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ABSTRACT

An ethnographic study explored the hypothesis that the use of "familiar" people in mock trial simulations contributes to student inattention to interpersonal skill demands necessary for proficient trial lawyering. Participants in the study included 12 third-year law school students, 1 adjunct instructor, 1 researcher, 12 local high school students, and 6 senior citizens, all of whom volunteered to participate as members of an unfamiliar witness and jury pool. Data collection included participant observation, informal interviews, field notes, a formal questionnaire, and a researcher's reflexive journal. All data was subjected to qualitative analytic methodology including coding and triangulation of data. Findings indicated that using unfamiliar people during trial simulations required students to demonstrate considerable emotional, psychological, and intellectual stamina. Specifically, it required them to "decenter," to function as storytellers, and to "read the jury" throughout a trial. This study suggests that trial practice classrooms should pay closer attention to the instructional value of jury feedback, teacher feedback, indirect and informal instructional techniques, collaboration, teacher-as-demonstrator, and evaluation procedures. (Fifteen notes are included.) (Author/SR)

Using Unfamiliar People In Witness and Jury Pools: An Ethnographic Study Of Interpersonal Skill Demands in Trial Practice

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ABSTRACT

The purpose of this ethnographic study was to explore the hypothesis that use of "familiar" people in mock trial simulations contributed to student inattention to interpersonal skill demands necessary for proficient trial lawyering. Participants in this study included twelve third-year law school students, one adjunct instructor, one researcher, twelve local high school students, and six senior citizens, all of whom volunteered to participate as members of an unfamiliar witness and jury pool. Data-collection included participant observation, informal interview, fieldnotes, a formal questionnaire, and a researcher's reflexive journal. All data was subjected to qualitative analytic methodology including coding and triangulation of data. Findings from this study indicate that using unfamilir people during trial simulations require students to demonstrate considerable emotional, psycholgical, and intellectual stamina. Specifcally, it required them to be able to decenter, to function as storytellers, and to "read the jury" throughout a trial. This sudy suggests that Trial Practice classrooms pay closer attention to the instructional value of jury feedback, teacher feedback, indirect and infomal instructional techniques, collaboration, teacher-as-demonstrator, and evaluation procedures.

Although naturalistic inquiry as a research paradigm has received scant attention in legal education research, a recent ethnographic study was conducted to examine student interpersonal skill demands in Trial Practice (1). Two important findings emerged from this study. First, because personal friends, acquaintances, and classmates role-played as fictional witnesses and jurors, the use of these "familiar" people exacerbated the inherent artificiality of trial simulations. And, second, while participating in trial simulations, students placed themselves more on trial than they did their fictional clients. That is, students were considerably more concerned with representing themselves as competent and articulate in front of "familiar" people, than they were with defending or prosecuting fictional clients.

Based on these findings, it was hypothesized that use of "familiar" people in trial simulations contributed to student inattention to interpersonal skill demands necessary for proficient trial lawyering, i.e. to attend to and reflect on important jury reactions, especially during opening and closing statements, to object to inadmissable testimony, and to admit evidence correctly into the record.

The study reported, here, was conducted to further examine student interpersonal skill demands in Trial Practice. However, in this study, an "unfamiliar", rather than a "familiar", witness and jury pool were used during trial simulations.

PARTICIPANTS

Participants in this study included twelve third-year law school students (2); one adjunct instructor (3); one researcher; twelve local high school students and six senior citizens, all of whom volunteered to participate in the unfamiliar witness and jury pool (4).

Three ground rules, intended to guide appropriate student use of an unfamiliar witness and jury pool, were established at the beginning of the course. Students were to be responsible for contacting persons listed in the pool well in advance of individual trial simulations. Only persons listed in the pool were to be utilized. And, students were to utilize an individual in the pool only one time (5).

DATA-COLLECTION

Because qualitative data-collection methodology is endemic to naturalistic inquiry, data sources in this study included participant observation, informal interview, fieldnotes, a formal questionnaire, and a researcher's reflective journal (6).

At first, because of my initial "stranger" status, I observed student interaction and recorded fieldnotes during the first session from the back of the classroom (7). For the second session, I unobtrusively moved to a side section of the classroom so that direct eye-to-eye contact between myself and students could be increased.

At the end of this session, I recorded in fieldnotes that

students began to initiate informal conversations with me out in the hallway during short breaks. The gist of these conversations centered around student interest in my perceptions as to whether they were being perceived as competent, articulate, and persauasive or just nervous and incoherent by witnesses and jurors. Among other things, I interpreted these conversations as indicators of increasing student familiarity and willingness to accept me as part of the class. Consequently, I felt my inital "stranger" status was gradually diminishing.

For the fourth and fifth sessions I accepted an invitation from the class to participate as a juror during trial simulations. During this role-play, observation was conducted from the jury box.

The remaining two trial simulations were conducted at the United States District Court and presided over by official district court judges. During these sessions, I observed from one of the press boxes officially designated for newspaper journalists covering trial proceedings. These boxes were just off to the side of the courtroom and in clear view of all the participants involved.

Informal interviews not only occurred spontaneously, i.e. while stretching our legs in the lobby during court recess periods, but also followed a set format. For example, it was the instructor's practice to invite participating students, the researcher, and on one occasion the jury, out for cocktails at a local bar following trial simulations (8). These occasions were intended to be open-ended, interactive sessions based both on the instructor's and on the students'

retrospective critiques of individual trial performances.

Besides the instructor and students, informal interviews were also conducted with members of the "unfamiliar" jury pool. These interviews usually occurred during jury deliberation sessions when I had the opportunity to talk with jurors both individually and as a group. In addition, data was also collected through question and answer sessions that occurred between the jury and the participating students immediately following the conlusion of each trial simulation. These sessions were intended to offer students an open-ended opportunity to glean direct and immediate feedback from jurors and witnesses.

Also, a formal questionnaire was distributed to each of the 12 participating students at the end of the eighth session (9). This questionnaire was formulated based on hypotheses generated from the data through on-going qualitative data-analysis procedures and was intended to provide an instrument by which these hypotheses could be verified, clarified, or extended.

Finally, a reflective researcher's journal was also employed as a data-collection source. This journal had a similar function to that of traditional fieldnotes. They both were designed to provide a means for describing and generating data. In this study, however, an important distinction between the two was made. This distinction specified that fieldnotes were to describe data that primarily involved the researched, while the researcher's journal was to describe data that primarily involved the researcher.

This distinction is not meant to separate the data into two different groups. Rather, this distinction recognizes that both fieldnotes and the journal are interrelated data-sources and function as "external memory aids" for the researcher during on-going data-analysis (10). That is, they both provide permanent and external means for not only extensive triangulation of data germane to the researched, but also provide unlimited opportunities for reflection by the researcher. In this study, for instance, the journal was used by the researcher to reflect on and evaluate such concerns as the appropriateness of the overall design of this study, the validity and reliability of qualitative data-collection and data-analysis procedures, and the applicability of naturalistic inquiry to legal education research.

DATA-ANALYSIS

All data was subjected to qualitative analytic methods and proceded through a three-step process. In step one, a beginning theoretical construct was identified in order to provide a focus for observing, interpreting, and coding data. This construct was identified as interpersonal skill demands experienced by students as they interact with an "unfamiliar" witness and jury pool in trial simulations.

In step two, consistent patterns in fieldnotes were identified and working hypotheses were developed. In this study, the procedures and format for organizing and transcribing fieldnotes were adapted

from those used by Corsaro and Goetz and LeCompte (11).

Finally, in step three, indefinite triangulation of theoretical interpretations of the data was conducted. Indefinite triangulation has been referred to by Cicourel as a procedure which involves others in the analysis process (12). It's function is to increase the validity of a researcher's theoretical interpretations of data by continually checking and cross-checking those interpretations with others. For example, during informal interview sessions, I systemmatically triangulated my own evolving interpretations of the data against those interpretations held by individual students, the instructor, and members of the jury pool.

FINDINGS

DECENTERING AND THE TRIAL LAWYERING PROCESS

According to Piaget, decentering is a psychological process whereby individuals acquire the ability to view phenomena from a perspective other than one's own (13). Learning to decenter represents a major stage of the developmental process because it provides individuals the skill to go beyond focusing solely on the needs and concerns of the self, and begin considering the self in relation to the needs and concerns of the group (14).

Decentering, in the context of Trial Practice, would provide students the ability to not only understand and evaluate their own performances during trial simulations, but would also provide them the

ability to be alert to and cognizant of how their performances were being understood and evaluated by others, i.e. jurors, judges, witnesses, clients, and opposing counselors. Students in Trial Practice, however, experienced much difficulty decentering during trial simulations.

Not surprisingly, students entered Trial Practice with a strong, egocentric sense of self. They resolutely subscribed to the notion that trial lawyering was an individual, top-down, and algorithmic process. This conception was also strongly reinforced by the instructor.

> There's a basic formula with trial lawyering. Tell the jury what it is they are doing in the case and what they have to decide. Then give them the convincing evidence to decide the case in your favor. That's the formula.

This formula was applied by students during their first trial simulation. After the jury explained its understanding of the case and the rationale underlying its verdict, students were often baffled. Students soon learned that they and the jury had not been sharing ongoing similar interpretations of the case. Rather, what the jury had understood and used as a basis for rendering its verdict was not what students had intended them to understand. Students began to realize that effectively communicating with a jury was much more complex and unpredictable than they had earlier presumed.

> During my closing, I guess I got a little confusing. I wasn't sure that anybody in the jury ever understood what I was talking about. It got to where I

knew what I meant so well, but I guess I didn't communicate it.

We were frustrated after we heard the jury's verdict. We had no idea that they were so concerned about the money, because the money had absolutely nothing to do with the case. I think what probably happened was that they heard the defendant and thought he was so credible that they just screwed up on all the legal issues. Because after the jury came out with the money thing, we just went, 'Huh?'. Then we just thought, 'Oh, my god!'

Student bafflement soon turned into student frustration.

I was aghast when the jury announced its verdict. Apparently, the jury's perception of the case was evolving differently than mine. I tried deliberately to lay it all out nice and clear, but obviously the jury didn't pick-up on my clear ideas. And that's very frustrating because I don't know how to correct that.

I was amazed at how little the jury understood the case, and how difficult it was to explain a case in an understandable manner. It was disheartening to hear the jury give its reasons for a verdict because those reasons had no relation to legal theory or legal argument. Good trial lawyers must be able to get their message across to a jury, but I don't know how anyone could predict what judges, witnesses, and jurors are possibly thinking.

STORYTELLING AND THE TRIAL LAWYERING PROCESS

Experiencing unexpected bafflement and frustration prompted

students to begin questioning the value of applying a formulaic process in trial situations. In particular, they suspected that merely "giving them [jury] the evidence" reflected an over-simplified procedure based on a reductionist view of the complex lawyering process. They began to report that a key factor had apparently been omitted from the formula: the human factor. Proficient oral advocacy skills must be based not only on knowledge of law, but also on the ability of lawyers to know what and how normal people think and feel. Thus, being able to convince a jury was first dependent on a jury understanding the lawyer's version.

> When you are conducting a trial, you are really only trying to convince some people of something. But, this first trial simulation has taught me that before you can convince people of anything, the first thing you have to do is get the people to just simply understand the story you're trying to tell.

> As lawyers, we need to be able to focus in on what and how normal lay people think. But we don't do a very good job of that. Just look at the language we use in jury instructions. These instructions are so convoluted that they become almost meaningless. Normal people just don't think and talk like that. We don't take normal people into consideration, so how can we expect them to understand?

Students gradually began to perceive themselves and the jury in different roles. For example, they began to perceive the jury less as passive individuals who automatically understand a lawyer's version of a case, and more as simply normal people who want to hear a story. Conversely, they began to see themselves less as objective dispensers of information, and more as subjective storytellers.

Seeing themselves now as storytellers and the jury as story

listeners, helped students become less self-focused about their own needs and concerns and more focused on the peculiar needs and concerns of others.

> After going through the first trial simulation, I understand now that in order to be a good trial lawyer, I've got to be slow, deliberate, and not suffer from lawyer's ego in front of a jury. I've got to learn to lay out the case in the form of an interesting story. But even more importantly, I've got to learn to lay it out in a way that the jury can understand it in simple terms, not in legalese in which lawyers immerse themselves in so much that as a result they forget that the jury has not been through the nightmare of law school. Lawyers need to relate what they have to say about a case in a way that connects the law to the facts the jury can understand.

EMOTIONAL, PSYCHOLOGICAL, AND INTELLECTUAL STAMINA

Besides decentering and storytelling, students also reported that effective trial lawyering required emotional, psychological, and intellectual stamina. They perceived the courtroom as a great battlefield, and depicted opposing counselors as waring generals where effective persuasion represented the ultimate weapon. They soon learned, however, that, like all great battles, even victory has its costs.

Students felt trial lawyering was always exhausting, and at times, even debilitating. Emotional and psychological stamina was required because the experience ultimately ran a gamut of emotions. During each trial, for example, students experienced periods of elation, i.e. when a favorable verdict was returned; tension, i.e.

when delivering opening and closing statements under severe time constratints; disappointment, i.e. when only half the jury box was filled with volunteers; frustration, i.e. when the jury's explanation and justification of its verdict had no legal foundation; and infuriation, i.e. when required not to deviate from the original script of the case.

In addition, intellectual stamina was required. Students experienced much difficulty asking specific questions of witnesses while listening to their answers at the same time. Once again, their tendency was to initially focus on the self and not on others. Consequently, especially during cross examinations, students primarily focused on their own questions, i.e. what specific questions they asked and how they asked them, rather than on the substance of witnesses' answers.

> I was paying too much attention to the next question that I was going to ask and I wasn't hearing the answer. And I found myself doing the same thing over and over with every witness. I couldn't get away from that. Sometimes I wasn't sure that I would remember exactly what my witness said three questions ago. Like that last question. I really had no idea what question I had just asked because it wasn't written down. It was a question I had just made up.

Moreover, students reported intellectual exhaustion from trying to improvise when the need arose, trying to avoid convoluted thinking while on their feet, and countering a tentative attitude about making objections in court.

Students felt the best way to cope with these forms of exhaustion

was to appear flexible, cordial, and empathetic with the jury while at the same time structured, forceful, and aggressive. The key, for them, was to combine both the emotional and psychological with the intellectual aspects of trial lawyering. By combining these aspects, important insights into what and how a jury was thinking could be better understood.

The unfamiliar witness and jury pool facilitated the utilization of alternative resources for learning. Jury feedback, for instance, was highly valued because it allayed student fears regarding their ability to perform competently in front of unfamiliar people.

> Before the first simulation, I was very fearful and worried about how I would perform in front of people, especially in front of my peers. But as it happened, the unfamiliar jury functioned as a relaxer to me. They calmed me down. Midway through the trial, I realized that the jury was simply a group of normal people who wanted to listen to what I had to say. So, I was much less critical of myself in front of them. However, I was much more tense and apprehensive when I felt I was performing in front of my peers.

Jury feedback was also valued because it was perceived as constructive, direct, honest, and task-specific.

> You know, the jury made a good point in their critique of me. I never thought that the jury would think of that particular point, or even think that way at all. It was very helpful for me to hear that from them.

> Only when you start to really hear what the jurors say back to you during the question and answer period, do you ever start to get some understanding of what you know and what you don't know how to do in trial practice. It's only when you hear the jury's reactions that everything starts to become much more clear.

Interestingly enough, even negative, non-verbal jury feedback, was eventually accepted by students for its instructional value.

There were times during my opening and closing statements when I looked at the jury and it was painfully clear to me that several members were simply not paying attention. Also, they were not and would not make eye contact no matter how hard I tried. At first, these things only slightly bothered me because I knew it was an older jury and their attention spans were prone to wander. But then I started to feel angry. I felt they weren't letting me apply the concepts I learned in school. In short, they weren't letting me function as an effective lawyer. Afterwards, though, I realized that this is the way it is out there in the world. It wasn't them, it was me that was having the problems. These experiences taught me alot about the difficulty in applying learned concepts in trial situations.

As a result, jury feedback allowed students to become more reflective about their learning. One student, for instance, initially bemoaned the fact that, in his view, the jury had reacted unfavorably to his style of questioning. Later, however, he discovered that the jury experienced just the opposite reaction. Through jury feedback, what was earlier perceived by the student as a stylistic flaw later was perceived as a stylistic strength.

Even though I don't think my questions were that aggressive, for some reason I felt that I was coming across real aggressively during my cross-examinations and that I was being too mean. Even worse was that I suspected the jury felt the same way I did. Yet, several jurors said after the trial that they really liked me because I came across very forcefully and was very intimidating in my questioning style. That comment taught me a good lesson.

I spent so much time preparing for my trial. Much of my preparation was geared so as not to negatively intimidate the jury. But during the trial, I felt that that was exactly what I was doing. So I backed off. I played it safe. You can imagine, then, how shocked I was when, after the trial, several of the jurors told me that one reason I won the case was because I came across as confident, forceful, and aggressive.

At first, this obvious mismatch between student and jury perceptions caused considerable student frustration. Yet, later, upon reflection, students reported that understanding this mismatch was a positive experience because it highlighted the fact that during any one trial a jury and a lawyer were constantly "reading" each other. It was critically important then to learn how "to read" jury reactions so that students could better understand how "to read" their own reactions. In this way, they would not make the error in assuming that specific behavior might be turning a jury off, when that behavior might, in fact, be turning them on.

Student reflection gradually evolved into student reflexivity. That is, based on their reflections, students sought to make substantive changes in their performative competency by beginning to ask more reflexive questions of themselves.

> While preparing for my second trial, I kept asking myself the questions, 'What can I do to liven up my own act? How can I be more convincing?'

> During the first trial, I felt that the jury thought I was distorting the facts and that I was being unfairly manipulative. So I've been thinking about ways to negotiate that. I've also been struggling with what I can do this time in my summary about driving home of the main point of the case instead of drifting off like I did in the first trial.

> The question I should have asked the jury after the first trial, but didn't, was, 'What did we do that annoyed you?' Knowing things like that is very important to me.

In the end, both reflection and reflexivity were important to

student change. Reflection afforded opportunities for extended insight and understanding while reflexivity facilitated actual change.

TEACHER FEEDBACK AND EVALUATION

Unlike jury feedback, however, teacher feedback, in the analysis, was not viewed by students as a powerful resource for learning. Students operated under the assumption that a causal relationship existed between teacher feedback and grades. Not surprisingly, then, at first, students were very attentive to teacher feedback primarily because they were concerned about getting good grades.

> From the very beginning of the course, I wondered how I was going to be graded. Therefore, I was extremely self-conscience about my performance. I wanted to get a good grade in that class, so I paid close attention in the beginning to the teacher's reactions and criticisms.

However, as the course progressed, both teacher feedback and grades became less and less important. Grades started to become a secondary concern primarily because no explicit grading criteria or grading procedure was ever introduced by the teacher. Although in many cases not knowing grading criteria often results in acute student anxiety, in this case, ironically, grades digressed as an important concern.

> At the beginning, of course, I was really grade conscious. However, as the class kept going I got so caught up in my performance that I forgot all about

grades. After a while, I just forgot that I was even begin graded at all.

Throughout the whole course I had no idea what I was being evaluated on. Originally, I thought the verdict was important to my grade. But then I realized that I can only do so much to influence a verdict in this simulations, so the verdict really didn't matter. I knew the teacher was looking at different things, but when you really don't know what you're being graded on, you can't really worry too much about your grade.

By the end of the course, teacher evaluation was replaced by student self-evaluation as the major grading concern. Rather than talk about letter grades and teacher evaluations, students preferred to talk about grades and grading procedures among themselves in reference to gains in personal experience, case preparation, and building confidence and self-esteem.

In the end, being graded didn't motivate me. In fact, being graded didn't affect my performance at all. I was motivated by a fear of looking foolish from a lack of preparation rather than from a fear of getting a low grade.

A grade was not that important to me. What was important to me was gaining a certain amount of self-confidence in my ability to function as a trial attorney. And knowing that I did everything that I could have in order to do well boosted my confidence. That's all I needed.

TEACHER DEMONSTRATION AS FEEDBACK

Teacher feedback was regarded by students as "too soft." In this context, the phrase "too soft" described feedback that was overly

complimentary and unnecessarily superficial.

> I felt that teacher feedback was much too soft. He was too concerned with being encouraging and positive. I rarely knew what I was doing wrong or how to really improve my performance.

> Teacher feedback was superficial. He's trying to be too nice. I wish he would just tell us directly what we did right and what we did wrong and not beat around the bush. We're a lot tougher than he thinks.

Teacher feedback was also not considered task-specific. Rather, it was replete with vague language that served only to facilitate and perpetuate ambiguity and, at times, even cynicism.

> The feedback was never explicit. I was merely told 'to improve.' But improve where? And improve how? Surely, such a requirement, if enacted into law, would be unconstitutionally vague. Such hypocrisy is the stuff of which cynicism is made.

> Feedback was not critical enough about specific weaknesses. We are already acutely aware of some of our own deficiencies and weaknesses, and we want an instructor to address those issues and not delve on all the positive things that we already know we are doing well. We want to know what we are not doing well. There's no point in hiding it. Just tell us what we did wrong. As it was, I didn't know what I did right and what I did wrong and therefore I don't know now what to do.

> Feedback, like 'that was really good' or 'that was wonderful', was meaningless because it was not specific enough within a legal context.

Teacher feedback would have been more valued if the teacher would have assumed multiple roles. Those roles would include teacher-as-lecturer, teacher-as-demonstrator, teacher-as-collaborator, and teacher-as-critiquer. Teachers need to show by example as well as

tell by lecture. They need to do less describing and prescribing, and more demonstrating and modeling.

> It would have been extremely helpful if, in the process of critiquing, we would have been shown how he [instructor] would have done something. I can learn well by example in addition to personal comments.

> More expert examples have got to be provided in this class. Teachers need to simply stop talking so much. They simply need to stop describing what needs to be done and get up there and start showing. After all, they're the experts. They need to model these behaviors, to demonstrate them, so that people can quit listening and start listening and seeing at the same time. For example, when he [instructor] starts talking like he would in a trial, I really get something out of it. So, they need to stop telling us what we didn't do and start telling us what we could do better by providing us ith many, many examples. By giving us lots of examples, teachers would be giving us more carrots and fewer sticks.

> I need to see things played out in order to really have my questions answered. I keep getting descriptions and I suppose when I get out in the real world I am going to say, 'Oh, that's what that is!'. 'Oh, that's what it is to have a great theory of the case.' But what you get during a critique is an hour of nothing. You just get a verbal playback, a retrospective account of one person's interpretation of your performance.

CONCLUSIONS

One student, after just completing his last trial simulation, suddenly slumped down into his chair, exhaled deeply, glanced around the courtroom, and then made the following observation to me.

> You know, I took Trial Practice because I am definitely going to be a trial lawyer and so I wanted to practice oral advocacy skills. I really wasn't too worried about the course because I knew I was already a good speaker. And yet this experience demanded a lot

from me that I wasn't prepared for. This experience demanded that I learn to speak competently at a special type of speaking.

That "special type of speaking" turned out to be storytelling and it represented an important interpersonal skill that few students could master.

But, just recognizing the need to become storytellers, much less being able to weave an interesting tale of facts in front of a jury, was a lesson not learned easily. The unfamiliar jury and witness pool facilitated student recognition of the need for storytelling because it required students to "decenter"; that is, to consider the needs and concerns of individuals from a perspective other than their own.

Students, however, experienced much difficulty with decentering. For example, at the beginning of the course, students perceived jury needs and concerns in a trial as somewhat similar to the needs and concerns of the two policemen in the Dragnet series who polularized the slogan, "The facts, Mam. Just give us the facts." Students soon realized, however, that jury needs and concerns extended well beyond just hearing the facts of a case. The jury needed and wanted to hear a story, and not just hear a collection of interrelated facts. When they didn't hear a story from students, the jury made up its own.

Considerable confusion and frustration occurred over student realization that significant discrepancies often exist between student interpretations and jury interpretations of a case. Students gradually understood the need for being more cognizant of and sensitive to how

ordinary people think and feel. In particular, students felt being able "to read" the jury was an important skill not only as a means for better understanding jury thinking and behavior, but also for better understanding their own thinking and behavior during a trial situation. In short, by decentering, students came to realize that 1) jurors are storylisteners who actively construct, rather than passively accept, interpretations of a case, and 2) trial lawyers are storytellers who actively "read" the jury based on a rudimentary knowledge of and sensitivity to the evolving thinking and behavior of a jury.

Trial lawyering, using an unfamiliar witness and jury pool, was exhausting nd therefore demanded emotional, psychological, and intellectual stamina. In particular, students experienced that effective trial lawyering makes demands at multiple levels. For example, in the beginning, students related to the unfamiliar witness and jury pool primarily on an intellectual level. Questioning techniques, for instance, was a major concern. Students were concerned whether their questioning techniques, i.e. what specific questions were asked and in what manner they were asked, were convincing to the jury.

Later on, however, students experienced difficulty having to relate to the jury on emotional and psychological levels as well. For example, students experienced difficulty learning how to control elation, reduce tension, counter disappointment, and neutralize frustration and infuriation while learning how at the same time to stay rational and cogent in front of a jury. This conflict posed a

considerable, if not at times insurmountable, obstacle.

The unfamiliar witness and jury pool also facilitated alternative resources for learning. Ironcially, however, while the pool illustrated the value of jury feedback, it also dramatically illustrated the potential devaluing of teacher feedback. Jury feedback was perceived as direct, honest, constructive, and task-specific, while teacher feedback was construed as "too soft" and not task-specific. Jury feedback facilitated important reflective and reflexive opportunities for extended student thinking. For instance, through reflection, students experienced greater insight into the nature of interpersonal skill demands required by Trial Practice. Through reflexivity, students generated questions about their current performative competency and then used those questions to direct subsequent changes in their trial performances.

Direct instruction, however, was not perceived as a valuable resource for student learning. In fact, instruction in Trial Practice suffered from what Friere has called "Narration Sickness." Friere uses this phrase to suggest that teachers at all levels and across disciplines talk too much about learning, rather than engaging students in the actual learning process (15). In Trial Practice, students felt instruction was excessively talk-oriented and unnecessarily focused on reactive description of student perforance rather than proactive prescription of student performance.

As an alternative, students felt instruction in Trial Practice should evolve from such theoretically-based pedagogical models as

teacher-as-modeler, teacher-as-demonstrator, and teacher-as-collaborator rather than teacher-as-lecturer and teacher-as-critiquer. These models would facilitate instruction where numerous examples of expert lawyers-in-action can be provided and where students and teachers can function as collaborators in trial practice. This collaboration can, then, be the basis for meaningful exchanges between students and teachers regarding ideas about specific lawyering strategies, problem areas, decision points, and solutions experienced in trial situations.

Moreover, this collaboration would be the means for student-teacher interaction to extend considerably beyond a singular retrospective critique of individual performance and more towards a social and collaborative discussion of the important 'whats' and 'whys' of effective trial lawyering. As one student remarked, "we can learn so much more in this class if we could see, experience, and discuss expert demonstrations of trial practice."

Finally, the presence of grades combined with the absence of an explicit grading criteria and grading procedure appeared counter-productive. Although at th beginning of the course, grades assumed considerable importance, by the second trial simulation, grades were not a major student concern.

For example, while preparing for their first trial simulation, students felt pressured to conform to "technique" because of their concern about grades. The term "technique" was used by students in the context of a singular, correct procedure and was formulated based

solely on student predictions about grading criteria that were to be employed by the instructor. In short, student behavior was significantly constrained during the first trial simulation because it was planned and performed based solely on what they thought the instructor was going to grade them on. Afterwards, students felt somewhat negatively about the experience because they acted out of character and therefore were not in control of their own behavior.

Later on in the course, after participating in two individual and group critique sessions, students confided that a grading criteria was essentially antithetical to the goals of the course. In the end, they concluded that little importance should be placed on a grade, and significant importance should be placed on the experience gained from participating in Trial Practice.

NOTES

(1) Bintz, William P. Student Lawyers on Trial: An Ethnographic Study of a Trial Practice Classroom (in review).

(2) The 12 law students were enrolled in Trial Practice at a major midwestern university during the Spring Semester of 1987.

(3) The adjunct instructor was also a practicing trial attorney with a law firm in Cincinnati, Ohio.

(4) The total number of persons who originally expressed an interest in participating as members of the unfamiliar witness and jury pool for the Trial Practice Program was 30. These volunteers represented four local organizations: a Pre-Law Society, an Educational Advising Group, Perpetuities, and a Senior Citizen Center. However, only a total of 17 of those persons later participated as witnesses and/or jurors in actual trial simulations. It was unclear as to whether the remaining 13 later decided they were not interested in participating, or were and encountered scheduling conflicts, or were simply not contacted.

(5) All ground rules guiding student use of the unfamiliar witness and jury pool were first proposed by Ms. Marjorie Murphy, Professor of Law, University of Cincinnati Law School, and subsequently accepted and implemented by the instructor in Trial Practice.

(6) For a comprehensive explanation and illustration of qualitative data-collection methodology see, Corsaro, William A. Friendship and Peer Culture in the Early Years . Norwood, New Jersey: Ablex Publishing Corporation, 1985; Glaser, B. and A. Strauss. The Discovery of Grounded Theory. Chicago: Aldine, 1967; Goetz, Judith P. and Margaret D. LeCompte. Ethnography and Qualitative Design in Educational Research. New York: Academic Press, 1984; and Agar, Michael H. The Professional Stranger: An Informal Introduction to Ethnography . New York: Academic Press, 1980.

(7) Even though I had previously introduced myself and the purpose of the study to the students, during the first stage of participant observation, it was important that I play the "professional stranger" role until I became familiar enough for them to invite me into their world (Agar, 1980). Theoretically, I thought that gradually shifting participant observation perspectives from initially behind the students, and thus going somewhat unnoticed to the sides of students (and eventually participating as a juror), and thereby significantly increasing my noticeability, would effectively facilitate the important transition from researcher-as-stranger to researcher-as-participant.

(8) Prior to my entering the research site, the instructor had already grouped the 12 law students into 6 groups (2 students per group). Each group was required to participate in two separate trial simulations. Therefore a total of four students participated per trial simulation, one group representing the defense and the other representing the

prosecution. Performative critiques were provided by the instructor to participating students at informal sessions immediately following the trial simulations.

(9) A copy of this formal questionnaire is on file with the university which provided financial support for this research project. Copies of this questionnaire can be obtained by writing to Ms. Marjorie Murphy, College of Law, University of Cincinnati, Cincinnati, Ohio.

(10) I wish to express my sincere thanks to Carolyn Burke for introducing and to Wayne Serebrin for clarifying the concept and function of "external memory aids" in educational research.

(11) Corsaro, William A. Friendship and Peer Culture in the Early Years . Norwood, New Jersey: Ablex Publishing Co., 1985; Goetz, Judith P. and Margaret D. LeCompte. Ethnography and Qualitative Design in Educational Research . New York: Academic Press, 1985.

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(13) Piaget, Jean. The Psychology of Intelligence . London: Routledge and Kegan Paul, 1950.

(14) Mead, G.H. Mind, Self, and Society . Chicago: University of Chicago Press, 1934.

(15) Friere, Paolo. Pedagogy of the Oppressed . New York: Athenium Press, 1984.