

牛津社会语言学丛书

Legal-Lay Communication

Textual Travels in the Law

法律行业内外的语言交流：

法律文本之旅

Chris Heffer, Frances Rock & John Conley 编

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出版说明

社会语言学是研究语言与社会多方面关系的学科,它从社会科学的不同角度,诸如社会学、人类学、民族学、心理学、地理学和历史学等去考察语言。自20世纪60年代发端以来,社会语言学已经逐渐发展成为语言学研究中的一门重要学科,引发众多学者的关注和探究。

“牛津社会语言学丛书”由国际社会语言学研究的两位领军人物——英国卡迪夫大学语言与交际研究中心的教授 Nicolas Coupland 和 Adam Jaworski(现在中国香港大学英语学院任教)——担任主编。丛书自2004年由牛津大学出版社陆续出版以来,推出了一系列社会语言学研究的专著,可以说是汇集了这一学科研究的最新成果,代表了当今国际社会语言学研究的最高水平。

我们从中精选出九种,引进出版。所选的这些专著内容广泛,又较贴近我国学者研究的需求,涵盖了当今社会语言学的许多重要课题,如语言变体与语言变化、语言权力与文化认同、语言多元化与语言边缘化、语言与族裔、语言与立场(界位)、语言与新媒体、语用学与礼貌、语言与法律以及社会语言学视角下的话语研究等等。其中既有理论研究,又有方法创新;既有框架分析建构,又有实地考察报告;既体现本学科的前沿和纵深,又展现跨学科的交叉和互补。

相信丛书的引进出版能为从事社会语言学研究的读者带来新的启示,进一步推动我国语言学研究的发 展。

LEGAL-LAY COMMUNICATION

Textual Travels in the Law

Edited by Chris Heffer, Frances Rock,
and John Conley

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The idea for this book originates from the 6th Cardiff Roundtable in Sociolinguistics, which was generously funded by the School of English, Communication and Philosophy at Cardiff University in July 2008. Adam Jaworski suggested that we might hold the Roundtable on the theme of language and law, and Gregynog Hall in the heart of the Welsh hills guaranteed that we ate and slept well. Nikolas Coupland and Adam Jaworski were very supportive during the long process of proposing the book to Oxford University Press.

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INTRODUCTION

CHAPTER 1

Textual Travel in Legal–Lay Communication

FRANCES ROCK, CHRIS HEFFER, AND JOHN CONLEY

While the legal process is, by its very name, a *process* that unfolds over time, analysts of discourse, including discourse in the legal arena, are methodologically inclined to start with a synchronic and apparently stable analytical unit—the immediate text—which often hides the diachronic instability of the discourse from which that text emerged. Nowhere is that instability more potent than in legal settings and in no other setting is the notion of apparently stable texts following each other along intertextual trajectories more enticing to participants.

This book has an encompassing theme—*legal–lay communication*—which it engages with critically, but it also develops a particular take on that theme—*textual travel*. This combination of themes makes it possible for the book to move beyond what would be possible with only one agenda. The chapters in the collection explore aspects of legal–lay communication, or those nodes of interaction where the legal world meets the everyday lifeworld. This may involve instances when people acting for the legal system, from police call handlers to judges, interact with people encountering the legal process in a lay role, for example, as witnesses and suspects. However, this transparent reading of “legal” and “lay” will be challenged both here and throughout the book. The book is far from being a potpourri of chapters on the theme of legal–lay communication. The theoretical nexus for the exploration in the individual chapters is the notion of textual travel, a point of departure which provides very particular insights.

We are using the portmanteau term *textual travel* as a way of bringing together a set of distinct but complementary theoretical constructs which collectively shed new light on legal–lay communication and on thinking about the ways in which texts can be transformed in social life. These include a series of concepts that are well established within linguistics, anthropology, and sociology and which have been

discussed using such terms as *delocation* and *relocation* (Bernstein 1990); *centering*, *decentering*, and *recentering* (Hanks 1989); *entextualization*, *decontextualization*, and *recontextualization* (Bauman and Briggs 1990); *intertextuality* and *interdiscursivity* (Kristeva 1980; Fairclough 1992, 2001; Candlin and Maley 1997); *reentextualization* and *text trajectories* (Blommaert 2005). These perspectives on textual travel are united by a desire “to understand the ‘life’ of... a discourse... to identify how it connects to other discourses in the textual chain” (Blackledge 2005: 121) or, as it is elegantly put in Javan, “*jarwa dhosok*, taking old language (*jarwa*) and pushing (*dhosok*) it into new contexts” (Becker 1995: 185).

Use of the travel metaphor in relation to texts is not novel. Linell, for example, described recontextualization as arising when “discourse and discursive content will travel across situations” (1998: 144). Blommaert too writes of texts, discourses, and images being “shipped around” along “trajectories” with various “mappings” in play (2005: 76) and discusses “texts that do not travel well” (2005: 78; 2008: xiv), having cast off their original “use, value and function” (Blommaert 2008: 6). In the legal context, Ehrlich has also talked of the “shifting” of testimony through the legal system (Ehrlich 2007: 455). Our term *textual travel* is an effort to encapsulate these related usages.

In short, textual travel concerns the way that texts move through and around institutional processes and are shaped, altered, and appropriated during their journeys. In legal processes, various actors give texts context-specific linguistic lives and send them on particular journeys. In the common law litigation process, for example, social actors produce language, creating transient discourse. Lawyers lift some of this language from its interactional context, or entextualize it (Bauman and Briggs 1990), and erase the rest. Courts at each level repeat the process, resulting in the text of texts that we call an appellate decision. Lawyers in subsequent cases make precedential arguments by further selection, erasing this and recontextualizing that. Later courts respond by creating texts of their own, and the reconstitution continues.

The contributors to the collection explore a wide array of processes, including police tasking and investigation, litigation in both the civil and common law traditions, judicial metadiscourse on everyday language, oral and written communications between legal authorities and the public, and the reactions of lay participants to legal processes. Despite this diversity of contexts, all of the chapters highlight the “natural histories” (Silverstein and Urban 1996a) of texts and the centralities of these histories to the respective processes under investigation. Indeed, our contributors demonstrate that the management of textual travel, including such phenomena as entextualization, and [de/re]contextualization, comprise the very core of communication and argumentation in and around the law. The contributions examine text (what is transferred and transformed when textual travel occurs?); context (how much, if any, of the original context is maintained when textual travel occurs?); voices (who or what travels and how is this manifest in the discourse?); and discursive practices (how do speakers and writers exploit the potential for

textual travel to facilitate addition, deletion, and change?). In this introduction, we shall tease out the central concepts of legal–lay communication and textual travel in a little more detail and then show how each of the contributions develops our understanding of these concepts and our understanding of the legal processes to which they are applied.

LEGAL–LAY/LAY–LEGAL COMMUNICATION

In this age of antiessentialism, it is not possible simply to define a concept clearly from the start. At the same time, as Cameron (1998: 164) pointed out in the early 1980s with regard to feminist theory's then nebulous use of the term *language*, if we do not start with some idea of what we are talking about, then we are likely only to achieve further mystification. Tracy and Delgado (in their chapter here) spell out a few key questions which trouble the legal–lay distinction, such as what the terms *legal* and *lay* actually refer to and whether both *legal* and *lay* parties need to be present for legal–lay communication to take place. One question which Tracy and Delgado raise, about the ordering of the pair of terms, should be cleared up immediately, as far as it relates to this collection. As indicated by the subheading above, we do not, as a team, attribute any particular theoretical significance to the order of these terms. The ordering of two-part terms generally reflects the main focus of the particular users. Thus, lawyers interested in linguistic issues generally talk about the field of “law and language” (e.g., Pintore and Jori 1997), while linguists interested in legal-linguistic issues generally talk about “language and law” (e.g., Gibbons 1994). In Heffer (2005), *legal–lay discourse* was conceived as a style of legal professional discourse (see below) so it was clearly directional from legal to lay, while Conley et al. (in their chapter here) focus primarily on *lay* reactions to *legal* consent forms, so use *lay–legal*. Rock uses *lay–legal* (Rock 2007: 27) due to a concern with the needs of lay people and, beyond that, an overarching conception of the legal system as being “for” its lay users (i.e., for society). The contributions as a whole show a mixed focus on the legal and the lay with some chapters perhaps focusing more on the legal and others on the lay side of the pair.

Beyond this terminological question, Tracy and Delgado's chapter also presents questions which effectively identify three quite different approaches to the lay–legal distinction, and it is worth teasing these out a little here.

(1) Legal–Lay as Categories of Participant

In the first place, *legal–lay* can be construed as participant categories: *legal* participants communicating with *lay* participants. However, we then need to consider who belongs within those categories. One could restrict *legal* to those with a law degree and a professional legal qualification that allows them to practice in the