pair-part sequence between Ben-as-Evaluator and Law-Student-Competitor, embedded in Ben's pedagogical metadiscourse on question forms, and immediately preceded by a framing utterance, "you're telling the answer," iconically represents an exemplar, a model, of question-and-answer form with a tag questions, between Attorney and cross-examined witness.

It turns out indeed that, lacking a ready-made linguistic vocabulary (e.g., "tag questions") for elaborating on the linguistic structure of "leading questions," judges resort to

models of question-and-answer interaction that become "leading" as a matter of association and practice. Kevin, a law student judge, suggests as much in the following two excerpts.

Excerpt 4.02 First Year Competition Round 1A 0h49m

Judge (Kevin): Both you guys did this way, you kind of say [χ] right and [χ] correct at the end, [ψ] a lot more times? [rising intonation] . . . Try not to say it a lot. **The more and more you do it**, the way you say it, [ψ] question the inflection of your voice? ((rising intonation)) You'll make it into a question. . . . Like at the- just the way you [ψ] inflect your voice. **But that will come.**

Excerpt 4.03 First Year Competition Round 1B Room 100 1h02m

Judge (Kevin): You know, a lot of times **when you first start doing these**, you'll say (χ) correct and (χ) right a lot, (χ) correct, (χ) correct. You know it's good to start that way, but, **as more you do it**, just pay attention. I mean your (ψ) inflection of your voice goes, you'll learn how to (ψ) use your voice to make it into a question. (ψ) You understand what I am saying? [rising intonation] (ψ) You were AT the club, you know with inflection, you were at the CLUB. . . . I'm not even asking a question. Sounds like it, (ψ) you were at the club. That's it. And if they don't say anything, ... then you say, (χ) correct? [rising intonation] **So I mean, that's something that will come.**

In these two excerpts, Kevin explains to different sets of law student competitors the proper ways to question witnesses during cross-examination. He contrastively associates "leading questions" with two question forms:

(χ) **Tag questions:** full clause + interrogative tag

(ψ) **Declarative questions:** A full clause that is turned into a Yes-No question by either (a) inverting the subject and auxiliary verb order or (b) ending the clause with a rising intonation.

(a) *Were{aux-v} you{sub} at the club.*

(b) *You were at the \uparrow club*

Both tag and declarative question forms can be deployed as "conductive" interactional devices to constrain an addressee's response to Yes-No or a similar preferred answer

(Cameron 2001:102). In ordinary conversation, conducive interrogatives do not necessarily undermine the interactional status of the addressee. Depending on their context of use, Yes-No questions can have facilitative and softening interactional and pragmatic effects as well (Holmes 1995). In fact, about half of the tag questions that American English speakers use during informal conversation are used as positive politeness devices, and about a third are used as true non-constraining, confirmation-seeking devices similar to *wh*-questions (Tottie and Hoffman 2006). Tottie and Hoffman's findings reflect the fact that the interactional functions and pragmatic effects of linguistic real-time utterances are inseparable from their contextual and situational surround: their data is based on a conversation between a host and a guest at her dinner party, in a privatized domain (the host's dinner table) where mutual (and equal) conversational politeness is the dominant, socio-culturally conventionalized, and interactional norm in mainstream Anglo-American society.

Kevin's metacommentaries in the two excerpts above socialize law students to associate tag and declarative question forms with their more conducive functions as the paradigmatic approach to their use in the legal domain. The law student competitors' own experiences, alongside with the judges' metapragmatic discourses, transform these question forms into pragmatic tools to keep wayward witnesses under control.

Despite this specialized usage of tag and declarative questions in courtroom talk, no conventionalized, prescriptive narrative circulates in the pedagogical literature, whether written or oral. Metapragmatic discourses on the use of tag questions exhibit a broad inconsistency and variability in their explanation, despite their institutional codification as "leading questions." A second metapragmatic discourse surrounding the use of tag questions in mock trials reveals, however, that the tag question form is linked to "leading questions" by

demonstrations revealing its ability to maintain both interactional control and to construe speakers “in control.”

Articulating the Voices of “Control”

Metapragmatic discourses that articulate tag questions as “leading questions,” imbue them with both institutional and social functions and meanings. On the one hand, they delineate institutional norms of interaction by defining participant roles: only opposing lawyers can use tag questions, and only during cross-examination. On the other hand, very instantiation of a tag question triggers evaluations of referential control associated with the conducive use of tag questions in society. These social evaluations are incorporated in mock trials through metapragmatic discourses of “control,” as the excerpts below will show. The interaction between the institutional discourse of “leading questions” and the social discourse of referential control reveals the dialogical dimensions of the meaning construction through the language of legal advocacy. Pragmatic markers and other linguistic features that constitute the verbal technology of legal advocacy inseparably link the construction of legal knowledge with projections of key, characterological attributes that define institutional and social beings. Metapragmatic discourses that associate “leading questions” with notions of “control” through tag questions establish an ideological configuration whereby the law students’ verbal effectiveness in the courtroom is evaluated in terms of their perceived social identity as linguistically strong persons in control of difficult talk situations.

In other words, metapragmatic discourses extend the ideological significance of tag questions beyond the immediate conversational context, as more durable projections of selfhood. As the excerpt below shows, using tag questions to maintain conversational control over a witness reflects positively on the lawyer’s calm, unflappable poise.

Excerpt 4.04 Evidence Final 1h37m

Judge: Control your witness. You know, on cross examination, you can professionally control that witness. They don't answer your question, let'em ramble, ask the same question say this is the question I asked you.

The judge does not directly associate “professionalism” with the use of tag questions, however. Rather, he makes reference to the law students’ psychological state that is purported to be revealed by the form of their questions. Another common, folk-psychological explanation for why law students failed to maintain control of courtroom interaction is that they became “frustrated,” as the following two excerpts, from different mock trial competition, shows.

Excerpt 4.05 Evidence Competition Round 1B Room 300 1h32m

Judge (Peter): Cross-examination. . . . **You were getting frustrated a few times.** And um, it's weird cause you and I are almost opposite. I had someone tell me when I did- you know when a witness says something good that I can use I get all smile like . . . okay so **I get pretty all, real happy about something I don't get frustrated very easy.** And, I have to watch it just like you do, you know once you, you kind of see, so you wanna watch the tone cause again, you can come off snarky to, the, defendant. Especially if you don't like the defendant.

Peter’s explanation makes clear that, as attorneys, personal impression management is as important as the management of textual information, as jurors scrutinize both courtroom interaction and attorneys’ self-presentation in order to construct the legal facts. It is remarkable the extent to which linguistic form and mental state not only is accessible to discursive consciousness, but forms the basic narrative template by which mock trial judges articulate their evaluations.

Excerpt 4.06 First Year Competition Round 1B 1h23m

Judge: . . . **you got a little frustrated on that cross-examination.** I sensed it, I don't know if you sensed it, but I knew that you were not getting the answers that you wanted. And I sensed that, and the jury will sense that, because the witness was being difficult to you. . . . You were not asking the specific question that would not give him a chance to answer how he wanted. So **your frustration came out to me** and I said, the witness got the best of you.

In this excerpt, the law student's frustration literally "came out" of the law student's failure to use tag questions properly during cross-examination.

The "institutional person" of the legal advocate is socially resonant because the metapragmatic discourses of tag questions articulate dominant, mainstream notions of "control" that underlie public discourses of "truth" (Hill 2000). Conversely, as the excerpts above have shown, metapragmatic discourses of "control" construe the failure to properly deploy tag questions is as revealing a weakness of mind, which suggests that the law students may be unfit for the harsh, combative verbal atmosphere of legal advocacy. Metapragmatic discourses therefore structure ideological extensions of the material forms of courtroom talk, projecting social evaluations of speakers that transcend the immediate interactional context.

"Tagging" Students in the Heat of Verbal Conflict

Metapragmatic discourses combine linguistic form and inner selfhood to model interactive examples of "leading questions," so that perceptions of linguistic form in interaction generate metapragmatic discourses about law student personalities. As such, mock trial judges sometimes deliberately throw an interactional wrench in the courtroom to test a law student's inner mettle. These interruptions constitute on-line, metapragmatic instructions to the law students to pay more attention to their language of courtroom interaction.

Excerpt 4.07 First Year Competition Semi-Final Room 200 0h23m

- 01 Student: **And**, in your position as lead detective, you're always the first to
02 arrive at the scene.
03 (0.8)
- 04 W: Not always-
- 05 Student: **-and**, when you arrive at the scene, you're in charge of,
06 conducting the investigation.-
- 07 W: -[once I,]
- 08 Student: [**and** overseeing] it.
- 09 W: Once I arrive at the scene I am in charge yes.
- 10 Student: **And**, the pl- the police station's not located very far from the
11 scene.
12 (1.0)
- 13 Student: **And** you're vary familiar, with Curley Park.
- 14 W: Yes I'm very familiar.
- 15 Student: Okay. (1.5) You stated, that you collected a nine millimeter, shell
16 casing.
- 17 W: Yes.
- 18 Student: **And**, in your experience. (1.5) it points to a, nine millimeter, gun.
19 (0.5)
- 20 W: A nine millimeter casing is VErY com[{1} mon.
- 21 Student: [{1 }A:n]d, it [{2} points-
- 22 Judge: [{2} counsel]
- 23 **let- let the witness answer the question, okay?**
- 24 LS1: Okay.

It is apparent that the student seeks to gain control of the conversational floor by cutting off the witness's utterances with turn-initial "and" continuer. The judge interrupts the cross-examination (lines 21-22) to orient the students to this strategy, which she may not have been aware of, challenging her to control the witness using a different linguistic strategy. For the rest of the five-minute cross-examination, the student literally tries out different questioning strategies, as if trying to figure out what will "stick." This is an inventory of question forms and strategies that the student uses subsequent to the judge's interruption:

Do-interrogatives:

"Did you do any other testing on the cigarette butt?";

"Did you just go, based off of your limb that this, cigarette butt hadn't been there very long.

Rising intonation:

“As long as the person had the intent to kill, the victim?”;

“But you’re an expert in interviewing techniques, in garnering information from, witnesses?”

Tag question, with difficulty:

“But (2.0) you didn’t you d- (1.2) didn’t state, how long it’d been there. Correct?”

In the excerpt below, Law Student 1 requests Kevin to explain why he interjected and admonished her not to cut the witness off during her cross-examination of a witness.

Excerpt 4.08 First Year Competition Semi-Final Room 200 1h13m

01 Student: I'm glad that you brought that up cause I was gonna ask you,
02 cause you said don't cut the witness off? But I thought that in
03 cross, you don't, you try not to allow them to talk very much.
04 Judge: Yeah but, **if you ask your questions right**, it doesn't really
05 matter what they say. So some of them that I did say that?
06 **You technically didn't quite, quite ask as leading** as it could
07 have been?
08 Student: Okay
09 Judge: You know?
10 Student: Right.
11 Judge: You know I kind of just did that to be, kind of get the feel how
12 you're gonna react. You know what I'm saying? You know
13 what I mean? I wanna see how you're gonna react to what,
14 you know?
15 Student: Yeah.
16 Judge: How you're gonna do it. And I think there, if we were being
17 hard? I would have,
18 Student 2: Okay,
19 Judge: Yeah. Kind of get in words where you're going.
20 Student 2: Okay.

In lines 04-07, the judge explains that the properly “technical” use of “leading” questions singularly trains the focal attention of the addressee away from the content-matter of the witness’s utterances. Instead, as line 19 explains, the use of “leading” questions “get in words” the attorney’s intentions or motivations in cross-examination—making visible where the student “is going” with her line of questioning. Line 19 reveals that question forms reflect law students’ intentions and motivations. Note that the judge does not explain that tag

questions are the proper forms of “leading questions” that keep witnesses under control. This is when metapragmatic discourses, such as those in Excerpts 4.02 and 4.03 above come into play.

The law student in the excerpt above became flustered that none of her questioning strategies was keeping the witness under control. Lines 11-20 in Excerpt 4.08, the judge provides a second justification for his interruption. In addition to make the student ask questions in a different way, he was testing how the student would “react” to things going wrong in the courtroom. The student’s conversation management is therefore made to reflect on the students’ mental composure in the heat of verbal conflict. A mastery and effective use of “leading questions” to keep a witness “in control” redounds to an evaluation of the law student as a person who maintains self-control in face of institutional constraints on action, as well show the potential to handle the risks and contingencies of legal advocacy more generally.

It is in this way that the socialization of law students into an adversarial mode of speaking also functions to reconfigure their social consciousness. Misfiring courtroom talk reveals some inner aspect of the self that disqualifies a law student from assuming stressful and demanding public or institutional roles. This dialogical quality of metapragmatic discourses is what allows institutional gatekeepers to incorporate sociocultural discourses, and the personalist ideologies of social selfhood that they encode, into their institutionally-bound discourses. The next chapter gives an example of how gender values infiltrate mock trial evaluations of intonation and seeks to explain why, more likely than not, those whose courtroom talk misfires become feminized.

Chapter 5. Hearing the Soundspace of Truth in the Falling Intonation

The previous chapter has shown that the metapragmatic discourses on the use of tag questions reveal the interplay of multiple discourses that associate the conversational management of propositional the truth-value and authoritativeness in the courtroom with projections of desired institutional selves in “control.” This chapter explores how mock trial law students learn to articulate their utterances with the proper intonation. Mock trial evaluators teach law students to attach a falling intonation to their courtroom utterances. The falling intonation thus becomes a pragmatic marker, contributing to the truth-value of the law students’ utterances. But learning the proper shape of the pragmatically effective intonation gets law students only half-way to an effective, acoustic presence in the court: they must also physically produce this intonation within a specific soundspace. Too little fall or too much fall in pitch puts law students outside of the acoustic “sweet spot” that makes their utterances ring with pragmatic “clarity,” creating instead a noise distortion that muddles their message. This chapter asks two questions. How do mock trial evaluators draw the boundaries of too much, too little, and adequate falling intonation? And how do they convey these boundaries to the law students? This chapter proposes a dialogic approach to study the social indexicalities of intonation in interaction. This dialogic perspective shows that mock trial judges’ metadiscourses of the falling intonation, and their articulation of “clear” sounding lawyers, are driven by ideological, considerations influenced by changing socio-political conditions in US society. The chapter shows that metadiscourses of intonation constitute subtle strategies of institutional gate-keeping and exclusion.

Approaches to the Study of Intonation in Communication

Intonation belongs to a group of acoustic features, including voice quality, loudness, and tempo, accompanying human speech that function as pragmatic markers signaling to listeners that they should interpret an utterance in a certain way (Pierrehumbert and Hirschberg 1990). They perform the same functions as lexical or syntactic markers such as tag questions, as seen in the previous chapter. This functional similarity across different modalities of communication has enabled multi-dimensional approaches to the study of intonation. The “systemic functional” approach to linguistic studies of intonation, for example, has focused on the ways that intonation contributes to the coherence of the lexico-grammatical elements of speech (Halliday 1963, 1967; Halliday and Greaves 2008). From a linguistic anthropological perspective, a similar focus on the interweaving of prosody and lexico-grammar in the construction of meaning has contributed to a better understanding of the mutually-dependent nature of the denotational and interactional dimensions of speech and communication (Lembert 2005, 2012; Silverstein 1997, 2004).

Recent approaches to the study of intonation have sought to specify the ways that acoustic perception relates to the interpretation of utterance meaning. They suggest that human hearing is sensitive to small acoustic variations that are systematically organized across larger utterance structures. Rather than “hearing” prosodic cues linked to individual utterances, humans decode their communicative significance in relation to the larger contextual surround that they help to delineate. In this contextualized approach, the meaning of intonation is explained in relation to the systematic organization of multiple utterances, the “poetic” structure of communication that reflects global purposes and goals for a given event of communication (Brazil 1975, 1978, 1997; Chun 2002; Couper-Kuhlen 1986, 1996; Levis and Pickering 2004; Ramirez Verdugo 2005; Wichmann 2000).

Prosodic flows form part of the larger organizational structure of communication which, together with the informational content of discourse acquires their full significance. This insight has highlighted the importance of discourse to structure expectations of acoustic production. These expectations play an important role in how hearers process acoustic perceptions of intonation. In other words, ideologies transmitted through discourse mediate how listeners perceive and categorize the prosodic flows of speech. In his study of service encounters in England for example, Gumperz (1982) showed that servers of South-Asian descent in a corporate cafeteria who asked questions with a falling intonation were perceived to be “rude,” a situation which arose because the customers perceived the prosodic cues through a group-culture specific mode of “hearing” questions. Such contextualized research on intonation show that broader social ideologies powerfully drive these linkages between prosody, grammar, and discourse structure in the construction of meaning in interaction (Heller 2013). One issue that is less explored is how these metapragmatic discourses of intonation bring broader social ideologies to bear in evaluations of how law students sound in the courtroom. It is clear now that the connections between acoustic perception, communication, and social judgment cannot be explored under a linear analysis:

A cautionary note should be offered that the direction of causality cannot be determined definitively by using regressions methods. It may be the case the judgments of speech clarity or height are driven by listeners’ perception of sexual orientation. We consider this unlikely, given that height and clarity, unlike sexual orientation, are intrinsically associated with specific acoustic parameters. [Munson, McDonald, DeBoe, and White 2006:233]

The linguistic anthropological understandings of the operations of linguistic indexicality show that the relationship between linguistic form, perception, and judgment is not strictly unidirectional but both multi-directional and multi-dimensional. By adopting the key analytical tools of linguistic indexicality—incorporating ideology and metapragmatics

and voicing effects—this chapter approaches the analysis of intonation within a dialogic framework that highlights the central workings of social indexicality in the construction of pragmatic meaningfulness in the courtroom. The dialogic perspective complements other approaches to the study of intonation, providing valuable insights on the ways that micro-level acoustic judgments and reflexive adjustments have a significant bearing on the politics of identity in institutions of social power such as law schools and courtrooms.

Locating Social Indexicality in the Dialogic Dimensions of Intonational Meaningfulness

The various linguistic and sociolinguistic approaches to the study of intonation have revealed, from their respective conceptual and methodological vantage points, that perceptions of prosody, perceptions of speakers' social identity, and interpretations of utterance meaning are intimately related to one another. The pragmatic effectiveness of a given utterance is therefore not the effect of a single linguistic or paralinguistic feature but the effect of multiple features overlapping with each other in the flow of speech that enhances or magnifies the perceptual or cognitive quality of the information being conveyed. Whichever term may be used to describe this stacked alignment of utterance meaning, the process of meaning-making is the same: various pragmatic markers are merged to enhance the resonance of an utterance in relation to the ongoing interaction.

The strategic component of making utterances significant in interaction is central in structuring the indexical dimensions of pragmatic markers. The simultaneous operations of indexical presuppositions and entailments (Silverstein 2003) imply that the effectiveness of pragmatic markers is context- and event-dependent. For instance, a pragmatic marker in a sermon may convey different information than it does during an academic presentation or in a courtroom. Metapragmatic discourses, by articulating the contextual specificity of

pragmatic markers, make it possible for speakers to recover the proper reading of pragmatic markers in context. In this way, metapragmatic discourses reveal a dialogical element in the use of intonation, where form and context mutually shape each other to produce relevant meaning.

Recent psycho-acoustic studies of prosodic perception are moving towards this dialogic approach, positing that prosodic processing involves contextual information. In particular, prosodic perception is linked to projections of “voices” embedded in episodically-stored memory: “abstract lexical representations that include concrete voice episodes for those voices” (Grohe and Braun 2013:924). Rather than process the acoustic forms of intonation in isolation, hearers imagine moments of language use, by which they register intonation through voicing effects (Hawkins and Smith 2001; Hawkins 2003; McQueen, Cutler, and Norris 2006). This episodic, dialogic perspective implies that metapragmatic discourses convey the meaning of intonation through context-typifications and voicing mechanisms. In mock trials, intonation meaning is bound to modeled re-enactments of the ideal behavior of legal advocates in the courtroom. These event-bound, characterological imaginations of ideal courtroom behavior also structure the perceptions of intonation error. Using the “wrong” intonation implicates negative social judgments of the speakers (Ramirez Verdugo 2005:2110). Scholars have noted such social implicatures of intonation, whereby speakers interpret sound deviation in terms of differences in dialect (Fuchs 2015; Pijper 1983; Szakay 2006, 2007, 2008); gender, transgender, and sexual orientation (Hancock, Colton, and Douglas 2014; Hinks 2005; Munson, McDonald, DeBoe, and White 2006); and second-language and language-based secondary, speaker status (Hincks 2010, 2005; Kormos and Denes 2004; Pickering 2004; Wennerstorm 2000).

To the extent that metapragmatic discourses model standard modes of expression to distinguish institutional speech and speakers, they are essentially mediated by language ideology. Linguistic anthropological research on language ideology shows that metapragmatic evaluations of people's use of language is present in all contexts of language use (Silverstein 1992). Language ideologies "can make verbal particulars diagnostic of contradictions and pathologies of power" (Errington 1999:225). A combination of sensitivity to the articulated design of a speaker's utterance, and the specific, widely circulating terms by which this sensitivity is communicated in metapragmatic discourses, can elucidate how broader socio-cultural values structure linguistic strategies in the courtroom.

Measuring Falling Intonation in Law School Mock Trials

Learning proper intonation is a central feature of the language socialization of law students in mock trials. As the transcripts below show, law students learn to associate the falling intonation as the default mode of referential expression in the courtroom. This default association between the falling intonation and declarative utterances is presupposed in Standard English speech (Wells 2006) with a formal, public speech style (Ladefoged 2006:118). Through mock trials, law students learn that producing this socially-circulating speech style has institutional benefits, because they pragmatically enhance the institutional relevance of their utterances.

Being conscious of the institutional consequentiality of their utterances in the courtroom, law students are oriented to producing the default pragmatic cues which they have been conditioned, in their educational and social life, to associate with declarative assertions and with formal, public speech. The institutional outcomes at stake in legal advocacy make it unlikely that the law students will acoustically fashion utterances that deviate from these normative expectations. Unlike situations where speakers use phonetic

variation to make their social identity stand out (Moore and Podesva 2009; Podesva 2011), in mock trials law students learn to deploy the falling intonation to make themselves invisible, making the referential content of their utterances emerge as if from its own volition.

The Metapratmatics of Clarity and the Struggle over the “Referential Voice”

Law students learn to associate the falling proposition with the propositional truth of their referential expressions. The discourses of mock trial judges construe the falling intonation to be an iconic manifestation of the superior truth value of the underlying proposition. The predominant way that mock trial judges convey this iconic-indexical value to the law students is through a metapragmatic discourse of propositional “clarity.”

Through the metapragmatic discourse of clarity, mock trial judges teach law students that the proper intonational contour allows their utterances to cut through informational noise and distortion, revealing the relevant facts. As a mock trial judge explains below, the lawyer’s intonation acts as an acoustic “beacon” of the relevant facts.

. . . you have to ask yourself . . . when they invoke the fourth amendment during a seizure of the person and take them out, what we do is . . . we stop right then. We stop right then, and we act like a beacon. A beacon that circles around and surveys all available information in justification of the seizure. Okay?

As the next sections show, this metadiscourse of intonation “clarity” mediates the acoustic judgments of the law students’ falling intonation. These judgements create an acoustic soundspace for the proper realization of the falling intonation in legal contexts. Metapragmatic discourses combine quantitative pitch variation with ideologically-driven representations of intonation through sociological voicing effects. Mock trial judges associate the effective falling intonation with the voice of the ideal legal advocate. Conversely, judges model improper intonation with non-institutional figures whose “defective” voice reflects other negative social character flaws. Metapragmatic discourses thus show that acoustic

judgments are ideologically mediated by institutionally contingent representations of the “referential voice” of the ideal legal advocate. Instead of revealing underlying structures of perception, metapragmatic discourses constitute the active coupling and decoupling of various social identities with an institutionalized “will to mean and signify something in a rational manner” (Inoue 2003:167). Judgments of acoustic clarity ultimately represent institutional judgments of the law students’ social identity. They are symptomatic of the unity or fracturing of the social body in contemporary, local imaginations of the ideal lawyer persona.

Goldilocks Falling in Soundspace: Coding the Falling Intonation

There are various ways to code the falling intonation. This chapter adopts an abstract mode of representing intonation, the “Tones and Break Indices,” or ToBI (Pierrehumbert 1980; Beckman and Pierrehumbert 1986; Pierrehumbert and Beckman 1988; Beckman, Hirschberg and Shattuck-Hufnagel 2006). Unlike other coding methods that provide denotational glosses, a phonemic-representational system such as ToBI facilitates a systematic account of the ways that intonation align with the other layers of linguistic production—the articulations of vowels and consonants in the “segmental” utterance stream, and the “suprasegmental” articulations of prosody. Another benefit of the ToBI method of annotation is that it allows phonemic representations of prosody to be overlaid with their acoustic realization in recorded speech. This phonemic-phonetic representation in turn allows for a more nuanced analysis of the metapragmatic discourses associated with them. Specifically, it provides a systematic framework to determine whether these metapragmatic discourses are based on attention to the prosodic form of law student utterances, or whether listeners are attaching a separate meaning to the law students’ acoustic realizations, which may override the default meanings associated with choice of tone type (Granato 2014).

Acoustic and phonetic research on intonation over the past decade has shown that acoustic variation constitutes an important perceptual grounds driving the social indexicalities of tone types. This body of research alerts to the necessity to attend to acoustic measurements of intonation as productive methodological and analytical frameworks for exploring the relationship between broader ideological discourses and the regulation of utterance meaning in discrete, event- and context-bound flows of communication. Whether measured as a “Pitch Variation Quotient” (Hinks 2005), “accent range” (Snow 2006), or “pitch span” (Couper-Kuhlen 2014), there are material points beyond which listeners perceive an intonation as acoustically exceeding its phonemic target. The ways that listeners signal these judgments of acoustic deviation strongly correlate with their judgments of the social background of speakers. Social indexicalities therefore attach not only in the choice of tone type, but they also attach to their acoustic realization. The ideologies construing the social indexicalities at the acoustic level of speech production constitute a second-order, institutional metapragmatics that add a further layer of meaningfulness to intonation.

Transcript Group 1: Too Little HLL

As the default mode of articulation in English declarative utterances (Wells 2006), the falling intonation highlights their referential function, signaling their propositional value as representations of truth. The falling intonation achieves the same pragmatic effects as those achieved by grammatical markers such as tag questions: they both achieve referential certainty and dominance over competing truth claims (Ramírez Verdugo 2005:2088; Tench 1996:88). The default pragmatic function of the falling intonation makes it a useful linguistic tool for lawyers to use in the courtroom because it allows the jurors to “hear” the truth of their utterances. Mock trial professors and judges explain the pragmatic utility of the falling intonation as a way to ensure the rationality of the institutional truth-finding process. As

explained in Chapter 2, the desired end-result—conviction or acquittal—is designed to minimize procedural error rather than to ascertain what “really” happened. As the law students perform their closing argument to the jury, they construct a complete narrative out of relevant fragments of the witness’s testimony and other pieces of evidence presented during the trial. The persuasiveness of their argument hinges on the institutional authority of the law students’ utterances, an authority that is intertextually grounded on their proper textual production during courtroom proceedings.

In mock trials therefore, law students encounter the courtroom as a “recursive institution,” an acoustic textual space that materializes the intertextual ideologies of legal reasoning, knowledge and authority, as a rational form of ascertaining underlying factual truths. From the perspective of this institutional rationality, the falling intonation most transparently contributes to the referential and institutional value of the law students’ propositional utterances. It contributes, not to verbal art, but to pure institutional reason—it is the sound that leads the path to transparent representations:

There is no poetry in the Law; though it possesses in an eminent degree the noblest element of poetry—that is harmony—not the harmony of sound which strikes the outward ear, but the harmony of science, which is perceived only by the internal soul. [Seaman 1859:17]

Not surprisingly, mock trial judges associate the falling intonation with notions of referential and denotational “clarity.” As a mock trial judge explains during a post-competition feedback session, acoustic delivery in the courtroom impacts the jurors’ interpretation of the propositional facts.

But here's the thing on cases like this. You got two warring propositions. . . . The two warring propositions can knock their heads together forever, and nothing comes of it. What you look at, is what holds up the warring propositions. What supports them from beneath. Okay? And as defense, and as the prosecutor, you have to catalogue those things in your mind and **make that choice clear for the jury.**

The judge then goes on to model a closing argument, projecting an intonational style marked by clear falling intonation contours, which makes the “choice clear for the jury.” In the excerpt below, a professor of the basic course on trial advocacy tells a student that he needs to deliver the favorable facts with “clarity,” so that the truth-value of the propositions becomes self-evident to the jurors:

You hit the stuff you needed to hit. But you always have to think, **clarity**. . . . But you never made it **clear enough**, to get the jury to like, MM! . . .
((The Professor models the closing argument with falling intonation.))
You see the difference? That's the kind of, stuff you need to put in there, to make it really really **clear**, . . . that's the extra stuff you wanna make sure you get out and start practicing.

The falling intonation projects ideologies of legal truth and authority in law students’ courtroom utterances in a metapragmatic discourse of “clarity.” Together with other grammatical, prosodic, and nonverbal cues, intonation constitutes a linguistic technology for the construction of institutional truth. In mock trials, law students learn to produce utterances which adhere to and become recognizable—they become iconic-indexical—as an instance of institutional truth-construction. As such, law students are not evaluated on any aesthetic value that may attach to their intonation as verbal art (Bauman 1986; Briggs 1988). In the pedagogical dimensions of mock trials at least, socializing law students to the falling intonation socializes them to the techniques of a logical voice.

The following transcript is an example of how mock trial judges articulate the pragmatic value of the falling intonation as a marker of being “more assertive” with referential claims to truth. While evaluating the performance of a law student (Jane) the judge (Ronald) explains that Jane must raise an evidential objection with more assertiveness, because being “assertive” goes a long way to establishing the grounds—that is, the truth-value—of her objections.

Excerpt 5.01 “You gotta . . . be more assertive”

01 Judge (Ronald): As far as demeanor with you? You gotta, you gotta be **more**
02 **assertive**.
03 Jane: Okay.
04 Ronald: Okay? I think was twice where I was like, so: you're changing
05 your objection now. hh .hh You know like you objected to one
06 thing and then you changed your obje- I'm like wh- wh- so what
07 are you objecting to you know. If you wanna object to something,
08 object to that. You know? and stick with it. You know you gotta
09 be, you gotta be **more assertive** in what you're saying. There's a
10 couple of times you were like, </raised pitch, reduced
11 amplitude> we::ll ((creaky)) you know I thi:nk u:r you know
12 </> I'm like no ((H* L-L%)).⁴ Either it is or it isn't ((H* L-L%)).
13 Jane: Yeah.
14 Ronald: Even if you don't. No shit. say it like it is. You know who- who
15 cares. I- **if you sound, confident** nobody will ever know the
16 difference, really you know? So, um, be assert- be **more**
17 **assertive**.

Ronald's demonstration of sounding “confident” (line 15) is embedded in his response to his characterization of Jane's speech. Rather than quote the lexical content of Jane's utterance, Ronald strings a series of turn-entry discourse markers—“well,” “you know,” “I think,” “you know” (line 11)—which in combination with raised pitch level, creaky phonation, and reduced pitch amplitude yield a stance of hesitation or uncertainty. Ronald employs intonation contrast to show, through a discourse of being “more assertive” (lines 1-2, 9, 16-17), that legal propositions must be conveyed in different configurations of pragmatic markers. In contrast to his high-pitched, monotone voicing of Jane's utterances,

⁴ H* L-L% is a phonemic representation of the falling intonation, the mental targets that speakers aim for when they mean to make an utterance with a falling intonation (Pierrehumbert 1980; Beckman and Pierrehumbert 1986; Pierrehumbert and Beckman 1988). H[igh]* represents the nuclear pitch accent, or the last highest pitch in the intonational phrase or the part of an utterance over which the falling intonation extends. L[ow]-L represents the acoustic trajectory of the intonation from the nuclear pitch accent. In this case, the pitch immediately falls, and remains in that lowered state until the end of the phrase, marked by the “%” sign.

Ronald attaches a falling intonation to his plain declarative utterances—“no,” “either it is or it isn’t” (line 12). By using the metapragmatic discourse made available by intonation contrasts, Ronald orients Jane to recursively project the logical structure of legal authority by altering the intonation of her courtroom utterances. The default pragmatic value of certainty in the falling intonation is articulated and made institutionally relevant through such context- and event-specific metapragmatic discourses. The falling intonation activates the logic of legal analysis to project a positive truth value to the lawyer’s courtroom utterance, regardless of whether or not it has any substantial merit: “if you sound confident nobody will ever know the difference” (lines 15-16).

Even though Jane did not pass beyond the first round of the evidence mock trial competition where she received the feedback above, her experience in this competition, her prior experience in the first-year competition—which she had won—and her active involvement in the Mock Trial club qualified her to be a judge for the summer-term First-Year Competition, approximately three months later. In one of her post-trial feedback sessions, Jane admonishes the law student to “act confident” at all times in the courtroom.

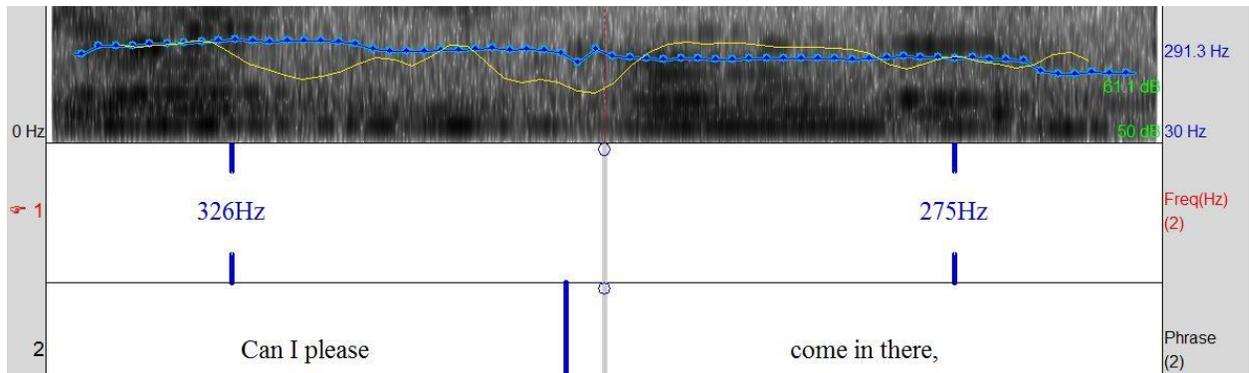
Excerpt 5.02 “Just act confident it helps a lot”

01 Jane: Starting with, opening statements, and just throughout the whole
 02 thing? even if you, don't feel confident? just **act confident** it helps
 03 alot like, (1.0) I found you **broke character**,
 04 Law Student: [hh]
 05 Jane: [but] you know what you're doing. We all do. So when you break,
 06 and you're like <elevated pitch> I'm sorry ((breathy))
 07 </>. Don't say that ((. . .))
 08 .
 09 .
 10 .
 11 Jane: So, um, careful on saying when you admit evidence? may I
 12 ple:ase or, just say, I move to admit. or, may I approach. May I,
 13 like very firm **especially** when you're a **woman** too? Cause it
 14 just sounds like, (2.0) <elevated pitch> can I please come

15 in there </> just, like may I approach ((H* L-L%)). May I admit
16 ((H* L-L%)). You know, sounds better ((H* L-L%)).

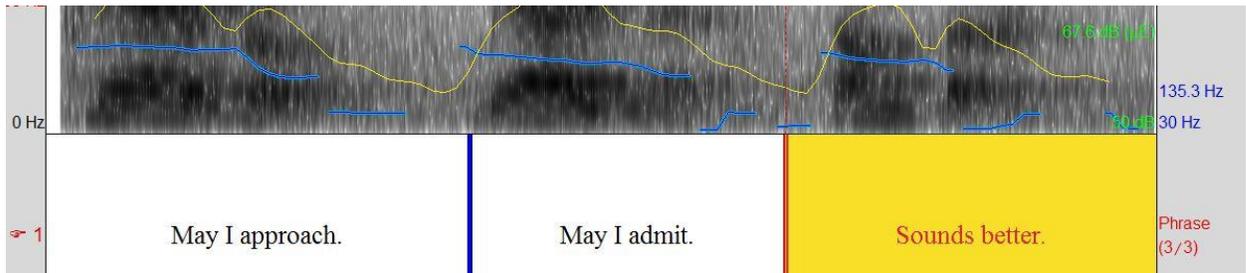
In this excerpt, Jane deploys a similar intonation contrast to construct a metapragmatic discourse of acting “confident.” It is comparable to the discourse of being “assertive” through which Jane herself learned of the institutional value of the falling intonation. Also comparable is the manipulation of acoustic contrasts along the dimensions of pitch height and pitch amplitude. A spectrograph of Jane’s voicing of “can I please come in there” (lines 14-15) with corresponding pitch track and frequency measurements, shows the following alignment of intonation with the segmental fragment. The pitch contour, tracked by the line with the connected dots in the image below, indicates the lack of an acoustic fall, rendering a monotone utterance.

Image 5.01 Jane’s Intonation of “Can I please come in there”



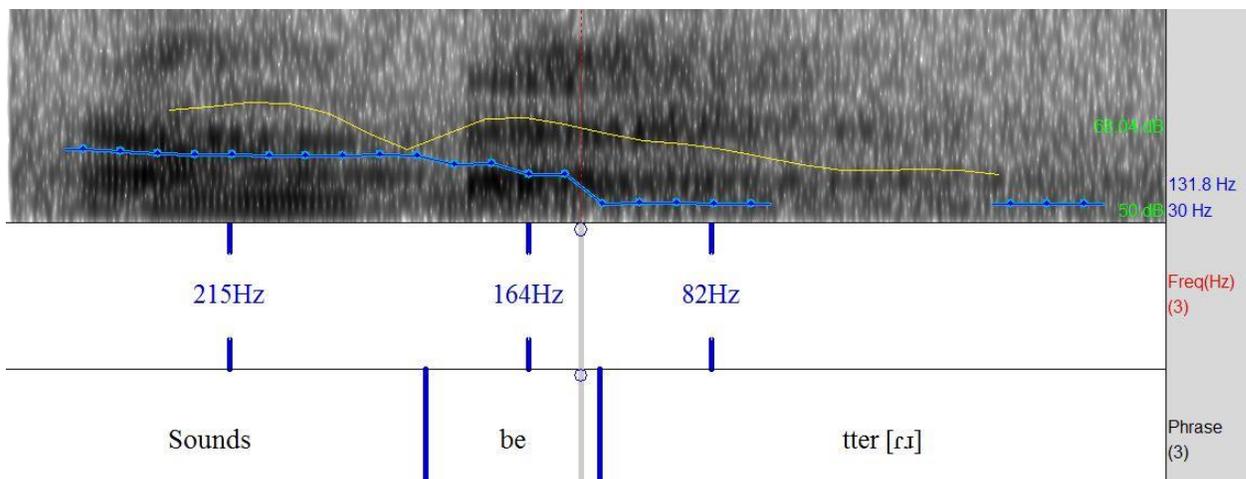
In contrast to this utterance, Jane produces a series of short declaratives with a perceivable falling intonation.

Image 5.02 Jane’s Intonation of “May I approach. May I admit. Sounds better”



The images also reveal that Jane has lowered her pitch height. When her “monotone” utterance is compared with “sounds better,” in the image below, it is apparent that she has deliberately lowered her pitch accent over one-hundred Hertz (326 Hz → 215 Hz).

Image 5.03 Jane’s Intonation of “Sounds better”

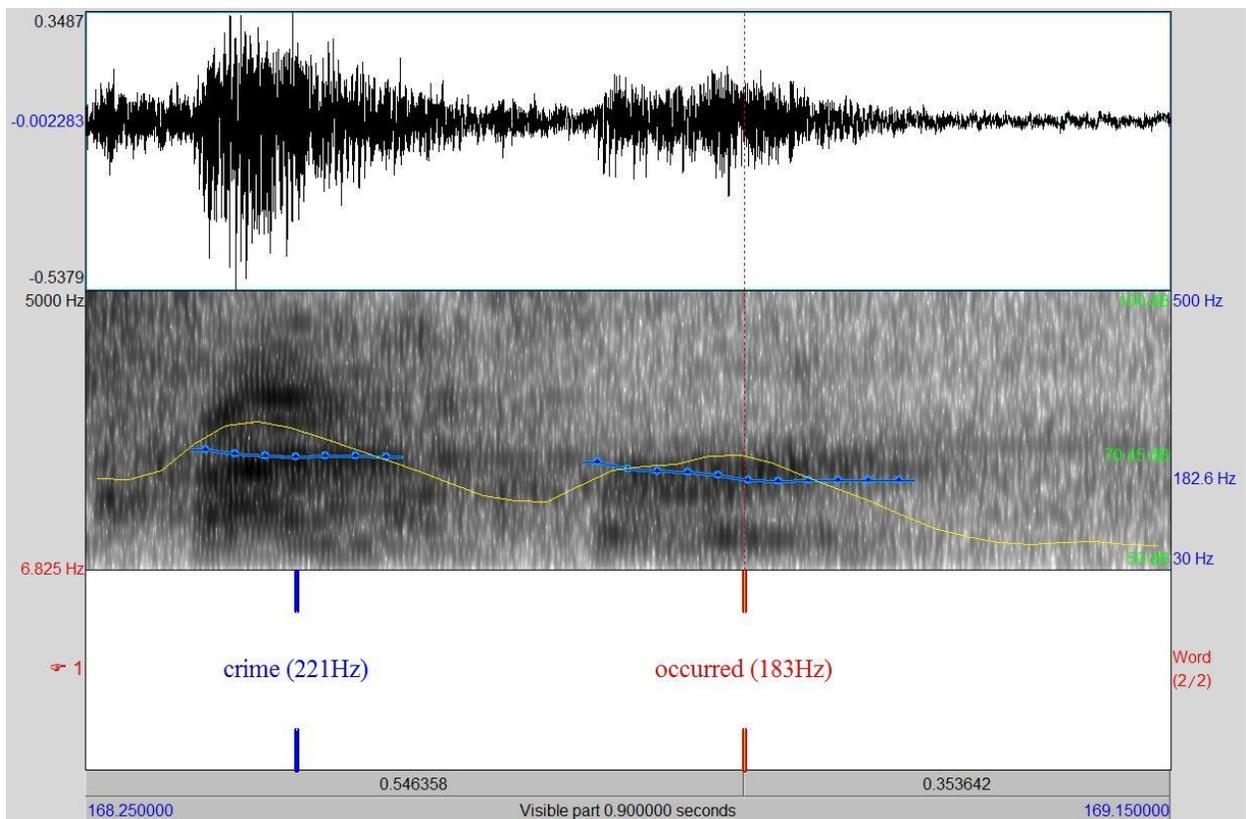


Unlike the judge in the evidence competition however, Jane does not associate the institutional relevance of the falling intonation with a projection of truth value to the lawyer’s utterances. Rather, she associates its use with the law student’s failure to maintain her institutional role as legal advocate: she “broke character” (Excerpt 5.02, line 3). Through the metapragmatic discourse of intonation, Jane articulates notion of role alignment which was lacking in Ronald’s previous evaluation of Jane’s falling intonation. A careful analysis of

Jane’s socialization to the falling intonation provides some clues as to why Jane’s perception and interpretation of the falling intonation might differ in this respect.

An acoustic analysis of Jane’s utterances in the courtroom during several mock trial competitions shows that her lowest pitch averaged to 190 hertz. More often than not, when she produced a falling intonation, her H* nuclear pitch accent differed by only three semitones, as shown in the following sample phrase.⁵

Image 5.04 Jane’s Intonation of “Crime ((H*)) Occurred ((L-L%)).”

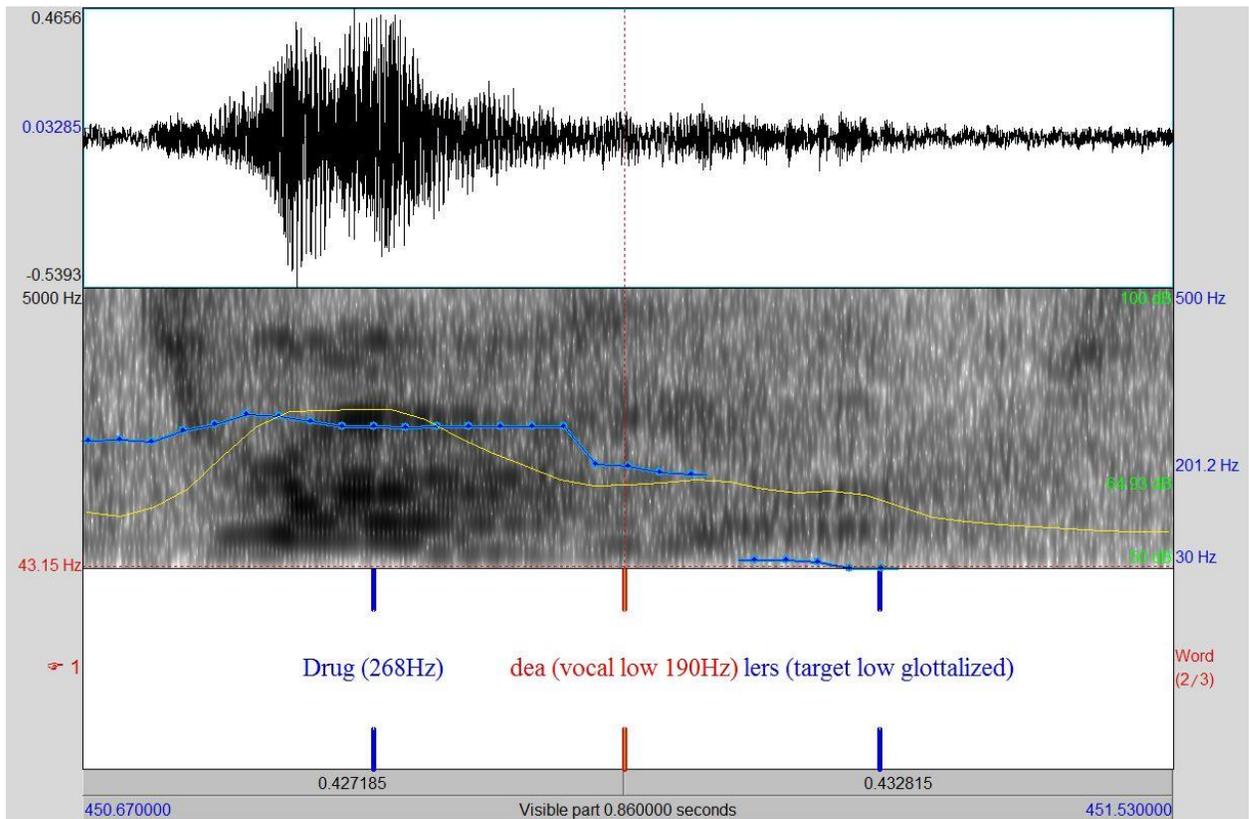


In Standard (formal, read) American English, the semitone range for the falling intonation among male and female speakers is six to twelve semitones (Fitzsimons, Sheahan,

⁵ A semitone scale is more appropriate than raw frequency measurements when comparing acoustics to auditory perception (Fitzsimons, Sheahan, and Staunton 2001). Because semitones are non-linear measurements, a program or formula must be applied to raw acoustic data such as the one used in this instance (de Pijper 2004).

and Staunton 2001). Further complicating matters, Jane’s average pitch height is generally higher than the 145-165 Hz “gender neutral range” prescribed, for example, in voice feminization therapy for male-to-female transsexuals (Dacakis, Oates, and Douglas 2012). In order to enhance the perceptual clarity of her falling intonation, while lowering overall pitch height, Jane resorts to other phonation strategies, as illustrated in the image below.

Image 5.05 Jane’s Intonation of “Drug Dealers.”



In her sentence-final pronunciation of “drug dealers,” Jane nears her modal (that is, her average) voice floor in the first syllable of “dealers.” But instead of remaining there, she further pushes her intonation down by glottalizing the last syllable, that is, by purely flapping her vocal cords without producing any recognizable phonetic sound. This physical strategy creates a boundary tone in the 30Hz range, a fall by over two and a half octaves—or 38 semitones—from the pitch accent in “drug.” The fact that Jane resorts to this super-low,

glottalized strategy to realize the falling intonation suggests a considerable amount of conscious effort in its production. To the extent that this acoustic realization of the falling intonation requires deliberately crafted excursions outside her normal acoustic voice range, it may mark a separation of voice identity occurs. Jane's metapragmatic discourse of "acting" confident (Excerpt 5.02, line 2) marks a voice artificiality that creates a degree of separation between her ideal figure of the legal advocate and Jane's social identification. Ultimately, her physical difficulties in producing the falling intonation with an institutionally normative pitch range has produced a metapragmatic discourse that projects Jane's gendered legal consciousness: "like very firm **especially** when you're a **woman** too" (excerpt y.04 line 13).

Jane's acoustic struggles suggest that law students' development of an identity as a legal advocate involves a re-imagination of their social identity. Jane's linguistic socialization exemplifies many law students whose perceived, physical incompatibility with linguistic projections of the voice of the ideal legal advocate implicates a symbolic micro-surgery over their incompatible, social giveaways:

Although this is an ideal-typical depiction of the lawyer's role, these traits are functional and frequently necessary in the practice of the law. In order for women to attain the professional identity of a lawyer, they must create a personal fusion of their given sexual identity with the demands of the professional persona they hope to achieve. Law school provides the introduction to the structural context in which these choices must be made. [Jacobs 1972:471]

It must be noted, however, that acoustic correlations with institutional roles do not directly implicate social consciousness in a structural-functionally predictable fashion. If a successful falling intonation indexes institutional knowledge and authority, as well as the ideal voice of the legal advocate, it does not necessarily follow that its failure indexes a concrete non-legal identity, to the same extent that it does not reveal falsity in a given propositional utterance. The fact that law students such as Jane nevertheless project a social

meaning to her intonation is, as this chapter will later argue, a product of multiple social and institutional discourses that represent conflicting visions of the legal profession.

Transcript Group 2: Too Much HLL

If Jane’s acoustic performance lacked “confidence” and “aggressiveness,” the opposite problem besieged Judy, a fellow member of the Mock Trial Club and an opponent of Jane in several competition rounds. During the final round of the most prestigious Invitational Mock Trial Competition, Jane and Judy, along with their respective team partners, represented opposing parties. During the feedback sessions after the competition, and before the winning team was announced, the judge, a real judge in the local courts who graduated from Bramble Law School in the early 1970s, provided the following warning to the competitors to not let their over-zealousness detract from the procedural goals of the trial.

Excerpt 5.03 “Don’t get yourself so revved up”

01 Judge: . . . when you really are hammering down ((H% L-L)).
02 witnesses (but) it’s doing you no good that is really helping you
03 but you really wanna battle-whip them? Slow so slow, pop in a
04 hard question pop in a loud noise. But let the jury soak it in.
05 Rather than being, more concerned about, ((whispering)) oh man
06 there's a fight about to break out call the deputies here okay?
07 ((Laughter))
08 Judge: Alright. So. That's another thing=
09 Judy: = I wasn't that loud?=
10 Judge: =that- that I noticed? that you wanna [make sure] you don't=
11 Judy: [()]
12 Judge: =get yourself so revved up. Because you know what you'll do?
13 You'll forget things. You'll forget things. And if you forget things
14 that won't do you any good.

When the judge began commenting on the law students’ sound, he had made sure that his commentaries applied to all the competitors: “Every question and answer aren’t the same. So, even when you’re revved up, like you were, and like you were, remember to take a breath, stop, and slow the cadence down.” Regardless of this disclaimer, in the excerpt above Judy

responds directly to the judge, “I wasn’t that loud?” (line 09), as if his commentaries were addressing her voice in particular. The judge makes the only “quotation” of an identifiable other voice iconically, by layering a loud and sharp, falling intonation in “hammering down” (line 01), which separates this phrase from the softer intonational flow of the rest of his utterances. This acoustic representation of “hammering down” is further indexically linked to Judy’s preceding mock trial utterances because of its acoustic similarity to Judy’s falling intonations which, as the following illustrations show, chart a loud, sharp acoustic fall.

Image 5.06. Judy’s “Show you” with a Falling Intonation

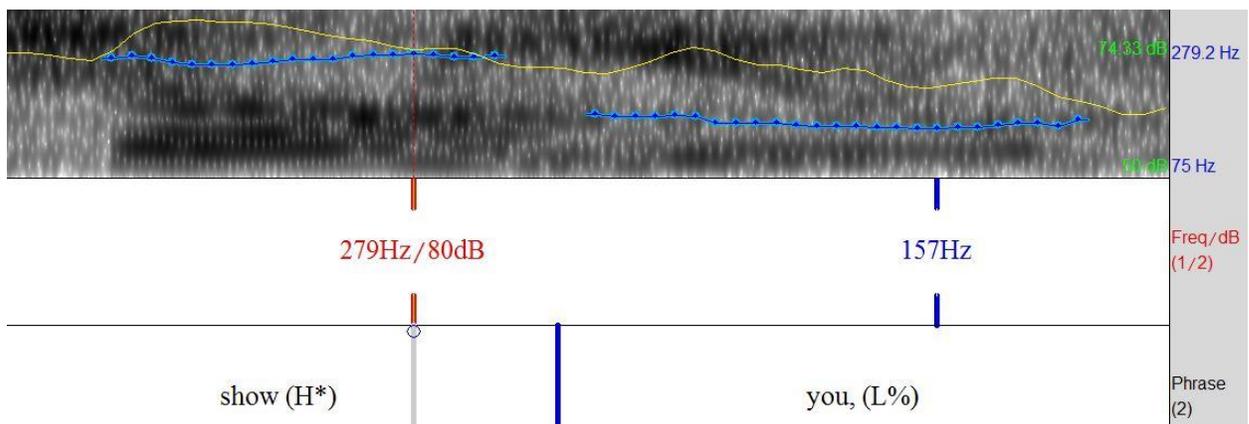
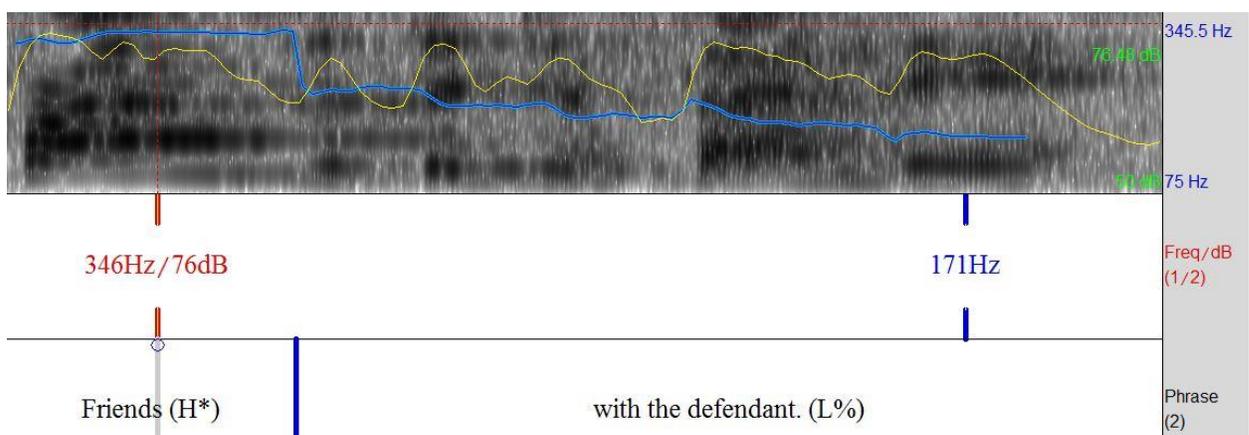


Image 5.07. Judy’s “Friends with the Defendant” with a Falling Intonation



Judy's consistent use of this falling intonation in the bulk of her utterances throughout the trial proceedings created, among other things, a perception of being loud and, ironically, of lacking in pitch diversity. If Jane's intonation can be linearly represented as a relatively flat line, Judy's intonation is a constant sine wave that does not change in height or amplitude. A further irony is that an examination of Judy's courtroom speech shows a strategic use of the falling intonation that distinctly highlights the most important elements of her utterances, the exact strategy that Judy felt that the judge failed to notice.

Excerpt 5.04 Judy's Strategic use of the Falling Intonation

And that, (0.8) so listen carefully to the **facts** ((H* L-L%)) presented to you and be mindful what you consider reasonable and who you consider **honest** ((H* L-L%)) and it will be very easy, for you to conclude at the end of this **trial** ((H* L-L%)) that the defendant, (1.0) is guilty of felony murder. °°Thank you ((creaky)).°°

Despite this strategic use of the falling intonation, Ronald, the same judge who admonished Jane for lacking in assertiveness, directly quotes Judy's falling intonation to characterize a non-legal voice lacking in control.

Excerpt 5.05 "I have trouble controlling the tone of my voice"

01 Ronald: You went from zero to a hundred and you never came back down.
 02 Okay, not even when you said **thank you** ((H* L-L%)).
 03 ((Muted laughter))
 04 Ronald: Like you're like, **THANK you** ((H* L-L%)).
 05 ((Laughter))
 06 (1.0)
 07 Ronald: And like wa[:lkd] away stormed off=
 08 Jane: [Ha]
 09 Audience: =[Hah hah]
 10 Jane: =[.hhh]
 11 Ronald: =[(I'm) like]
 12 Judy: =[(Mhm?)]
 13 Jane: Hh Go:d,
 14 Ronald: Ok(h)ay h you know like, jus-, s- I- I'm-, I'm being, I'm
 15 being de:d serious. Before you, stand up to- to do anything. .hhhh
 16 take a deep breath. Because I know some of it's nerves. Okay
 17 I know it is.
 18 Judy: Mhm,=

19 Ronald: =That's why- I mean, ((Ronald's National Mock Trial Competition
 20 Partner)) used to do it too. He used to- I mean his voice.
 21 Judy: Mhm=
 22 Ronald: =.hhh uh like- have you ever see(h)- .hh have you ever seen that
 23 SNL with- with [Will Ferrell]=
 24 Judy: [Mhm]=
 25 Ronald: =who's like ((breathy)) I suffer from voice immo:dulation.
 26 ((Laughter))
 27 Ronald: Yeah I was like, (0.5) ((breathy)) I have trouble controlling the
 28 tone of my voice.
 29 Judy: M[hm]
 30 Ronald: [Like] that's, what I felt like through a lot of it you know so,
 31 .hh just take a deep breath, .hh <rela:x a:nd>, say what you gotta
 32 say. Okay?

The fact that Ronald mischaracterizes the creaky voice quality of Judy's utterance of "thank you" shows that Ronald is using this phrase as a textual anchor to animate the true, acoustic target of his metacommentary: the sound of Judy's falling intonation. Ronald animates the falling intonation, using it as an acoustic point of convergence for three different conversations: (1) Judy's preceding mock trial performance; (2) the voice of Ronald's team mate during the National Mock Trial Competitions ("I mean his voice," line 20); and (3) a Saturday Night Live script featuring a spokesman suffering from "voice immodulation."

Excerpt 5.06 Jacob Silj's "Voice Immodulation"

Actress Tina Fey: No I mean, it's your voi:ce. You- you're shou:ting.
 Could you jus- [bring it down or-
 Silj [Actor Will Ferrell]: [O::H MY:: GO::D. I am no:t shou:ting. I am
 unable to contro:l the vo:lume, or pitch of my voi:ce, due to a
 we:ll-documented condition known as **voice immo:dula:tion**. I
 am protected under the Ame:ricans with Disabilities Act. I have
 the right to use ha:ndicap pa:rking spaces.
 Fey: Okay I- I just never heard of that condition=
 Silj: =BIGO:T, BI:GO::T, YOU ARE A BIGOT TINA FE:Y,
 Voice is- immo:dulation is re:al. [Dufek 2013[2001]]

The sense of Judy's having exceeded the institutional boundaries of the falling intonation is a composite effect of bringing together multiple discourses, one that goes beyond a direct projection of voicing contrasts through which intonation indexes discretely bound events, biographically concrete individuals, and/or stereotypical character roles.

But this indexical indeterminacy is ideologically significant because the metapragmatic discourse of "clarity" that gives institutional meaningfulness to the falling intonation, the acoustic materiality of the law student's voice, felicitous as it may be in the order of interactional meaningfulness, nevertheless becomes symptomatic of an inner corruption of the lawyer's voice. What is it about these law students that transforms the lawyer's voice into something so lacking in indexical, and referential, clarity, turning it into something lacking (as in Jane's case) or excessive (as in Judy's case)? The next section presents several "noise filtering" discourses that articulate acoustic sounds that are not so pleasant to hear, or at least inappropriate in a legal setting, representing them in voices that embody social character flaws. These discourses reveal social selves incompatible with the ideal legal advocate, not only acoustically but mentally incapable of voicing referentially "clear" propositions.

The final sections of this chapter argue that the particular terms of this characterological discourse converge on collective perceptions and anxieties of social change that have impacted the discourses on legal education and the legal profession over the past 40-50 years. More generally, attempts to maintain the "clarity" of the lawyer's referential voice reveal themselves to be part of institutional strategies of linguistic gate-keeping to manage competing social-political claims to access legitimate standing in institutional soundspaces.

Social Thresholds of the Acoustic “Sweet Spot”

Between Jane’s and Judy’s vocalizations in the courtroom, it is Judy’s excessive sound that poses the greater problem. Whereas Jane can be trained to improve the acoustic resolution to her falling intonation, there is a sense that the resolving power of Judy’s intonation is revealing things beyond mere acoustic noise: there is something unpleasant in the materiality of her voice that makes her sound abnormal, artificial in the courtroom. All the three episodes that Ronald animates by quoting Judy’s (quoted) falling intonation invoke a voice deviation turned into deviance, acoustic noise pointing to a deeper inner distortion: Ronald’s national mock trial team mate’s “voice” distorted by his nerves; and Jacob Silj’s clinical disability, his “voice immodulation,” that distorts his utterances. By extension, Judy’s “THANK YOU” represents some similar kind of inner distortion. These citations and quotations transform measures of acoustic variability into a qualitative judgment, where evaluations of sounding “loud” or “revved up” associate acoustic perception with an overflowing presence that cannot be fully bound within the regimes governing the construction of linguistic meaningfulness in the courtroom. But how do the judges distinguish between linguistically “sound” and linguistically “unsound” voices in the courtroom? What is the nature of this perceptual “boundary between language and nonlanguage” (Inoue 2003:163)?

The symbolic and dialogical complexity of the answer is suggested if one considers the possibility that, once upon a time, the voice of Jacob Silj might have been unproblematic. The acoustic “illness” that makes him sound distorted today is symptomatic of his erstwhile social identity no longer being the only familiar figure and natural presence in public spaces (Silj is an official spokesman for the US government). By establishing acoustic contrasts as points of convergence for multiple conversations and interactions involving both institutional

actors and social figures, metapragmatic discourses of speech clarity link perceptual sensitivity to sound with notions of social order and institutional separation. When mock trial judges construe the law students' falling intonation as falling outside the institutional soundspace, they also spot an aberrant social presence this acoustic excess. Identification of this uncanny acoustic presence depends on projections that symbolically displace the law students' voice into social figures whose profound character flaws—of which their acoustic excess is a telltale sign—naturalize their exclusion from powerful, authoritative institutional roles.

Acoustic Shadows: What Lurks behind her Voice

Judy's falling intonation hangs in the air of the Invitational Competition. During the feedback sessions, the judge frequently picks up on this sound, its unpleasantness, using it as a narrative catalyst during his feedback sessions. He uses this sound to ventriloquize the unpleasant voices of his former clients and witnesses whom he encountered years ago as a defense attorney. In the excerpt below, the judge characterizes the voice of the prosecutor's witness whose negative courtroom impression won the case for the defense.

Excerpt 5.07 “And then on cross-examination . . . she turned hard of hearing.”

Don't battle the witness too much. I had a case, where I was defense counsel aggravated assault. Clearly, the chair leg, metal chair leg was used to whack the victim in the head. So it looked bad for us. And the victim's sister took the witness stand, testifying for the prosecution, and **could have put her testimony to music. It was melodic. It was sing-songy. It was a beautiful thing to hear.** Okay?

And then on cross-examination first thing, she turned hard of hearing. ((In a loud, gritty, monotone voice)) **WHAT.** ((Laughter)) Let me repeat the question okay? Every answer, was an in your face back at ya. Okay? And we talked to the jurors afterwards they said they couldn't stand the sister, didn't believe a single thing that they said. And it came back not guilty. So, I just let her go. I just kept asking my question she kept saying what like she couldn't hear? And I didn't say that?

When the witness's "melodic," "sing-songy," "a beautiful thing to hear," almost musical intonation came to a scratching, gritty halt during cross-examination with her monotone utterance, "WHAT," the acoustic transformation of her voice projected to the jury, according to the judge, an artificial, inauthentic act that cast an air of doubt to her testimony. A few minutes later, the judge picks up on an utterance made by Jane acting as a witness being cross-examined by Judy to tell the story of one of his clients who lost composure during cross-examination. More directly this time, the judge marks the client's unpleasant sound with a metalinguistic gloss: she "snarls."

Excerpt 5.08 "Are you calling me a liar?"

Beautiful job here by Jane. "Are you calling me a liar?" I had a witness one time, my own client in a horrible CSC ((Criminal Sexual Conduct)) case. . . . My client was on the witness stand just getting destroyed, by the prosecutor, ugly CSC crime on her own daughter. Okay? And so finally, she just ((in a loud "snarling" sound)) **snarls** back. Much nicer than Jane, did. ((Snarling)) **Are you calling me a liar?** . . . So, I do remember **that** as a witness who was going down the tubes, okay and was being combative. And we lost that case that case was horrid. And we lost it.

The judge admits his loss as a defense attorney but projects its cause to his client's unseemly verbal conduct on the witness stand, acoustically conveyed by her "snarl," the "combative" nastiness of which becomes iconic of a "horrid" inner nature that naturalizes her "horrible" act and justifies her punishment by the justice system. The fact that he uses the spatial deictic "that" rather than the personal deictic "her" to refer to his client's verbal conduct in the courtroom suggests that the judge's attention is focused on the sound of the witness's utterances, whose unseemly acoustic characteristics provide the perceptual points of convergence between the focal character in story—the client-witness—and Judy's doubly-distorted voice.

In both these instances, the indexical links between utterance sound and a characterological figure are direct: the judge's stories link unpleasant sounds with unpleasant

characterological figures—the victim’s sister, a “horrible” mother. By identifying unpleasant sounds with characterologically figures, the judge develops an interpretive grid where the acoustic soundspace of legal advocacy is projected through the judge’s articulation of character flaws that make unpleasant sounds, revealing social beings unfit or incapable of assuming the “referential voice” in an authentic way.

This interpretive framework depends on a metapragmatic discourse that makes intonation multi-voiced and dialogic: the ideological presuppositions that inform these voice-overs furthermore render the links between unpleasant sound and unpleasant people seem to be natural extensions of each other (Inoue 2004). These ideological presuppositions are more strongly manifested when they need to be inferred in order for hearers to understand the pragmatic objects of metpragmatic discourse. In the excerpt below, a real judge, who sat in as a judge in the first rounds of the Invitational Competition, compliments on the courtroom feistiness of her clerk, Ashley, who sat as an observer in several of the mock trial rounds over which he presided.

Excerpt 5.09 “Oh you talked him into it huh?”

01 Gary: . . . Judge uh Sims' coming in, for the finals.
02 Judge: ((Addressing his law clerk, Ashley)) Oh you talked him into it
03 huh.
04 ((Laughter))
05 Judge: Oh Ashley gives you the good red-head smile,
06 ((Laughter))
07 ((Compressed voice, higher pitch)) She gives you little puffy
08 chee:ks,
09 ((Laughter))
10 Judge: She says, ((low-high-low contour to [u] vowel with matching
11 loudness modulation)) **Ju::dge**,
12 Ashley: I'm the same way in court right? ((Higher pitch)) This little smi:le,
13 Judge: Oh, let me tell you about Ashley.
14 ((Laughter))
15 Judge: And the, and the defense attorney was getting on her nerves.
16 (1.5) She, lit him up.

Ashley never comes back down. The judge's reduction of Ashley's courtroom utterances into pure growls and "grumbles" highlights her non-referential voice, revealing a self that, defined as it is through its nonlanguage, incorporates an ineluctable element of noise in her lawyerly, referential utterances. Commendable as she may be, her acoustic transformation in the legal soundspace casts her in the shadow of suspicion. Competent as she may be in the pragmatic duels in the courtroom, her acoustic excesses cast a shadow of doubt on her professional "commitment to justice, respect for the rule of law, honor, integrity, fair play, truthfulness, candor, and sensitivity to diverse clients and colleagues" (Stuckey 2007:519).

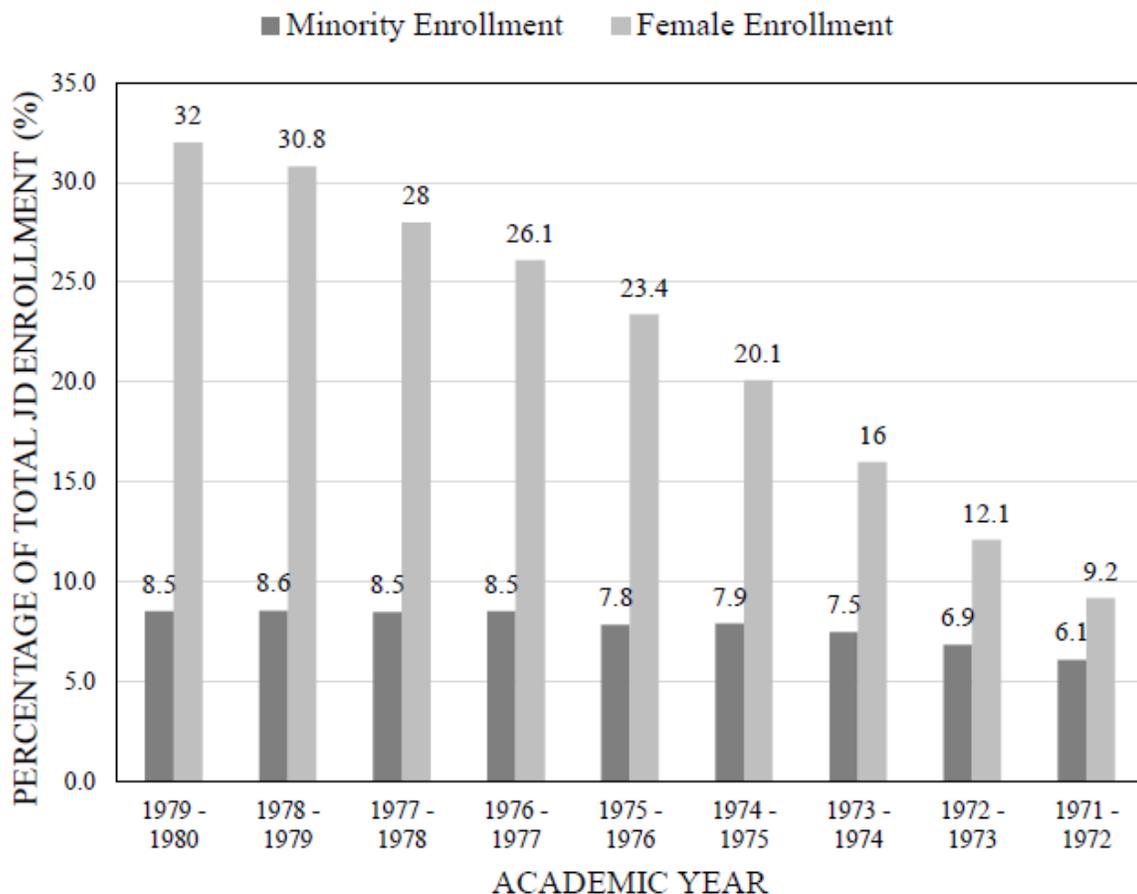
Reductions to Non-Referentiality: The Social Formations of Acoustic Exclusion

The chapter has demonstrated that the acoustic line of perceptual divergence from institutional soundspaces is symbolically drawn by aligning courtroom role-distinctions with characterological contrasts made through projected dialogue involving multi-voiced, metapragmatic discourses. The fact that these dialogical projections are gendered is not a coincidence. This section argues that the particularly gendered configurations of the double-voiced discourse of the mock trial judges, animating and aligning institutional voices with gendered social voices, is mediated by changing institutional attitudes towards women in law schools and in the legal profession. To support this argument, this section addresses two questions. First, why women? Other minority groups have also increased their demographic presence in US law schools since the Civil Rights era, impacting the culture of law schools. Second, why are negative stereotypes attached to women figures in the courtroom, and their voice reduced to pure non-referentiality?

More than any other social group, it was increasing presence of women that was most keenly noticed in law schools, especially during the late 1960s and early 1970s. Whereas throughout most of the 1960s, a law school classroom of one-hundred might have four

female law students, by the 1976-1977 academic year, one out of every four first-year law students were women. Within four three-year academic cycles, the number of women enrolling in US law schools nationally grew twelve-fold, from 2,769 in 1967-1968 to 29,343 in 1976-1977 (American Bar Association, Section of Legal Education and Admissions to the Bar 2012). In contrast to the exponential growth of female law student enrollment during the 1970s, the proportion of minority enrollment remained relatively constant during the same period, constituting between 6.0% and 8.5% of the total first-year law student population (American Bar Association, Section of Legal Education and Admissions to the Bar 2013):

Chart 5.01 Comparison of First-Year Minority and Female Enrollment in the 1970s

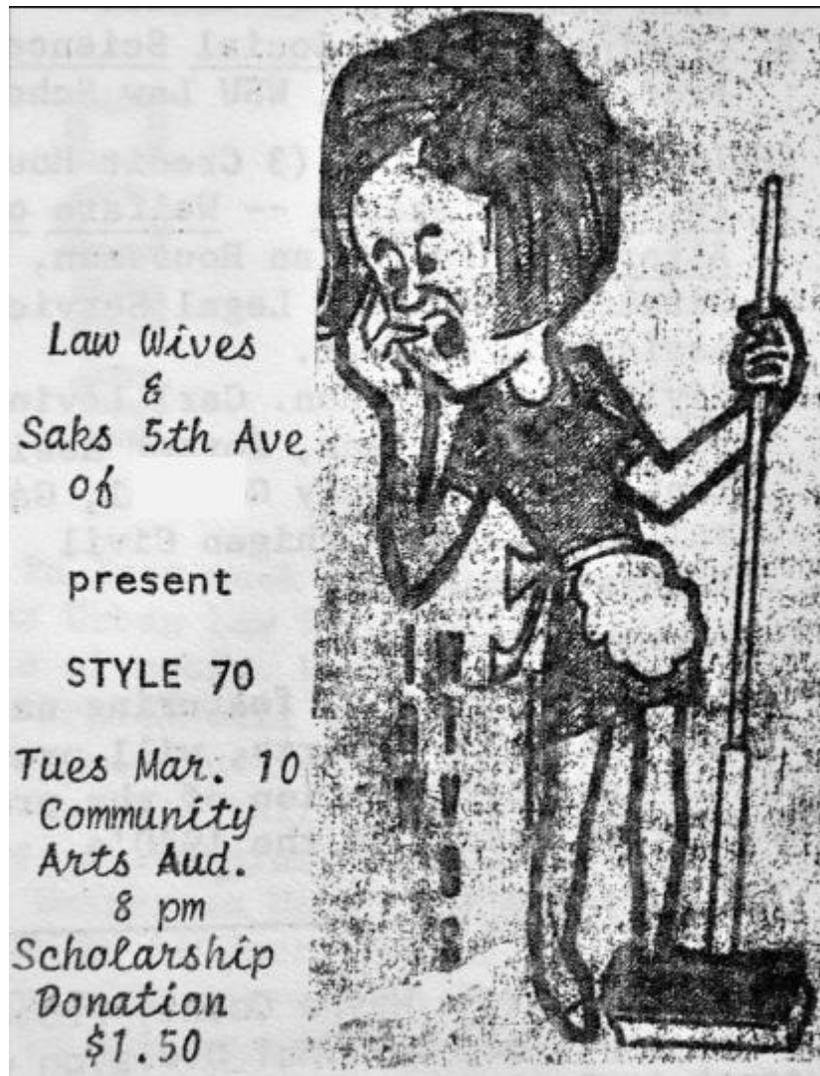


These statistics indicate that the established institutional and educational gate-keeping mechanisms were relatively successful in blocking the entry into the legal profession of

minority groups despite the social upheavals and diverse political-economic claims to justice and equality in the wake of the Civil Rights era. The greatest institutional beneficiaries of these social changes and changing political discourses were women with the social, economic, linguistic, and cultural capital to pass through these gate-keeping mechanisms. Their increasing institutional presence was the result of a broader cultural change in the imaginations of gender order in mainstream US society that made it more acceptable, and less stigmatizing, for adult women to pursue public, professional career paths. But these currents of social change did not impact established imaginations of social order in law schools with the same speed, a cultural inertia that was stronger the more law schools oriented to matriculating students from the surrounding, local communities. Such was the case for most law schools in the Midwestern state of Auburn in which Bramble Law School is located. During this period of social unrest and diverse claims to justice, within the walls of Bramble and other local law schools, a social order continued in which law students were expected to be married men. Institutional media naturalized the social status of women in law school by circulating texts and images of the “Law Wives Club,” texts and images that denotatively and symbolically associated women with gender-appropriate domestic activities. Members of the Law Wives Club in one regional law school in Auburn held fashion shows every semester. The school’s law student-run periodical, “The Advocate,” published this announcement for one of these shows, this one held in the spring of 1970.

Swing into the Seventies with styles from Sak's Fifth Ave in [Auburn City], which will be shown at [the law school's] Community Arts Auditorium on Tuesday, March 10 at 8:00 pm. STYLE SEVENTY is the ninth annual fashion show sponsored by Law Wives. The latest in make-up by the Sak's Salon and great new looks and hair styling by Bernard Hairstyling will accompany an inspiring collection of spring outfits. Door prizes will be given away in addition to cosmetic favors by Sak's. Following the show there will be a tea in the Alumni House. Admissions to the show is \$1.50 and the proceeds go to the Law Wives Scholarship Fund.

The picture of a housewife donning an apron and holding a broom-mop accompanies this announcement. This same image is reprinted in later fashion show announcements.



The expectation that law student readers will relay this event to their wives is explicitly stated in the announcement for the next fashion show, held in November 1970: “Please remind your wife that Law Wives meeting is Wednesday, November 11. Brenda Rosenberg, of Saks Fifth Avenue, will speak on Fashions. This is a great opportunity for your wife to meet the wives of your friends.” These announcements make explicit the more general, cultural presupposition in law school discourses that the addressees of legal texts are

male. Women figure in these discourses merely as foreign invitees to texts that demarcate a distinctly masculine domain of linguistic activity and knowledge. The following 1968 advertisement in *The Advocate* announces a “legal studies program” organized by the Law Wives to provide wives some “basic” “understanding” of what their husbands are learning:

Have you ever wished that a short lecture covering the entire scope of the courses you are taking could be given to your wife so that she would have **some understanding** of the material you're studying? If so your wishes have been realized. Beginning in December, and once a month thereafter, members of the faculty will be giving such lectures in the Faculty Lounge for all interested wives. The talks will attempt to provide a **basic** presentation of each course.

This gendered vision of social order embedded in law school texts and discourses came under increased symbolic tension with the increasing number of women claiming law student status, whose voice could not be contained within the alienating female roles assigned by the underlying gender expectations in legal discourses. Throughout the 1970s, law school media juxtaposed discourses that denotatively and symbolically reflected contradictory presuppositions about social order and change. In the same issues where the Law Wives Club was advertising fashion shows and “basic” legal presentations for wives, *The Advocate* began to quote a different voice, a voice marking a novel presence that had no cultural or institutional precedence—the voice women clamoring to be heard as law students, resonant in this 1972 satisfaction survey.

HAVE YOU BEEN TREATED DIFFERENTLY BY OTHER STUDENTS
BECAUSE YOU ARE A WOMAN?

“Male students assume that women are there looking for a husband, especially if she is less attractive than they desire women to be.” “If a woman stands for her sex, she is labeled ‘women’s lib--if she doesn’t she is looking for a husband.’” “I am often asked why I am in law school.” “The men students don’t buy coffee for other men, but I’m drowning in it.” “Two types of reactions—1) If I was taking up a seat, I had better kill myself working hard enough to make Law Review, or 2) a refusal to be taken seriously as I would have a man to support me.” “The ever present question—what is a nice girl like you doing in law school.” “A thousand times I was asked—‘what are you going to do when you graduate.’”

These novel claims to the legal voice symbolically masculinized imaginations of the lawyer confronting these gendered discourses, his symbolically outed masculinity articulating a collective, institutional sense of ambivalence towards the erosion of familiar (and familial) social borders that for many years underwrote the social legibility of legal texts and the social legitimacy of procedural legal outcomes. In a 1974 issue of *The Advocate* which has the same white-aproned, broom-wielding housewife advertising another fashion show, a comic illustration depicts a male lawyer disclaiming any sexual discrimination in the hiring practices of his legal organization.



The small caption on the side juxtaposes a contradictory text and image, conveying a stance of resentment to the primary text and transforming the female lawyer into a blind-

folded (ignorant, fashion-loving, socially attractive) law-woman: “It certainly is refreshing to find a woman around here who knows her place!” The growing uncertainty and fragmentation of social visions in law schools is magnified if one considers the possibility that, at the time it was published in the mid-1970s, the majority of the readers of *The Advocate*, men and women, needed the direct, explicit guidance of the sub-text to properly understand the accusatory irony of the main punch-line: “Why, some of our best friends are women.”

By circulating this fluid and fractured milieu of ironic, contradictory texts and symbols among law students, professors, and administrators, public legal media established competing forms of social order in legal discourse, pulling the normative foundations of legal institutions in opposite directions. The anxieties generated by this growing normative tension materialized into the figure of the disturbed male lawyer on the retreat, because the growing female law student body was materially the most immediate, most visible, and most audible manifestation within law school walls of larger social forces gradually altering the face of legal education and the legal profession. Attempts to reclaim social stability, or at least contain competing forms of social order, took the shape, in this highly gender-conscious institutional environment, of metadiscourses re-interpreting the femininity of the women law students’ voice into a negative quality, something incompatible with “clear” speech. This second-order re-interpretation entailed the erasure of her referential voice—of reducing her utterances to nonlanguage.

Of course, prior to the social upheavals of the late 1960s and 1970s, the legal media “heard” female legal actors. The acoustic and other symbolic qualities that gave femininity to

the courtroom presence of female lawyers was seen as unproblematic, her certain “flair” even enhancing the clarity of her expressions.

Fears as to women making fools of themselves in the courts have proved quite groundless. There are plenty of fools in our courts, of course, but they are not all women. In fact, women have done rather surprisingly well in this field. Given a **clear head** and a reasonable amount of training and assurance, they seem to have a **flair, a sixth sense (can it be our old friend intuition?)** which makes the difference between persuasion and the reverse, between success and failure. [Kenyon 1950:54]

Up to the early years of the civil rights movement, the inscrutable, feminine “intuition” was construed to be not only compatible with legal reasoning and analysis, but to bring a sensible, “gentle quality” into masculine legal bodies grown “callous” and “crotchety.” The excerpt below is taken from a local city newspaper article entitled, “Women Law Clerks Put Pants in Male Bulwark.”

Women bring a **gentle quality** in the law. . . . Too often we men grow **callous** to the problems of everyday life. We judges tend to grow **crotchety** as we grow old and a woman’s opinion acts as a sort of ballast. . . . **Women intuitively have a feeling for the law that most men do not have.** . . . Don’t sell a **woman’s intuition** short. I can say without hesitation that I believe I have one of the finest law clerks in the profession. [Gallagher 1966]

The inscrutable quality of the “intuitive” feminine presence can be attached and reattached, enclosed within or excluded outside the bounds of institutional “clarity,” because of its essential inscrutability. Her linguistic “flair” is particularly vulnerable to meet a similar fate that fell upon the “Divine” voice of the black preacher in an earlier era. The Chair of the National Conference of Bar Examiners thus makes a language joke in 1939 to open his speech proposing more stringent requirements to admit to legal practice “only those candidates who are adequately equipped from the standpoint of knowledge, ability and character to serve as lawyers”:

As Senator Soaper says, “It is the duty of statesmen to be familiar with all great public questions, but not necessarily with the answers.” We have not the facility of that dusky Divine who stated to his colored congregation one Sabbath morning in the

deep South, “My brethern and sistern, in my sermon to you this morning, I will reveal the unrevealable, expound the unknowable, and **unscrew the inscrutable.**” [Bierer, Jr. 1939:390]

Needless to say, the inscrutable pronunciations of the racial divine has no authentic place in modern, civilized, institutional soundspaces. In similar fashion, by highlighting the non-referential aspects of the female mock trial competitors, the judge metacommentaries examined in this chapter, by reducing feminine voices into growls and grunts, perceptually re-draw institutional boundaries. Their perceptual reconfiguration casts the feminine presence in the legal soundspace as an unpleasant transgression rather than a fresh, gentle infusion of “flair” to the legal voice.

Conclusion

Even though increasingly complex social forces in post-World War II US made increasingly untenable the economically, racially, culturally, and sexually homogeneous order underwriting the erstwhile figure of the lawyer, the terms of institutional resistance to these forces of social change were constructed in response to the most prominent shape that they manifested themselves within law school walls—more and more women. The mock trial judges’ metadiscourses of lawyers’ courtroom sound are second-order phenomena grounded on this critical period of socio-institutional transformation. Even though this chapter examined women law student competitors, the metadiscourses of lawyerly intonation and sound quality are necessarily conveyed through overlapping stories and conversations among social and institutional figures whose voices animate socio-culturally contingent, political alignments of acoustic, gender, and moral contrasts. The fact that these engendering discourses represent a powerful dialogic mechanism for the performance socialization of law students indicates that they remain powerful mechanisms for policing social and cultural transgressions into institutional spaces. They remain symptomatic of an institutionally

collective desire to fix the social and cultural definition of lawyer identity. Even though law-women are no longer the novel presence they were forty years ago, other social tensions intrude across institutional soundspaces today. No longer addressed to the female sex alone, these engendering mechanisms of referential erasure represent symbolic efforts to stem the continuing intrusion of socio-political forces within in the law school walls perpetually distort the once-given, once-familiar vision of the lawyer in the courtroom, turning strangely non-referential his once-clear voice.

Chapter 6. Intertextual Dialogues between Legal Actors and Social Stereotypes

Reported speech constitute another linguistic mechanism that law students learn to deploy in order to achieve pragmatic ends in the courtroom. Compared to tag questions and intonation, the strategies in the use of reported speech are associated with institutional discourses of intertextuality. These discourses orient mock trial competitors to the proper ways of combining fragments of evidential material in the course of courtroom interaction to construct convincing legal texts. Law students learn to deploy intertextual strategies through the use of reported speech in interaction through trial and error. In due course, they learn that intertextual authority is established not only by establishing the institutional authority of invoked texts. Law students learn that they must also induce the proper voices into the textual utterances of their rivals so that their referential content becomes understood in relation to relevant social contexts. Law students thereby link the propositional status of their rival's utterances with the status of social beings projected through voicing effects.

Theorizing Intertextuality

“Intertextuality” refers to the ways that discrete fragments of language or “texts” are reproduced and circulated across many and different moments of language use, in a way that they remain relatively constant or recognizable as the same text. As its etymology implies, texts may consist of fragments of grammar, which may vary in size from less than a full sentence, such as the classic opening of a fairy tale, “once upon a time,” or cover chunks larger than a sentence, such as when somebody shares an electronic news article on his or her web log. Texts may also involve more than one individual in their reproduction, circulation, and reception. Finally, they may project contextual information about the situation surrounding a given event of language use. A central premise of intertextuality is that the meaning of circulated texts, however abstract may seem, depends on these residual shades of

context (Irvine 1996). Intertextuality thus highlights the fundamentally interdiscursive or “dialogic” (Silverstein 2005:12) nature of human language as a form of social action. As the driver of these dialogic relations in language, intertextuality creates, replicates, and transforms diverse conceptualizations of society, social relations, and social selfhood.

An important finding by linguistic anthropologists is that, in many instances, when a text is isolated and invoked intertextually, a message is simultaneously conveyed which instructs the recipients to read and relate it to other texts in certain prescribed ways. The ways that such “metadiscursive” functions of intertextuality (Silverstein 1992, 2005) guide or “regiment” the circulation and reception of texts play a key role in relating larger cultural values with the grammatical structure of texts in socially consequential ways. Linguistic anthropologists argue that intertextuality involves powerful social organizations that regulate the modes of “entextualization,” or the specific mechanisms by which texts are rendered detachable. Social institutions also sanction the legitimate “contextualization” of texts by defining the terms of the appropriateness and effectiveness of their re-use in various contexts. Entextualization practices thus regiment the modes of textual production and circulation, their metadiscursive functions revealing the ways that durable cultural meanings, norms, and relationships are materialized and legitimized in the course of everyday social and institutional interaction (Silverstein and Urban 1996:14).

The Dialectics of Institutional Practice and the Dialogic Emergence of Culture

Entextualization practices highlight the organized, institutional labor involved in the reproduction and circulation of cultural meanings and norms in society. Large-scale, social patterns of language use underlie the formation of durable institutional practices, which allow individuals to recognize texts as an instance of a “prayer” or a “trial,” for example, and to properly inhabit the individual identities or roles associated with these texts and events.

Institutional practices relate to recurrent entextualizations, often associated with durable and powerful social organizations. Repetition of the same prayers in a Catholic church, or the national anthem at school, establishes these texts as the model of institutional entextualizations. These recurrent entextualizations weave a tight metadiscursive fabric that legitimizes larger schemes of social order.

Regardless of the degree of tightness by which institutional texts define social contexts, texts must be reproduced through the linguistic action of individual institutional agents. Entextualization therefore highlights the importance of actual discourse practices: before or at the same time that institutional texts, guided by structures of entextualization, define the broader social orders, such texts must be pronounced in one way or another, by real people through physical modalities of communication. As such, institutional regimes of entextualization are conditioned by the contingencies of “situated human communication” (Bauman 1975:291), anchoring institutional texts and their associated schemes of social order on a shifting, potentially unstable field of linguistic production. Situating texts in human communication incorporates bio-linguistic variables that escape the complete control of institutional organizations, such as the communicative resources available to individuals, their competence to use these resources, the various interactional goals of the participants, and the specific, time- and space- bound contingencies of particular moments of entextualization (Bauman 1975:302). These variables impact the ways that institutional texts are materially reproduced and played out, however regimented their norms of reproduction and circulation may be. Contingency makes entextualization “emergent.” Whereas institutional practices fix entextualization along established routes of reproduction and

circulation, the emergent quality of texts incorporates a linguistically creative element to entextualization.

The relationship between the social regulation of intertextuality and their contextual emergence reveals a “dialectic” tension between institutional texts, their producers, and their recipients. The analytical framework for exploring this tension draws an opposition between “centrifugal” and “centripetal” social forces pulling in opposite directions (Hill 1985:728), forces which are mapped onto large-scale relations of social inequality, such as city and countryside, prestige and non-prestige languages, and market-institutional and kinship-based structures of economic exchange (Hill and Hill 1986). As researchers have noted, this strictly one-to-one mapping of institutional texts with social relations of power represent conceptual end-points, or starting-points. In real life, text and their social effects are mixed and more complex.

Intertextuality as Regimes of Calibration

Linguistic anthropological studies of intertextuality (Briggs and Bauman 1992; Bauman 1996, 2004; Liu 2012) show that institutional order is maintained through intertextual variability and flexibility. Rather than enforcing a complete erasure of textual variability and deviation, institutional centers of power respond and adapt to the real-life, social contingencies of entextualization by flexibly managing intertextual tensions. Even the most rigid texts depend on a “relajo” or license for textual creativity (Bauman 2004:157), even if only to allow sacred texts to become reproducible in the present and the future. It is along these cross-contextually licensed points of intertextual creativity, however small or fragmentary, that an alternate text, a “counterregister” (Bauman 1996:321), or a counter-ritual, can insert salient cultural oppositions and tensions in authoritative, institutional texts (Gal and Irvine 1995; Irvine 2005; Irvine and Gal 2000). In mock trials, law students learn to

selectively block certain non-legal texts and pass through other texts, co-contextualizing courtroom texts with other, social vectors of entextualization. In this way, acquiring the logic of institutional entextualization has broader ramifications on social power relations and cultural differentiation. It is the means by which individuals in positions of social power and cultural prestige claim linguistic ownership over the production and interpretation of texts and discourses in institutional spaces.

By exploring law school mock trials, the chapter shows that the creativity of entextualization is a central element even in the most centrifugal centers of power. Law students learn that, in order to control the meaning of texts produced in the courtroom, a reliance on legal language and a display of authoritative legal texts is insufficient. By managing configurations of intertextual regimentation and creativity, law students learn to highlight, suppress, or alter oppositions between legal and social texts. Through strategies of intertextuality, law students learn to foreground various social contexts, which create complex pragmatic effects in the institutional setting of the courtroom. As the linguistic data in the chapter shows, how law students learn to manage the institutional and social effects of intertextuality is a matter of trial and error.

Learning to Entextualize in Mock Trials

Mock trials provide the scaffolding, template, or “metatext” (Silverstein 1998:137) guiding the socialization of law students to the proper use of reported speech to achieve intertextual authority in the courtroom. Through their use of intertextual strategies, law students learn to manipulate the boundary between “legal” and “non-legal” contexts by strategically foregrounding linguistic contrasts in one case, and erasing it in other cases. In other words, intertextuality is a syncretic phenomenon, by which speakers selectively highlight or suppress relevant oppositions in the course of their language use (Hill 2000).

This syncretic element of intertextuality implies that law students do not merely attend to surface textual contrasts, but they also decide whether to foreground such contrasts and thus make them matter in the interpretation of legal texts. As students “minimize” or “maximize” the intertextual gaps between legal and non-legal texts (Briggs and Bauman 1992; Bauman 2004), they also manipulate the interpretation of these strategies.

Evidence Competition at Bramble Law School

Sitting in the middle of the pack, the Evidence Competition is primarily aimed at socializing students to the proper presentation and treatment of legal evidence in the courtroom. Analysis of the linguistic experiences of law students participating in the Evidence Competition provides valuable insights on a critical stage of law student socialization whereby students learn to interact with legal texts and articulate the ideological basis for their reproduction in the courtroom. The interactional format of mock trials locates this ideology in the ways that law students project the institutional authority during real-time, verbal exchange in the courtroom. It is through these situationally grounded engagements with legal texts that law students learn of the institutional operations of intertextuality.

A surprising finding, illustrated in the transcripts below, is that the law students’ ability to tap into the power of legal texts depends on a realization that they are both denotationally and contextually malleable. The power of legal texts in the courtroom is not predicated on minimizing of intertextual gaps. While law students do harness the rigid fixity of legal texts to achieve desired interactional and pragmatic effects in the courtroom (Transcript 1 below), they realize that this is only one of many intertextual options in the treatment of legal texts (Transcripts 2 and 3 below). In order to win a trial, they must learn to bring into play multiple intertextual strategies in the courtroom.

Transcript 1: Mobilizing the Ideology of Legal Authority in the Courtroom

The competitors of the Evidence Competition obtain a packet containing the rules of the competition as well as all the legal material required for them to develop their case. The only background information provided in the packet is that a “felony murder” occurred, and that the State prosecution has charged the defendant with one count of felony murder and one count of conspiracy. Lacking in the packet is an official narrative of what happened, who were the parties involved, and who was killed. Instead, the competitors are provided with several typed “statements” from different people giving different accounts of the underlying events. These statements, plus the available body of evidence—a hand-drawn map, a finger print analysis report, official phone records, and photographs of material items—constitute the available repertoire of legal texts from which the competitors, as prosecution or defense, will construct a compelling narrative in the courtroom which will sway the institutional decision-makers—the jurors—to return a favorable verdict.

It is important to note that there are no physical jurors present in the Evidence Competition. This is significant because the evidence competition is specifically designed to socialize law students to the proper treatment of legal texts in institutional settings, not the art of persuading the jury. Accordingly, law students are primarily evaluated on their ability to transpose legal texts into the real-time, oral modalities of courtroom interaction. This transposition is critical to establish the authority of legal texts as factual evidence since, as a professor of evidence explained in an interview, if a legal text is not admitted in the courtroom as evidence—that is, if a law student fails to properly entextualize a legal text in the interactive space of the courtroom—“as far as the jury is concerned, it doesn’t exist.”

The fundamental challenge that the competitors face is that their endeavors to reproduce legal texts in the courtroom is met with resistance from the other courtroom

participants, by the opposing lawyer-competitors in the form of evidential objections, and by witnesses from the other party offering an unfavorable version of the underlying events. Whereas evidential objections are dealt with legal argumentation among the law student competitors and the judge involving rules of evidence, witnesses' verbal utterances pose a direct intertextual challenge to the law students' attempts to construct a textually coherent narrative out of the available body of evidence. And whereas research on courtroom interaction shows that attorneys have an institutional advantage to conversationally constrain or "nail down" witnesses (Matoesian 2005; Tiersma 1999:164-170), law students cannot exploit this institutional advantage unless they know how to harness the force of legal texts to effectively nail down difficult witnesses when the need arises.

The transcript below features a law student competitor, Tami, representing the prosecution, interacting with one of the defense's witnesses, the defendant's brother. In this transcript, Tami and the witness are disputing whether the witness saw Joy, her wife (the witness is played by a female law student), pull out a gun from a "closet" or from a "drawer."

01 Tami: So you really aren't sure what you saw Joy grab that night. From
02 the closet.
03 (0.8)
04 Defendant Witness 1 (DW1): It was a drawer and all I know is that she keeps the
05 gun in that drawer.
06 (3.5)
07 → Tami: Do you, do you remember giving a, do you remember giving a
08 statement?
09 (1.0)
10 DW1: Yes in the statement I said that she went into the drawer I didn't
11 say she went into the closet.
12 → Tami: And when you gave the statement, you were under oath, correct?
13 (1.3)
14 DW1: Yes.
15 (1.8)
16 → Tami: You told the truth?
17 (1.0)
18 DW1: Yes?

19 → Tami: Cause telling the truth is important?
20 (1.3)
21 DW1: Ye:s?
22 (1.3)
23 → Tami: In your sworn statement you said. (4.8) One second. ((Scans over
24 the statement))
25 Defense Attorney: The second paragraph (. . .)
26 Tami: While I was there I saw Joy go into the closet and get something.
27 And two lines later you said, and I just know that she keeps a gun
28 in that drawer so, (1.0) are you really sure where Joy keeps the
29 gun?
30 (1.0)
31 DW1: I said it in the drawer. Okay I am sorry if I misspoke about the
32 closet I didn't think it- that was a, (1.0) relevant point (and) I'm
33 sorry.
34 → But yes she went to the d- she went to the closet, and there was a
35 drawer in the closet then.
36 Tami: Okay.
37 (0.8)

In this excerpt, the defendant challenges Tami’s narrative authority. In response to Tami’s attempt to cast doubt on the reliability of DW1’s testimony (“So you really aren’t sure what you saw Joy grab that night,” Line 01), DW1 attempts to cast doubt on the reliability of Tami’s own utterances through a lexical challenge: the gun at issue is in a “drawer” and not in a “closet” as Tami mentioned. In order to establish the epistemological authority of her utterance, Tami invokes an institutional text, DW1’s written statement (Line 07). Through several metapragmatic turns, Tami and DW1 establish the grounds for the epistemological superiority of this text: first, DW1 was “under oath” (Line 12) when he gave the statement; second, DW1 told “the truth” which is “important” (Lines 16, 19); and third, the statement is therefore a “sworn” narrative, a product of a truth-telling ritual (Line 23).

Next, Tami engages in a performance of display, in Lines 23-24, where she picks up a physical paper copy of DW1’s statement on the prosecutor’s table, walks to the center of the courtroom, and for nearly five seconds of silence scans over the paper. While it may appear

that Tami is searching for the specific passage in the statement relevant to the current testimony, each passing second of silence functions to concentrate the listener’s attention upon Tami’s gaze of the physical object in her hands, building a kind of suspense where the silence becomes more and more pregnant with textual anticipation: what is she reading? Tami’s silent “reading” of the text in the silence of the courtroom therefore augments the impact of Tami’s eventual recitation of the textual passage: this is what she found in the text, this is what the text says; and that is the truth. As if recognizing this building momentum and to deflect its force, the opposing law student “helps” Tami locate the relevant text (Line 25).

Tami’s courtroom recitation of the relevant text in DW1’s statement is a verbatim replica of the written text:

DW1’s Written Statement	Tami’s Courtroom Recitation/Animation
While I was there I saw Joy go into the closet and get something.	While I was there I saw Joy go into the closet and get something. (Line 26)
And, I just know that she keeps a gun in that drawer and I just know that she keeps a gun in that drawer ... (Lines 27-28)

DW1’s statement reveals that neither Tami nor DW1 are wrong: it mentions both “closet” and “drawer.” Yet Tami emerges as the victor in this conversational struggle, as DW1 concedes her mistake, apologizes, and performatively self-corrects her utterance to display conformity to Tami’s recitation: “But yes she went to the d- she went to the closet, and there was a drawer in the closet then” (Lines 32-33).

Analysis 1: Socialization into the Ideology of Intertextual Authority

Even though the verbal dispute between Tami and the witness may appear to be a trivial one involving closely-related words, this transcript demonstrates the ways that Tami and the other mock trial competitors learn and perform the institutional rules of truth-claiming in legal advocacy. In fact, this routine of citing a prior legal text and quoting from it,

in lines 07-29, is an institutionalized script that members of the Mock Trial club circulate to law students during workshops and individual feedback sessions. As such, this transcript illustrates the ways that the activity of citing and reading (that is, re-entextualizing) a legal text socializes law students institutional practices of intertextuality. Re-entextualization, repeated practice of citing and reading legal texts in the courtroom disciplines the law students into the institutional mechanisms of textual reproduction. Tami's physical performance of entextualization—of moving into the center of the courtroom with a hard copy of the witness's statement, and reciting the relevant text—transforms the hard copy into a “fetishistic object” of authority (Matoesian 1999). The performance of reporting its content by reading establishes an intertextual transparency between what is printed and what is spoken, establishing Tami as a neutral conduit of an authoritative text, allowing her to assert and maintain interactional control by minimizing intertextual gaps.

By anchoring the witness's utterances to a legal text, and then framing the utterance as reported speech (at line 23: “In your statement you said”), Tami marks her entextualization as more truthful and reliable than the witness's own reported speech. The re-entextualization of texts thus metapragmatically functions to reify legal texts as an institutionally privileged source of knowledge. But this process of reifying legal texts through routinized practices of re-entextualization also draws on broader social values dealing with notions of authenticity and authority. The intertextual transparency of legal texts thus draws upon a “metapragmatic discourse of truth” (Hill 2000:287) underlying modern, Western standards of scientific evaluation and norms rational public discourse (Bauman and Briggs 1999; Rosaldo 1982).

This analysis suggests that the intertextual authority of legal texts in the courtroom is grounded on multiple contexts, institutional and social. The concept of linguistic ideology (Silverstein 1979:193) challenges the assumption that the relationship between institutional texts and institutional authority is exclusively isomorphic (Inoue 2003:18), with the one unproblematically reflecting or “indexing” the other. Mock trial competitors are routinized rather into verbal practices whereby cultural standards of linguistic truth and authority (Silverstein 1993) powerfully drive intertextual meaning-making in the courtroom. In order to establish transparent intertextual authority and the evidential value of legal texts, Tami and the other law student competitors must learn to project these broader, social ideologies mediating notions of truth and factuality in discourse. By learning to produce texts in the courtroom, law students also learn the proper ways of encoding fact and truth in language.

Transcript 2: Intertextual Calibration of Legal Authority

DW1 turned out to be a formidably touch witness for Tami to cross-examine. At various points of the mock trial, DW1’s conversational resistance threatened to derail Tami. Tami learns through trial and error that citing and reciting the authority of legal texts does not always work to restore conversational order, and her authoritative standing, in the courtroom. Transcript 2 analyzes one such instance of a failed attempt to establish intertextual authority. Here, Tami’s strategy of controlling the witness through the authority of a legal document grinds the courtroom proceedings to a halt.

The interaction begins innocuously enough, with Tami and DW1 following their institutionally assigned Question-Answer adjacency pairs (Schegloff and Sacks 1973:295-296) to co-construct the contextual background of the relevant events.

01	Tami:	So on July nineteenth twenty twelve Joy asks you to come over
02		and babysit. Correct?
03	DW1:	Yes I did come over and babysit.

04 Tami: And she asked you to come over and babysit at twelve o'clock at
05 night.
06 (1.5)
07 DW1: I can't be sure of the time. But she did ask me to come babysit.
08 Tami: She asked you to come babysit at twelve o'clock.
09 (4.0)

It is important to note that the referential content of Tami's questions constitute recitations, and thus re-entextualization in the courtroom, of DW1's written statement.

Witness Statement:

“On July 19, 2012, Joy asked me if I could come over and babysit [Q-A 1] her kids at midnight that same night [Q-A 2].”

Question-Answer Sequence (Q-A) 1:

01 Tami: So **on July nineteenth twenty twelve Joy asks you to come over**
02 **and babysit.** Correct?
03 DW1: Yes I did come over and babysit.

Q-A 2:

04 Tami: And she asked you to come over and babysit **at twelve o'clock at**
05 **night.**
06 (1.5)
07 DW1: I can't be sure of the time. But she did ask me to come babysit.

Through prior exposure to sample transcripts and exemplary re-enactments of such Q-A sequences in textbooks, workshops, and feedback sessions, law students develop an understanding of courtroom interaction as a normative system in which different speakers are assigned into specific interactional roles limiting the types of utterances they can make (Atkinson and Drew 1979; Greatbatch 1988) In Q-A sequences between attorney and witness from the opposing party, the witness is assigned the second pair part, answer role, constraining them to utter the preferred response, a minimal, “yes/no” agreement token. In this transcript, the witness adheres to this conversational expectation in her initial response:

she utters “yes.” But her additional remark deviates from this expectation: after the preferred response, she repeats the declarative portion of Tami’s question, “I did come over and babysit.” While this repetition may appear innocuous as far as the propositional content of the statement it concerned, it nevertheless signals to Tami and the other courtroom listeners that the witness will not confine herself to automatic yes/no agreement tokens. She will be a difficult witness. This impression is further reinforced in the third Q-A sequence, in which the witness refrains from answering altogether, creating a four-second pause and forcing Tami to move on to the next Q-A sequence:

Q-A 3:

08 Tami: She asked you to come babysit at twelve o'clock.
09 (4.0)

These conversational moves indicate that the witness is unwilling to keep the conversation on institutional track. They represent tactics of role mis-alignment which increase the likelihood of a conversational breakdown. The interactional plane thereby becomes a field of resistance which Tami must carefully manage in the course of her re-entextualization, thus complicating her textual labor. In particular, the unstable interactional ground between Tami and the witness squarely re-orient the listener’s attention from propositional content to a battle of demeanors (Lempert 2005; 2012:64). Tami not only must worry about re-entextualizing the content of the witness’s statement given that the necessary verbal confirmation will not be readily forthcoming. She must also ensure that the listeners fault the witness, not Tami, for any subsequent breakdown in communication.

10 Tami: When you arrived at Joy and Darnell's house and you walked
11 inside, **Joy and Darnell they were, making some masks?**
12 (1.3)
13 DW1: Yeah they were making some masks. (0.5) And they were tak- and
14 they were- seemed to be, really antsy? And they were taking their

- 15 time about leaving.
- 16 → Tami: But this was July this wasn't Mardi Gras. Making the masks
 17 didn't seem, odd to you?
 18 (1.5)
- 19 DW1: I don't speculate what other people do.
- 20 Tami: Okay, and while you were at Joy and Darnell's house you also
saw Joy wi- grab to- uh what you believed to be a gun. Correct?
- 22 DW1: Yes she kept the gun in that drawer.
- 23 → Tami: Well you didn't think it pertinent to, call the police?

Unfortunately for Tami, she has yet to recognize the extent to which the witness's deviation from the interactional script is derailing Tami's intertextual labor. The witness's verbally elaborate replies to Tami's questions represent the witness's own re-entextualization of her prior, written statement, re-contextualizing the events in question in a way that does not align with Tami's interpretations. In effect, they are talking past each other, engaging in separate linguistic reconstructions. To Tami's first entextualization ("Joy and Darnell were making some masks," line 11), DW1 re-entextualizes another portion of in her written statement that Tami does not mention.

DW1's Written Statement	DW1's Re-Entextualization
They were making some cool masks. Joy probably wanted me there cause she things I am really good with kids and I am pretty good at watching stuff. While I was there I saw Joy go into the closet and get something. I think she probably got her gun, but don't know for sure. She was acting very secretive.	Yeah they were making some masks. And they were tak- and they were- seemed to be, really antsy? And they were taking their time about leaving (lines 14-15).

While both Tami and the witness co-contextualize the same sequence of events referred to in the written statement, the witness's textual alterations create a subtly different story: the children's parents appeared nervous while they were making "masks," and they seemed reluctant to leave. Similarly in the following Q-A sequence containing Tami's

second argument (“you saw Joy grab what you believed to be a gun,” line 20-21), the witness re-entextualizes a different portion of the written statement:

DW1’s Written Statement	Tami’s and DW1’s Re-Entextualizations
While I was there I saw Joy go into the closet and get something. I think she probably got her gun, but don’t know for sure. . . . And, I just know that she keeps a gun in that drawer and then she put whatever it was in her purse right away.	Tami: Okay, and while you were at Joy and Darnell’s house you also saw Joy wi- grab to- uh what you believed to be a gun (lines 20-21). DW1: she kept the gun in that drawer (line 22)

The combined effect of the witness’s different rendering of events, plus the conversational positioning of these actions as counters to Tami’s questions, is to make Tami’s follow-up questions (“but this wasn’t Mardi Gras,” lines 16-17; “you didn’t think it pertinent to call the police,” line 23) seem oddly out of place. DW1’s intertextual moves thus create a conversational misalignment which makes Tami’s arguments contextually unintelligible. The witness exploits this logical gap to generate a sense of confusion which allows her to take control of the conversational courtroom floor: she asks a question in the form of a repair request (line 25, below).

20 Tami: Okay, and while you were at Joy and Darnell's house you also saw Joy wi- grab to- uh what you believed to be a gun. Correct?

22 DW1: Yes she kept the gun in that drawer.

23 Tami: Well you didn't think it pertinent to, call the police?

24 (1.8)

25 → DW1: **On what basis?** [I thought.]

26 Tami: [That she is g-]

27 (0.5)

28 DW1: That it- the gun was in that drawer. I didn't see her pull out the

29 gun,

30 [...]-

31 Tami: [So,]

32 DW1: -I gotta call police now.

A witness is never supposed to ask a question in the courtroom. Failure to enforce this normative tenet seriously damages perceptions of Tami’s communicative competence as a lawyer. After an overlap in talk and a half-second lapse in which the position of next speaker is up for grabs, the witness takes over the entextualization labor, providing an account of her prior utterance which further undermines the contextual basis of Tami’s central arguments, as well as Tami’s institutional authority in the courtroom. Tami twice fails to regain conversational control over the witness (lines 25-26; 30-31). She needs to do something, something fast and decisive, to ensure that she does not get nailed down by the witness for good. She needs to bring out the big guns.

33 → Tami: So you're essentially, saying that you **lack the personal**
 34 **knowledge under 602** to- to, know whether or not she in fact took
 35 the gun out of the house that night are you [1] agreeing to that?
 36 Defense Attorney: [1] Objection your
 37 honor [2] argumentative.
 38 DW1: [2] I don't know what [3] six oh two means.]
 39 Judge: [3] Hold on hold on hold on]
 40 hold on. When an objection is on, everybody's gotta stop, except
 41 for the person who is making the objection. So what's your
 42 objection.

Tami entextualizes a legal source, Rule 602 of the Federal Rules of Evidence (FRE), which requires that witnesses know what they are testifying about.

FRE Rule 602	Tami’s Re-Entextualization
A witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter.	So you’re essentially, saying that you lack the personal knowledge under 602 to- to, know whether or not she in fact took the gun out of the house that night are you agreeing to that?

By citing and entextualizing a legal rule, Tami invokes the weight of legal authority in an attempt to nullify the witness’s intertextual moves. This invocation of an institutional text, seen as a measure to balance the significant damage to Tami’s institutional status

resulting from her failure to properly manage the conversational flow in the courtroom, represents a drastic move to deny the institutional standing of the witness. In effect, this is a tactic of intertextual minimization similar to the performative citation and reading of the written statement in the first transcript. But unlike this first tactic, reading a legal rule in the courtroom triggers a monological force that absorbs, like a black hole, all conversational coherence. Whereas reading the written statement allowed Tami to control the witness in Transcript 1, here Tami's invocation of textual authority results in the interruption by both the opposing student-attorney and the judge.

43 Defense Attorney: Argumentative? °Like she said,°
44 Judge: Your response.
45 → Tami: **I'm not trying to (0.8) argue with the witness if my tone seems**
46 **like that** I guess I was just confused because the witness, uhm,
47 testified that she saw Joy grab the gun, and now the witness is
48 testifying that she's not sure what she saw, so I'm wondering if
49 the witness is almost questioning their own personal knowledge,
50 and whe- whether they had even the opportunity to perceive it.
51 Judge: Okay. It's slightly argumentative. But also, you know, she- she's a
52 lay witness, she's not a lawyer, she doesn't know what six oh two
53 → is so **you're asking for a legal conclusion**. So I'm gonna sustain
54 um, the way it's asked. Okay? And mak- if you wanna break it
55 down and ask one question at a time, then maybe it will work that
56 way. But your objection is sustained.
57 Defense Attorney: Thank you your honor.

Despite Tami's insistence that she is not trying to "argue" with the witness (line 45-46), the fact remains that the intertextual misalignment between her and the witness has transformed the interaction from a lawyer "making an argument" to two individuals "having an argument" in the courtroom (O'Keefe 1977). The judge's decision (line 56) reminds Tami that she cannot use a legal rule and hold a layperson responsible for upholding institutional authority ("you're asking for a legal conclusion," line 53). That is Tami's job.

Analysis 2: Learning to Release the Foot off the Legal Pedal

Tami learned two important lessons from this interactional breakdown. First, her demeanor as legal actor is maintained through the proper management of the conversational flow of courtroom talk in accordance with normative institutional conventions. Second, this interactional management is indispensable for controlling the interpretation of legal texts in the courtroom. Crucially, however, the novelty of these realizations stems from the fact that mere citation of legal authority does not translate into success in legal advocacy. Tami thus realizes that the structure of textual authority in the language of legal advocacy departs from the forms of legal argumentation that she and other law students learned in the lecture classrooms (Mertz 2007).

As Tami becomes exposed to the practical consequences of her linguistic behavior, she comes to realize that the language ideology of the law coexists with other linguistic ideologies in legal spaces. Realizing that legal, institutional spaces are ideologically diverse spaces (Philips 1998, 2004; Matoesian 2005) is an important stage in the professional development of law students as legal advocates, a realization that occurs outside the lecture classrooms.

To summarize the chapter's findings thus far, Tami's attempt to reduce her utterances to a purely textual legal authority deprived the courtroom with conversational breathing room. The ensuing breakdown in interactional order teaches Tami that foregrounding her "hegemonic footing" (Matoesian 2000:88), which she had successfully achieved in Transcript 1, still requires a careful management of what becomes thereby backgrounded. To the leading lines of legal authority, Tami must also attend to the vanishing points of social meaningfulness, interweaving multiple vectors of entextualization to produce a textual composite with a complex, "indexical layering" (Matoesian 2000:895) of linguistic forms

and expressions which “contextualizes mutually synchronizing ideologies, voices, and forms of participation in the construction of legal reality and truth” (Matoesian 2005:736). In other words, Tami must not suffocate the witness’s utterances in the inert substance of legal texts. She rather needs to re-contextualize the witness’s wayward linguistic behavior with a sub-narrative of her social world. Tami learns to socially re-contextualize legal texts by constructing a social discourse with the witness, enabling her to merge the linguistic authority of legal texts with social insight. Through the metapragmatic “warrants” of textual legal authority, Tami learns the proper ways to create convincing social relations and social beings out of legal texts.

Transcript 3: Intertextual Fusion of Multiple Participations of Power

Despite these interactional mishaps, Tami has succeeded in advancing to the final round of the Evidence Competition. By this point, she has undergone three full mock trials involving the same case, but alternating between prosecutor and defense attorney roles. Throughout the course of these mock trials, Tami has learned to manage her conversation with the opposing party’s witnesses in a way that has reduced the need for her to resort to the invocation of legal authority to maintain control of the witness’s utterances. Transcript 3 demonstrates how Tami mobilizes legal texts to co-construct a social world that supports her legal arguments to the jurors. It demonstrates the ways that linguistic elements contained in legal documents allow Tami to contextualize her narrative, by placing the witness in a social world.

In the final round, Tami is assigned to represent the defendant, who is charged with the felony murder of a security guard at a convenience store. According to the prosecution’s rendering of the events, the defendant shot the security guard while the he and his co-conspirator, Mr. Crabman, broke into the store at night. Tami’s “theory of the case”—her

story—is that while the defendant may have pulled the trigger, it was Mr. Crabman who was the mastermind behind the plan to break and enter the convenience store, and therefore the state is prosecuting the wrong person, the “fall guy” for someone else’s plan. It should be Mr. Crabman, not the defendant, who should be on trial. The following portion of Tami’s closing argument to the jury articulates her narrative explaining Mr. Crabman’s (“Darnell”) motivation to put the defendant (“Earl”) in jail:

Revenge is a dish best served cold and this is something that my client had to find out the hard way. . . . Darnell owed people money. He had a demanding wife. . . . The only person that doesn't have a dog in this fight is Earl. . . . Darnell, had this plan to rob the Crabshack [the convenience store], to get Earl out of his life and get Earl out of Joy's life, and he was going to do this with or without Earl there. The end game was the same. To blow the whistle first, and make it look like the man that was making your married life a living hell actually did it.

As the facts in the competition packet would have it, Joy, Mr. Crabman’s wife, was previously married to the defendant. The relevant passage in Mr. Crabman’s written statement below describes Joy as “always nagging” him to give her “things,” telling him that the defendant bought her things. This is a narrative that benefits the defendant’s case because it shifts the criminal motivation to Mr. Crabman, who was driven by his wife’s perpetual “nagging” for material goods, which he could not provide through conventional, licit means: Mr. Crabman is an employee of the convenient store, implying that he earns a low, hourly wage.

Excerpt 6.01 Statement of Darnell Crabman

I also talked to Earl [Defendant] about Joy. I told him that Joy is **always nagging me** to buy her all these random **things** she wants. He just laughed. Joy told me that Earl used to buy her **things** when they were together and then she'd **always ask me** what I got for her. Like I **always have a present waiting for her**, yeah right. She is **always** like, ‘Earl this’ and ‘Earl that’. I would do anything for her to just stop talking about him. IT really gets on my last nerve.

In order for Tami to re-entextualize this passage in the courtroom, Tami must animate it in her conversations with Mr. Crabman, who was brought into court as the star witness for the prosecution who places the defendant in the crime scene. At the same time, she must ensure that the jurors interpret the text in its proper social context. The excerpt below represents the interactional text that Tami co-produced with Mr. Crabman in the courtroom to achieve these two objectives.

01 Tami: You know Earl because he was married to your wife Joy.
 02 Mr. Crabman: Yep.
 03 Tami: And Joy would, **FRE**quently remind you about the **things** that,
 04 (0.5) **Earl would do for her,**
 05 Mr. Crabman: Yeah she's a **nag** but what woman isn't hh.
 06 Tami: And, she would **nag** you pretty **frequently** though.=
 07 Mr. Crabman: Yeah she definitely (h)is a **n(h)agger**.
 08 Tami: It got on your **nerves**,
 09 (1.0)
 10 Mr. Crabman: Doesn't **nagging** get on every(h)one's **n(h)erves**?
 11 (0.8)
 12 Tami: She seems like a **hard woman to PLE**ase,
 13 (0.8)
 14 Mr. Crabman: **I can please her pretty good,**
 15 [((Muted laughter))]
 16 Tami: [At **THIS point** you] would do **ANything**, to get her to STOP
 17 talking. about Earl. [Right.]
 18 Mr. Crabman: [I mean,] I figured I'd just buy her a **gift or**
 19 **something** and **she'll shut up.**

Tami selectively re-entextualizes Mr. Crabman's written statements in order to create a characterological reading of Mr. Crabman that supports Tami's interpretations of his motivations. Using Goffman's scheme of speaker role distribution of principal, author, and animator (1981), Tami assigns the following speaker roles between herself, Mr. Crabman, and the jurors, making critical intertextual alterations along the way, as all three participants jointly and actively re-contextualize Mr. Crabman's written statement.

Table 6.03 Lexical Substitutions of Mr. Crabman’s Written Statement

Written Statement	Cross-Examination	Courtroom (Author-)Animator	Social (Author-)Principal
“always” (Lines 01, 03, 04, 05)	“frequently” (Lines 03, 06)	Tami (lawyer)	Joy (wife)
“nagging me” (Line 01)	“remind you” (Line 03)	Tami	Joy
Earl “used to buy her things” (Line 03)	“things” Earl “would do for her” (Lines 03-04)	Tami	Joy
“a present” (Line 04)	“a gift or something” (Line 18)	Crabman (witness)	Crabman (husband)
“for her to just stop talking about him” (Lines 05-06)	“and she’ll shut up” (Line 19)	Crabman	Crabman
“He just laughed.” (Line 02)	((muted laughter)) (Line 15)	Jurors	Earl (ex-husband)

The voice of principal, author, and animator, which was unified in the figure of Mr. Crabman in the written statement, is distributed along three players, the attorney, the cross-examined witness, and the jurors. As the table above shows, Tami links the courtroom utterances with a specific principal, the social figures to which these utterances ultimately belong. This role distribution allows Tami, the witness, and the jurors, to re-enact a social play in the institutional stage—the latter figuring them as courtroom actors, the former enacting the “end game” between Joy, Mr. Crabman, and the defendant. But the social context is not a specific prior event—Tami’s closing argument does not “index” a “real” past. Instead, it brings together conversational strings that lead deeply into the undercurrents of Mr. Crabman’s psyche.

Tami carefully guides the vectoral flow of these conversational strings to mine Mr. Crabman’s mental state through her lexical substitutions. Her substitution of “always” to “frequently” shortens the interval aspect of Joy’s “nagging” the witness for “things”: Joy did not “nag” the witness all the time, suggesting an element of impatience on the witness’s part

that undermines his justification for committing the breaking and entering. Tami also transforms the target of Joy's desire, from "things" that Earl can "buy," to things that he is asked to "do for" her." Tami thus shifts the materiality of the object of desire to something less material, an action of "doing" on Earl's part that "pleases" her as a "woman" (line 12). Tami's proposition, "she seems like a hard woman to please," appears harmless. But the witness refuses to agree with it with a simple "yes" answer. Tami has learned, the hard way, to expect such a response: conversational non-conformity and resistance is the expected behavior of cross-examined witnesses who resist, for the sake of resistance, all attempts by lawyers to "nail" them down. So in response to Tami's question, Mr. Crabman contradicts Tami. Joy is not a hard woman to please: "I can please her pretty good."

The sleight of hand is that, Tami has already anticipated the witness's inevitable resistance and had pre-designed her question so that the witness's answer would amount to an agreement at a subtextual level. In this case, Tami managed to have the witness agree that Joy's object desire was not material, not for Crabman to "buy" her "things," but to "please" her. Therefore, Joy's insistent "nagging" could not have cornered Crabman into stealing "things" from the convenience store. It is not because he could not "buy" Joy "things" that he felt compelled to transgress into an illicit form of wealth-acquisition (i.e., stealing), but rather because he could not adequately "please" her.

Both Tami and the witness are aware of their respective roles in the distribution of intertextual labor in the courtroom. The jury, who is denied an official voice in courtroom space, nevertheless plays a role in the unfolding social narrative. The jury's muted laughter (line 15) realizes Earl's laughter described matter-of-factly in Crabman's written statement ("I told him that Joy is always nagging me to buy her all these random things she wants. **He**

just laughed”). The jury’s muted laughter objectifies Earl’s laughter which was only described in Mr. Crabman’s written statement.

What is Earl, through the jurors, made to laugh at? The waves of laughter are the final textual threads that place into motion Mr. Crabman’s “end game”: Earl’s laughter marks the act of Crabman’s emasculation. Tami intensifies the piercing force of this laughter by sharpening it with three indexical arrows at the same time: (1) a deictic term (“At THIS point,” line 16); (2) a locative noun (“point”); and (3) by precisely overlapping these terms with the muted laughter spilling into the courtroom space (lines 15-16). By placing Earl’s laughter in the body of the jurors, the jurors are virtually taken into this central moment of emasculation, and Crabman’s “real” motivation becomes vividly realized and marked by the jury’s laughter in the courtroom. Tami has “exposed” Crabman in the courtroom, emasculating him one more time. But it is not Tami who “exposes” him, but the jurors who are inevitably induced into the act of psychological exposure by their own laughter.

Analysis 3: The Lawyer’s Competence in Lexical Landscaping

Tami’s entextualization of Mr. Crabman’s written statement has re-contextualized Tami’s argument in a love triangle, turned violent out of anxieties of sexual impotence. Tami’s tactful distribution of intertextual labor among herself, the witness, and the jurors makes this re-contextualization possible. What makes Tami’s closing argument conceivable and convincing is that it taps into resonant stories of social relations that involve sex and material desire. The lexical alterations in the course of entextualization in the courtroom constitute points of intersection with social vectors of entextualization. They allow Tami to use legal texts to recreate a social script that makes up the contextual background which brings her courtroom arguments to life. By managing the co-construction of social scripts in the courtroom, Tami has learned a key mechanism by which the language of legal advocacy

can create social worlds and social beings. Rather than directly imposing the denotational and propositional authority of legal texts on wayward witnesses, law students learn to calibrate the social reach of legal texts. Through this “lexical landscaping in court” (Cotteril 2004:528), law students learn to exploit the multi-directionality of institutional texts to place the verbal behavior of witnesses in broader social contexts. Ultimately, the persuasive power of the language of legal advocacy emerges not from linguistic structure but from “an intertextually fused field of participation that hovers over the current conflict” which “imparts a tacit yet richly inferential and strategic sense of moral relevance to the ongoing exchange” (Matoesian 2005:736).

Conclusion

The language of legal advocacy involves the orchestration of multiple layers of discourses and meanings that transcend the boundaries of institutional role divisions and the denotational content of legal texts. Representing legal texts in the courtroom entails lawyers synchronizing multiple planes of participation through the careful management of intertextual labor. The distribution of what can be said, how, and by who equally involves strategic assessments of what is to be re-inscribed in texts, as well what contextual excesses of meaning will accompany those texts. Verbal strategies in the courtroom thus involve coordinated acts of codification that involve multiple layers of speaking forms, as well as managing the kinds of meanings that these forms convey. But in contrast to institutional actors using linguistic variation to mark a shift in “style” which presupposes a directly perceptible, symbolic isomorphism between linguistic forms and socio-institutional stereotypes (Angermeyer 2009; Fuller 1993; Tiersma 1999:153-179), this chapter has shown that these sociolinguistic associations depend on complex intertextual strategies and choices.

As they develop their skills in specialized areas of legal practice therefore, law students learn to exploit the formal properties legal language and argumentations to animate multiple forms of speaking and interaction which script multiply voiced social relations. From a culture-as-text perspective (Silverstein and Urban 1996:9), the systematic, institutionalized activity of associating legal texts with social contexts in specifically patterned ways constitute a key social mechanism by which institutional language becomes imbued with cultural power. By rendering certain text-context alignments authoritative, the institutional operations of intertextuality reveal the ways that powerful institutional actors such as lawyers construct certain visions of social order as they pursue practical ends, making those orders real and imbuing them with the institutional stamp of intertextual authority.

Chapter 7. Conclusion

This dissertation has explored three non-referential, pragmatic features of conversation that play critical roles in the construction of authoritative legal texts in the courtroom. The conversational strategies that law students learn through the use of these pragmatic markers teach them that prevailing in the adversarial setting of a legal proceeding involves the mobilization of multiple texts, multiple contexts, and a multitude of social and institutional voices. They learn that to articulate the propositional truth of legal texts in the dialogical fashion. This concluding chapter discusses the implications of the dialectic and dialogic dimensions of institutional linguistic practices on the language socialization of law students, and the relationship between institutional language and social power.

Constructing an Identity as a Legal Advocate

To a greater or lesser degree, all interactions in law school—from professor-student interactions in lecture classrooms, to mock trial competitions, to in-house legal clinics, and hallway and student lounge chatter—involve plays and displays of language that heighten the language consciousness of law students. The language socialization of law schools therefore involves two distinct processes. On the literal denotational plane of linguistic socialization, law students are familiarized with the specialized lexicon, textual arrangements, and forms of expression that externally mark their speech and writing as part of the legal “register.” On the conversational side of linguistic socialization, law students are induced into the linguistic technologies of legal advocacy. They learn that determinations of propositional truth in adversarial legal settings are fought on dialogical planes of linguistic meaningfulness. These dialogic strategies deploy non-referential features of conversation, as explored in this dissertation; but law students do not learn them through text books. Instead, law students learn them in recursive fashion, in an experiential way, by modeling interactions.

The dialogic strategies of reducing the propositional value of the utterances of courtroom rivals, central to the conversational craft of the adversarial lawyer, are played out in the mock trials and feedback sessions in powerfully socializing ways. Interviews with mock trial competitors confirm that they learn the dialogic dimensions of legal advocacy through them. As Judy explains the “art” of constructing “leading” questions during cross-examination for example, she articulates the multiplex nature of legal utterances by separating their semantic-referential content, “the way you say it,” from the dialogic elements carried in the non-referential features of speech, or “the way you . . . sound”:

- Judy: Leading is, what it is.
 JB: Yeah.
 Judy: It's like I- what I'm telling you ((stroke)) is where I want you to go.
 JB: Mhm yeah.
 Judy: So if I say to you, uhm, you didn't go to the store yesterday, you can be like yeah actually- well, you didn't go to the store yesterday you know it's like, **the way you say it** and the way-
- JB: -uhuh
- Judy: **the way you- you sound,**
 JB: Uhuh,
 Judy: **is two different, things** and I think once someone understands that?
 JB: Uhuh,
 Judy: And, literally I probably only understood it- really understood it-
 JB: Uhuh,
 Judy: t- until I was practicing for my evidence competition last ter- last semester.
 JB: Oh okay.
 Judy: I probably really didn't understand like the difference?
 JB: Mhm,
 Judy: until last term like I always knew like yeah you have to like, do this and that, but I was like,
 JB: Mm.
 → Judy: that's, I i- it's- **it's like a, it's an ART.** Really it really is an act-
 JB: it's an art,
 Judy: yeah. To u- really understand it.

Also noticeable in the interviews with Judy and with other mock trial competitors is that metapragmatic discourses of legal advocacy have a cumulative impact on their developing identity as lawyers, in relation to how mock trials reshape their social identity. Ideologies of rationalism underwriting legal discourses transform the law students' inability to maintain conversational control in the courtroom into a judgment of their character flaws. Judy, for example, has through several mock trial competitions and mock trial feedback sessions received negative feedback on her "loud" and "revved-up" voice quality. While these judgments of acoustic perception may be ideologically driven by deeply-entrenched gender stereotypes and gendered-norms of presentation and conduct in legal spaces, as explored in Chapter 5, Judy is not aware of that. As a consequence, she internalizes these criticisms of her "sound" as symptomatic of a deeper psychological shortfall on her part. In the interview excerpt below, Judy uses a folk-Freudian discourse to "self-diagnose" the sound abnormalities that others notice in her but which she does not. She is becoming like her "mean," "cold and emotionless" father:

- Judy: . . . because he's so, mean and so- **I feel like I'm becoming him-**
- JB: -uhuh
- Judy: and I'm scared of that-
- JB: -uhuh
- Judy: because how- how **mean** he is?
- JB: Uhuh?
- Judy: And **so cold and emotionless**? And my mom is just the opposite it's just, I c- and that's why I bump heads with my sister cause my sister's like my mother,
- JB: Uhuh
- Judy: and she is so nice you can't yell at her you can't do anything she'll like get **all emotional**.
- JB: Hhh hh hh
- Judy: And I'm like, m- always- **and I don't do it on purpose**.

But notice here the Judy still continues a dialogic struggle against the negative evaluations of her “revved-up” voice by mock trial judges. She creates a voicing contrast where the acoustic object of criticism is displaced into the voice of his mother, whose “all emotional” voice is contrasted with the “cold and emotionless” quality of her father’s voice. By “becoming” her father, Judy may become a “cold” person. But in the scheme of legal advocacy, that is better than being “all emotional.” This dialogical struggle makes sense in the context of her interviews that revealed her determination, despite the odds against her, to finish law school, pass the bar exam, and become a successful lawyer.

As such, exploring where and how students learn the dialogic dimensions of the language of legal advocacy can provide valuable insights on the the law students’ development of their professional identity. Such research would contribute to the existing research on the “trajectories of socialization” in primary school settings (Wortham 2005, 2006). Dialogically-informed analyses of language socialization in law schools can also provide valuable insights on the linguistic mechanisms whereby students are included or excluded in legal and other occupational, corporate, and bureaucratic communities of practice (Eckert and McConnell-Ginet 1992).

The Language of the Law and the Power of Legal Institutions

The dialogically complex and intertwined mechanisms of language socialization and professional identity development in law schools also has implications on the study of language and power in legal processes as well. The dialogical dimensions of language in adversarial speech alerts that the power of institutional language, to the extent that such power is dialectically contingent on the social life of metalinguistic discourses (Agha 2003; 2007), cannot be recovered through isolated interpretations of surface linguistic forms read in isolation. Much research on the “power” of institutional registers has shown that judgments

of “powerful” versus “powerless” speech reflect the operations of socio-institutional power (Ainsworth 1993; Conley and O’Barr 2005[1998], 1990; Conley, O’Barr, and Lind 1978; O’Barr 1982; O’Barr and Atkins 1980).

The complex ways that law students learn to speak the language of legal advocacy alerts language scholars of the need to understand institutional power from the perspective of the pragmatic orientations of institutional agents engaged in institutional action. This is more the case because, like the pragmatic features discussed in this dissertation, many of the linguistic features that scholars discuss in terms of “powerful” and “powerless” speech styles are not acquired in the same way that law students acquire the specialized words and expressions that constitute the denotational universe of the legal register. This dissertation has shown that the language of legal advocacy is taught through situated models of use-in-practice, mediated by metapragmatic discourses. Hence the power implications of language socialization are grounded on the linguistic configurations of pragmatic effectiveness that are constantly negotiated, re-interpreted, and sometimes altered in these metapragmatic discourses. Rather than a matter of deploying linguistic magic bullets (Briggs 2002) already isofunctionally pre-charged with social power, an analysis of the metapragmatics of language use reveals the socio-historical dialectics of power embedded in institutional discourses. Linguistic anthropological research has long demonstrated that the ideological presuppositions that speakers bring to bear in their linguistic representations of the world to not merely reflect social “realities” but construct and reconstruct them. This creative element of language plays a critical role in the socialization of law students into legal advocates. As such, the insights from this dissertation opens productive avenues for further researching the

creative capabilities of legal language. After all, law students learn in due course that, to be a successful advocate, a lawyer must become the most creative teller of “facts.”

Appendix A. The Legal Lexicon

Note: State and Local courts provide a compilation of common legal definitions for the public. An example of such a compilation is available at the website of the State of Connecticut Judicial Branch, at <http://jud.ct.gov/legalterms.htm>.

Legal Archaisms

Antiquated Morphology	“Hear ye”; “Further affiant sayeth not”; “Comes now Plaintiff”
“Same”	“She made an offer in a letter to buy the machinery, and I accepted same .”
“Said” and “Aforesaid”	“Lessee promises to pay a deposit. Said deposit shall accrue interest at a rate of 5% annum.”
“Such”	“We conclude that the trial court’s order constituted an abuse of discretion in the procedural posture of this case which compels us to set aside such order.”
“To Wit”	“the said Richard . . . with force and arms, to wit , with swords, bows and arrows, broke the close of the said archbishop.”
Formulaic subjunctives	“know all men by these presents”; be it known”; “be it remembered”; be it enacted”
“Here-,” “There-,” “Where-”	Hereunder, therein, wherewith

Legal Neologisms

“-ees”	Asylee, escapee, tippee, employee, referee, trustee, acquittee, arrestee, conscriptee, detainee, expellee, inauguree, indictee, invitee, shelteree, lessee, grantee, patentee, payee, pledgee
Matched pairs	Mortgagor / mortgagee; trustor / trustee; employer / employee
Specialized domains	(Securities) antitrust, blue sky laws, predatory lending; (Criminal) Mirandize

Formal and Ritualistic Language

Formal lexicon	Around → Approximately Begin → Commence/initiate Stop → Desist Use → Employ Hasten → Expedite Require → Necessitate Give → Present Earlier → Prior Ask → Request End → Terminate
“Do” and “Shall”	“We the people of the United States . . . do ordain and establish this Constitution of the United States of America.” “This act shall be known as X.”

Jargon, Argot, and Technical Terms

Technical terms	Cy pres; res ipsa loquitur; income; issue; negligence
Non-technical jargon	Black-letter law; case at bar; chilling effect; conclusory; decedent; instant case; sidebar; arguendo; implicate (the First Amendment)
Legal Homonyms (meanings different from ordinary definition)	Action; aggravation; brief; motion; notice; party; plead; prayer; real; service; strike; person
Legal Synonyms (used together as expressions or idioms)	“Rest, residue and remainder”; “aid and abet”; “due and owing”; “full faith and credit”; “goods and chattels”; “ordered, adjudged and decreed”; “mind and memory”; “null and void”; “possession, custody and control”; “right, title and interest”; “save and except”; “true and correct”
Legal Antonyms (may not be antonyms in ordinary English)	“Speech” / “conduct”; “taking” / “regulation”; “widows” / “widowers”

Appendix B. Transcription Conventions

.	end phrase boundary; falling intonation
,	end phrase boundary; neutral intonation
?	end of phrase boundary; rising intonation
<u>underline</u>	emphatic stress; increased amplitude
:	lengthening
=	latching; no pause between phrases
-	self-interruption; breaks in the word, sound abruptly cut off
(.)	pause of 0.3 seconds or less
(#. #)	measure pause of greater than 0.3 seconds
h	outbreath (e.g. sigh, laughter); each token marks one pulse
.h	inbreath
[]	overlapping speech
()	uncertain transcription
(())	transcriber comment or description; physical action; nonvocal noise

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