

Judges and lawyers at school: interactionist sociology of legal education

Volume 6 Issue 4 - 2022

Fernando de Castro Fontainha

Professor of sociology, State University of Rio de Janeiro, Brazil

Correspondence: Fernando de Castro Fontainha, Professor of sociology, State University of Rio de Janeiro, Doctor of Political Science at the University of Montpellier Brazil, Tel +55(21)9879 4-8787, Email fernando.fontainha@iesp.uerj.br**Received:** July 05, 2022 | **Published:** July 15, 2022

Introduction

This work provides an interactionist approach to innovative legal teaching practices through the analysis of modes of professional legal education: the simulations of civil court hearings in chambers at the workshops École fédérale du barreau (EFB), based on direct observations carried out in February and March 2016. These reflections are the continuation of empirical studies on the practices of preparation for the ENM examination¹ and on the teaching of law in France.² One of the difficulties found is the huge gap between the very numerous writings on teaching at the ENM³ and the almost non-existent analyses of the professional learning of lawyers in the bar schools.

In a first part, the idea of the interactionist approach and its consequences for the analysis of pedagogical situations will be developed. Then, the data from the observation carried out at the NHS and finally at the EFB will be presented. The guiding idea is to investigate in a fine and detailed manner legal teaching practices that go beyond the traditional framework of the known “judicial necks”.

An interactionist approach

Since the 1980s, French sociologists have been affected by two simultaneous movements: the abandonment of Marxism and the embrace of American interactionist sociology, especially that produced by the second school in Chicago, the generation formed by Blumer¹ and Hughes, which led a struggle against determinism and functionalism. The return of the actor and the atomist perspective then gained prominence in French sociology, interpretative pluralism moved towards holistic theories, and, lastly, the empirical dimension rose considerably in importance. Champy² explains this conversion in the field of the sociology of professions.⁴

“In the first place, the exhaustion of the Marxist paradigm has forced some researchers to find new research directions. Moreover, the decline in the influence and credit of Marxism, long important in French sociology, has been accompanied by a mistrust of the “great theories”, making it very attractive to value the empathy and description of the diversity of situations, which is constitutive of interactionism. Finally, interactionist sociology has a final attraction for sociologists who, if they do not come from Marxism, are mostly left-wing: its critical dimension” (2009: 29).

We must try to understand how the authors of this critical sociology - whose symbolic interactionism is the source - can contribute to the sociology that is necessary to understand a process such as legal education.

¹Fontainha^{3,4}

²Billand, Israël⁵ and Miaille, Fontainha.^{6,3}

³Boigeo⁷⁻¹⁰ Boigeo¹; Bancaud; Rosset¹¹ DALLE12FILLON; Bonichi; Lecompte¹³ Martaguet¹⁴ Miaille¹⁵ Oger¹⁶ Fontainha¹⁷ et Pierre¹⁸

⁴For an attempt at a deterministic and constructivist reconciliation in the sociology of professions see ABBOTT.¹⁹

The first school in Chicago⁵ was, after the Parisian school of Durkheim, the greatest reference in sociological production in the last century. Among these several factors, we could mention the financial support of John Rockefeller (and later of the “Memorial” foundation), the entrepreneurship of Harper and Small - respectively president of the university and head of the sociology department - the intellectual partnership between researchers like Park and Burgess (or between research fields, see the case of the collaboration of the psychologist Mead and the political scientist Merriam), the small size of the social science departments, and finally the abandonment of a faculty academic conception and its turn towards research and seminars.

Yet perhaps the Chicago School's greatest contribution to sociology is the relationship that its production has with field research, which has strongly shaken the relationship between the researcher and his “object”, considered to be the first major work produced for this generation and already includes a long (120 pages) methodological note and a very advanced conception of the importance of first-hand data. Well beyond the importance of use, the conception of the relationship between the researcher and his data is also revolutionary, according to the authors. The individual then appears as a source of sociological knowledge, no longer as an object of social forces and determinations. Studying the behavior of individuals in a community means making visible society as it is experienced by its members.

The other enormous contribution, which stems from the relationship between the city of Chicago and its university, is the notion of a sociology laboratory, as Burgess puts it.

Witnessing incredible growth between 1840 and 1940 and an explosion of diversity, the city of Chicago became the laboratory of sociology. Part of this empirical impetus was due to Park, who, based on his previous experience as a journalist, believed that the sociologist must be close, physically close, to his subject of study.

In the book they both wrote, known in United States as the green bible, they set out their conception of the place of empirical work in the body of scientific work. This replaces the primacy of theory with empirical research and this marks a series of great works such as Shaw's, Anderson's and Johnson's.

However, there were also several factors that led to the decline

⁵Several books have been produced on the birth and development of the first generation. One of comprehensive is that of Blumer¹ See also “The Chicago School”.²⁰

of the Chicago School between the late 1930s and the 1940s, when the benchmark in sociology became Columbia University and the Lazarsfeld and Merton Department.

After a period of decline, the systematization of the work of the first generation and the preparation of a second (that of Goffman and Becker), by sociologists such as Hughes and Blumer,¹ gave rise to sociology known as symbolic interactionism. Far removed from Marxist formulations, it claimed to be a critique born as an opposition to functionalism and determinism. Symbolic interactionism, according to Blumer,¹ can be explained by four central conceptions: This current can be described as radical, in that it grants not only autonomy of action to the individual, but also creativity, since the roles, meanings and objectives of multiple actions change during interactions and are indefinitely renegotiated over time. We would say a theory rooted in the empirical world, first because it is a product of the research done, and second because it only regains meaning when new forays into the field are made.

Goffman was an author who decided to bring to status fundamental category sociology. His seminal work uses metaphor to explain social behaviour and how people interact with each other. In Goffman's work, being is not important, because the play of expressions is so complex that we can notice that they are techniques for mastering personal and social information that we share.

It should be noted that in Goffman's vocabulary, there is not only the actor, but also the receiver, in a dialectic where each part of the interaction is both actor and receiver at the same time, and informational exchanges can become enormously complex. The cognitive process behind this dynamic is that of the evaluation of normative expectations and the production of the fulfilment of obligations, a basic dynamic that sets up a real rite of interaction that can have a very complex blur of jolts and counter-jolts. Therefore, a sociology of learning and competition can develop.

At Goffman, individual action and self-presentation gain a strategic dimension. The notion of social mobility is a major issue in school competition. Success in education is not necessarily a victory, it can also be a failure.

For him, then, becoming a judge or lawyer is not necessarily a social and personal success. For those who wanted to be law professors, it would be a major personal failure. For those who are sons of great bourgeois, it would be a social failure. However, for the son of a blue-collar worker or for a student from a small provincial faculty, it would be a victory and even a climb up the social ladder.

Yet, for Goffman, motivations and feelings matter only to the point that print management strategies and techniques are implemented, as the following two examples. So the first issue raised by this competitive current is deviation. Considering that we live in a tangle of social norms - which we retouch and renegotiate at every moment - deviation raises the question of symmetry between individuals and social groups. The universe of the selected is not the same as that of the selectors, and fit ability to make the rules of competition is not the same either, as Becker said in his book on "outsiders".

Even without being a full member of the school, Garfinkel founded ethnomethodology, a theoretical and methodological approach whose influence from Chicago is strongly present. In Garfinkel's vocabulary, actors become members, insofar as they share the same knowledge and practices of its implementation in such a context. Thus, normativity loses space in the face of interpretation, and three fundamental analytical concepts appear: first indexical

(the link between a linguistic form and each context), then reflexive (the dialectic between describing and constituting a situation), and finally describable (thinking the world as describable, reportable and observable). For Garfinkel, then, the main imperatives of empirical research are the deep and long-term immersion of the researcher in routine social contexts (social facts as practical achievements), the use of observation as the fundamental technique of data collection, and dense description as the way to organize them. Besides account, the fundamental concept of ethnomethodology is lay sociology, which he contrasts with professional sociology, in his words.

Individuals, beyond autonomy and creativity, are granted the capacity for sociological elaboration, that is to say, the relationship of each one with several groups produces strong cognitive references, and common sense rises in importance as a fundamental criterion for the analysis of society. For Garfinkel, then, the figure of an individual marked by ignorance about the conditions of production of his life in society is non-existent: there is no such thing as a cultural idiot. Coulon and Dupret, two well-known French ethnomethodologists, use this notion as a strong point in the diffusion of Garfinkel's thought.

This academic culminates in the ethnomethodology of education, which also emerges by criticizing determinism and functionalism, and which, if it was manifested in France in the theory of reproduction (the school as a place of perverse social selection), in the United States it was a very optimistic current (the school as a place of pure meritocratic selection). One of the first works to mark this turning point was "The educational decision-makers" (1963), by Cicourel and Kitsuse, who used the postulates of ethnomethodology to show the relativity of categories such as merit, gift, vocation and technical and scientific competence in school selection. Let us see a good summary of this work by Coulon:

"Cicourel and Kitsuse's study tempers Turner's optimism about my open and fair competition in the American education system. Indeed, they show that counsellors exercise effective control over students' access to the various curricula, particularly their access to the curriculum that is decisive for upward social mobility: preparation for university. By controlling the curricula, the teaching staff can exclude a particular pupil from the competition, and the efforts of "aspirants" are no guarantee that they will remain in the competition. For their efforts, as has been shown, are not necessarily evaluated according to academic criteria. The study by Cicourel and Kitsuse shows that in a large number of cases, some pupils who show good attitudes are penalized, or even excluded from academic and therefore social competition".

Rejecting the romantic attributions that surround the school does not reconcile functionalists and interactionists, on the contrary. Mehan, in his article "Structuring School Structure" (1978), clearly opposes the notion of structure and turns his interest towards what he calls structuring activities, according to which selection is not determined by prior constraints, but through the interaction between selectors and selected:

Belief on academic performance, plans, as well as the routine bases of behaviour interactions. Constitutive ethnography is the study of the. This approach certainly brings out another distinction between functionalism and interactionism around the notion of competence. Once based on our relationships, social competence is the ability to mobilize capital (cultural, social, economic or symbolic) to accomplish an objective. However, if the frame of reference shifts from relations to interactions, competence becomes interactional and incorporates the cognitive (without being, however, psychological) fundamental factor: achievement, as Mehan says.

There is no need to look in people's skull, in there is only the brain (1963). Competence, then, is not a product of the accumulation of knowledge or of any other strictly intellectual attribute, one must know how to deal with this knowledge. However, the tacit dimension - the one we will try to demonstrate as a determinant in competition - of the rules of this training is at least as important as knowing the laws and jurisprudence by heart or following the daily press, as Mehan said.

It is imperative to note that when we speak of the tacit dimension, it is not at all a confusion with the notion of misunderstanding, the interactional dimension is known to all, it can even be the object of fine strategic elaborations, sometimes giving full meaning to a training process. It is tacit to the extent that it is not objectified (taken as an objective fact) in pedagogical programs and projects, nor used to justify a response (by the selected students), nor to legitimize a mark awarded (by the selectors). This problem is the basis of Mehan's criticism of the American education system: "Mehan recalls that he has already shown that the meaning of the questions, contrary to one of the founding assumptions of the very principle of testing, is not the same for everyone. Their meaning is not, far from it, shared between the adults who test and the children who are tested. Wrong answers often result from a different interpretation of the conceptual material used, not from a lack of knowledge or an inability to reason properly. Clearly, then, processes manage to construct. Yet it is this elaboration that should be considered fundamental by educators, since its examination would make it possible to assess the real reasoning abilities of students.

In other words, taking the results of a test for an objective fact conceals three types of mechanisms: the one in which students interpret the questions and the material presented to arrive at an answer; the one by which the tester interprets and chooses what, among a quantity of behaviours, constitutes a response to be retained; finally, the one in which the testers and students jointly produce the answers during the test"

A final constructivist work - and a must for this work - is "The social construction of reality", written by Berger and Luckmann. Of great theoretical ambition, this work is known for its success in reconciling Durkheim's objectivity and Weber's subjectivity, insofar as the authors explain that the construction of society is the interpenetration of an objective facticity and a subjective sense.

This movement, in which subjective senses become objective factivities, according to the authors, has three dialectical stages: exteriorization (the human projection in the world), objectification (the products of the projection return to these creators as external data) and finally interiorization (the reappropriation of these external realities). Then the gap as well as the dynamic production and reproduction of the symmetry between subjective reality and objective reality bring up.

When they talk about socialization processes, locate two periods: primary socialization, within the family, and secondary socialization, which takes place in institutional sub-worlds, varying according to the complexity of society and the division of labor.

With regard to the subject of this work, the notion of use and distribution of cognitive resources converts them into real cognitive tools, or, in Haecht's words: "We are thus faced with two modalities of composition of social reality. The first will be subjective, and will concern the ways and means by which individuals, in their incessant work of attributing meaning, manufacture legitimization, or on the contrary find themselves incapable of doing so. The second will be

objective and will concern the ways and means by which institutions propose their legitimacy or, on the contrary, find themselves incapable of doing so" (2006, 117).

Goffman and the theatre setting (daily interaction)⁶

In terms of his frame analysis, Goffman does more than justify his choice by adopting the language of theatre. He asserts that the social world is a stage, that the questions of daily life are performative, and also finds the same constraints as in the stage (1974, 124- 155). The "presentation of oneself in daily life", a problem that made him famous, raises more the key question that could roughly summarize the work of this author: we are not what we are; we are what we think others think of us. Understanding social reality as a dialectical process in which one is both actor and recipient at the same time (and in the course of interactions) involves, on the one hand, a cognitive movement of informational apprehension of expectations, and, on the other hand, the practical fulfilment of obligations. An important remark in relation to the question of power relations is necessary to rule out a possible normativity from which actor and recipient would be fully free and equal when they interact.

As such, the author distinguishes two classes of rules of conduct: symmetrical and asymmetrical (1967: 52-53). Symmetrical rules force individuals to the same expectations and obligations towards each other, whereas asymmetrical rules force individuals to different expectations and obligations towards each other. A good example of this is the relationship between nurses and doctors, taken from his famous research in a psychiatric hospital (1961a). He tells us that doctors often give orders to nurses, but the opposite almost never happens, although nurses usually, without the feeling obliged to the same when a nurse enters.²¹⁻²⁴

Two theoretical statements are the pillars of its interactionism

The first is the notion that the links between actor and receiver are the bonds of society. It can be seen as a fraction the rites that are made to represent the social collectivity can sometimes be made by individuals themselves.²⁵ This makes it possible to grasp the social phenomenon through the study of human interactions.

The second is the notion that these bonds between individuals are in fact norms that bind them to each other, rules of conduct that have a double force on individuals. The direct character of these by with which he is morally bound to conduct himself, and character these by establishing others bound act towards him.²⁵

These two theoretical propositions entail an extremely important methodological implication in the framework of this study, based on the Durkheimian-inspired distinction⁷ ceremonial lead to on matters that are important in themselves, and ceremonial lead to that are felt to be secondary in themselves.²⁵ We give the example of these two types of norms in the same context: according to a substantive norm, a judge must keep his or her reserve with regard to the persons involved in a trial on his or her responsibility, and according to a ceremonial norm, a judge must wear the black robe when presiding over a hearing. The apparent insignificance of the second norm should not be taken into account as such, as it similarly implies significant constraints on the judge's framework of interaction. Although the first norm described serves to protect the sacredness of individuals, their right to be judged with neutrality, the second, even if it appears to regulate just procedural matters between individuals, also protects an important dimension of the sacredness of the individual: respect for the rites of interaction.

⁶Ideas also developed in FONTAINHA.²¹

⁷"Determination of Moral Fact" 22.

However, the methodological implication goes beyond this distinction. From the moment the author considers that the links between actor and container are the links of society, because collective rites can be reproduced by individuals, the understanding of society can then be made through the investigation of the most daily and superficial relationships that people may have with each other. In other words, if we try to grasp society through the interactions between individuals, it is methodologically more practical to value interactions based on ceremonial norms, because gestures that may be apparently “empty” are in fact filled with more easily accessible meanings, while opportunities to see the affirmation of moral order are quite rare because of the time needed to apply the substantive rules. We can cite at least three reasons for the methodological advantage of this approach: rites based on ceremonial norms are much shorter, they have no substantive implications, and they can be repeated at every interaction.²⁵

Goffman then distinguishes ceremonial activity into two elements: dress (deference) and behavior (demeanor). Out of deference (1967: 56-77), the author speaks of the component of the activity that is like a symbol in itself, and confirms its relationship to a receiver. To better understand deference, he draws cults (1960: 427) and divides deference rituals into avoidance rituals and presentation rituals. Avoidance (negative) rituals are all those that concern the maintenance of distance, the taboo against the act of touching, discretion, and finally, the preservation of the “ideal sphere” that Simmel spoke of.⁸

Examples of avoidance rituals could be all the small, slightly awkward gestures and responses that you can give to others when you want to show that you are busy or in a bad mood, or when you don't feel like interacting. (Positive) presentation rituals show how the actor looks at the recipient and how he or she will treat the recipient during the interaction. Examples of presentation rituals are greetings, invitations, compliments and other minor gestures that at least show the desire to engage in the ritual of interaction.

On the other hand, behavior²⁵ is the component of activity that exists through the way of behaving, the way of dressing and the way of maintaining oneself. Behavior is the vector of the good (or bad) impression that someone can cause in the presence of others. So, “behaving well” is a matter of exercising character or the skill we often call “sociability”, and it is through behavior that one creates a self-image. An interesting note in this regard is the professional help that can be given to the behavior: the hairdresser, the tailor, the aesthetic doctor or dermatologist, the fashion advisers, the nurses who prepare the psychiatric patients for the visiting day).

That being said, we can start to develop our “scene”. The first concept to consider about self-presentation is that of “face”. In a world where people experience many social encounters, one's “face” can only be the complex product of a complex arrangement of impressions. A face, then, is the set of values and positive and rewarding social attributes that one actually claims for oneself in every interactional context one is in. Or, in the words of Goffman himself: The term face may be defined as the positive social value a person effectively claims for himself by the line others assume he has taken during a particular contact. Face is an image of self-delineated in terms of approved social attributes – albeit an image that others may share, as when a person makes a good showing for his profession or religion by making a good showing for himself.

So, depending on the context we are in, depending on the interests we want to accomplish, depending on the desires and wishes that guide us, we claim to be on one side. At this point we must distinguish

- because of the versatile nature of the “self” in interaction - virtual identity from real identity, and also personal identity from social identity.

Precisely when we speak of virtual identity, we are talking about the presuppositions made about the “face” (face) of someone who potentially has a retrospective character, precisely because there are categories and attributes, components of real identity, that can be effectively acquired.²⁵ Thus, the identity dynamic that develops in the immediate presence of the actor and the receiver is the capacity of the former to construct an informational whole and to show it, as well as the capacity of the latter to verify and look for the limits and nuances (or even real impostures) of this information. In turn, these informational sources are both social (does the Star of David hanging around one's neck mean real membership in the Jewish community?) and personal (does having the ring on one's finger mean marriage?). The dramatization of relationships between individuals begins with the precarization of the self, at least if we consider that the “being in itself” of philosophy or “being oneself” does not exist, and in its place we have the being as an object of presentation and verification. It is on this point that the question of information control gains prominence. We must therefore talk about a final concept that forms the perspective of theatre: normative expectations.

It is clear that, in relation to the question of identity and information, even when one begins an interaction with a person one does not know, it is not a “blank sheet” that will be filled in during the ritual. All the expectations that an actor may have about a container before interacting with it are called normative expectations. In its broader dimension (the one that comes closer to judgement, positive or negative), the human being cannot live in society without sharing a set of normative expectations, stemming from the knowledge that each person has of the reality that surrounds him or her.⁹

Obviously, a community context implies a cognitive context, which means that a change in the interactive network implies a change in belonging to a community of normative expectations. In its stricter dimension, normative expectations are those constructed through the use of identity tags, or “labels” that an actor may acquire on the container before even knowing it.

It is by answering questions such as these and by living through similar dilemmas, most of the time less serious but sometimes more serious, that we practice and develop means of social success, which are absolutely linked to the act of interacting and which have no relation to “capitals” or anything else, outside or prior to the framework of interaction, what we have previously called “interactional competence” and which Simmel identifies as “the art of sociability”.

An understanding of the categories Goffman uses to capture interactions in everyday, urban and secular life is absolutely essential if we are always to use his interactionism as a tool for understanding other, much less everyday types of interactions, where the art of sociability needs to be truly elevated to the status of a strategic skill.

From daily interaction to focused interaction

So far we have considered the general and basic terms of Goffman's interactionism in relation to everyday life. The author focuses his effort on understanding social situations that we might describe as ceremonially uninstitutionalized. In the immediate presence of other people, it is sufficient for everyone to make minimal use of their normative expectations in order to be able to behave well. When

⁹Reference should be made to Garfinkel's²⁴ concept of secular sociology, mentioned earlier.

⁸See SIMMEL.²³

we find someone we know on the street, when we talk with a friend, or even during a family dinner, the right behavior and dress can be acquired by belonging, even if weak, to the community of normative expectations, in its broadest sense. When a doctoral student meets a colleague in the hallway, after the usual greetings, a discussion begins on the thesis of one of the two, their mere immediate presence in front of each other was enough to trigger the interaction. This can happen even between strangers, when a change of behavior occurs because one has to share the lift or urinals.

However, let's imagine the same doctoral student who, instead of telling his colleague in the corridor about the progress of his thesis, has to present it to his entire laboratory in a seminar. In this case, the mere immediate presence does not trigger all the interactions that make up an academic seminar. One must arrive on time, wait for the opening speech of the director, take a seat, speak for a determined length of time, listen to the comments and criticisms, each in turn, and then take the floor again. Here we describe a completely different type of social situation, which has as a fundamental difference from the everyday, the institutionalization of its ceremonial properties. Goffman, instead of considering these two types of interaction as routine or hazardous, will call them unfocused and focused.

Focused, the interaction more focused on the situation we want to analyze, therefore have certain properties that give them a particular status - and therefore a particular approach. The author points out that participation in focused interactions - which he also calls encounters - is based on adherence to an essentially ceremonial code: that is to say, rules that organize constraints of discretion and posture, verbal communication and spatial position.

As far as we are concerned, rules - even and especially ceremonial rules - are made up of expectations and obligations, and this is where the metaphor of the game begins to take on its full meaning. In NHS and EFB training, as at the Rummy table,¹⁰ mastery of the rules and the ability to transform them into the means of success is the most important factor in determining the winners. As the author says, it is the fulfillment of obligations and the correspondence to expectations that structure encounters. Here the first direction of sociability towards a true interactional competence emerges.

The ability fulfill obligations meet expectations contributes to our reputation and attracts people to us, earning us the label of someone "sociable". So the issues surrounding the way interactions take place are also important to better understand, especially in the context of this study. So let's imagine our doctoral student after his discussion with his colleague. Here we must try to imagine the multiple nuances between each one: two possible sequences of this interaction are: either his colleague is interested in his thesis and his character, or his colleague will think that his study is of no interest and that he looks weird. Either way, the stakes are too small. In the worst case, he or she will have someone in his or her circle of acquaintances who will merely greet him or her and spread rumors about his or her work. In the best case, he will win a friend, who will also pay professional compliments in his workplace and improve his reputation.

However, when we think about the seminar, we already see a rather different picture. The stakes are greatly increasing and can lead to much heavier relational - especially professional - consequences. On the other hand, the seminar is suitable for demonstrating the structural differences between unfocused and focused interactions.

¹⁰The card game and the deliberation of a jury are just two examples of focused encounters given by Goffman.²⁵

Simulations at the ENM

Part of the initial training received by legal auditors at the ENM concerns the simulation of firm civil hearings. Throughout the training, this pedagogical practice is designed and experienced as formative. The examining magistrates distinguish between formative activities and those called "summative". This means that the former do not bring a note to the listeners, but simply an opportunity to develop "real" skills, by simulating the atmosphere to be experienced on a daily basis in the near future. In the French judicial procedure as a whole, cabinet civil hearings are the most informal and simple ritual of interaction between a judge and the litigants. Normally held in his small chambers, only the persons concerned are present. It is a very different dynamic from the large courtrooms often represented in the cinema or on television.

Below will be presented the observation data of almost two weeks of this specific mode of training. 26 simulations were observed, each lasting approximately one hour. The roles of Juvenile Judge, Family Court Judge, Guardianship Judge and Sentence Enforcement Judge were simulated

The scene and the actors

The simulations take place in classrooms arranged to resemble judges' chambers. Four kinds of actors take part in the simulation: the target of the exercise (the listener who plays the judge), the actors (the listeners who play the citizens, witnesses, lawyers and the judicial officer), the "jury" (the examining magistrate and a psychologist), then the observers (the rest of the class of judicial listeners).

The dynamic consists of three steps: briefing, simulation and debriefing. First, the target auditor of the exercise leaves the room, and the instructing magistrate debriefs with the listeners-actors, often with regard to behavioral instructions which, by function, set traps for his target colleague. It is important to underline that these are never traps concerning procedural legal technique, but issues around situational and interactional management.

In a second moment, the simulation begins, and the listeners interact directly and vividly. The beginning and end of the hearing is ordered by the target listener, which cannot exceed 30 minutes, and the "background" of the exercise comes from a court file chosen and distributed in advance (a few days) by the investigating magistrate.

Finally, the examining magistrate and the psychologist debrief the exercise, giving their opinions on the performance of the target auditor. This is a moment of monopoly of speech, but exchanges with the target auditor and even the rest of the promotion are not rare.

Each actor will be represented in this way:

Instructing Magistrate **MAG**

Psychology **PSY**

Target auditor (judge) **AUD**

Actor auditor (subject to trial) **HUI**

Actor auditor (lawyer) **AVO**

The briefing

The briefing is a very brief moment, lasting only one or two minutes. While the target listener waits outside the room, the examining magistrate and the psychologist give instructions to the acting listeners. They do this very quickly, which shows that everyone

has mastered and shares the meaning of the exercise: to trap the person playing the role of judge, so that they can assess how he or she behaves. There was no need for big discussions, a few words were enough to establish the rules of relevance. Words like these: **MAG** “So, who’s Mommy? You have to pretend it’s your boyfriend who forbids it. Who’s doing dad? Then you don’t care.”

Clearly the situation-problem mentioned confuses moral and legal issues, this is a case where the listener has to decide who to give custody of a child when neither parent wants it. So they should play the woman divided between her child and her new boyfriend, and the man who thinks the mother is responsible. Often the magistrate’s instructions - very difficult for the observer to spot - concerned the creation of situational discomfort for the listener under evaluation.

On the other hand, the psychologists were more attentive to the instructions on dress and behavior, as one explained to me during a coffee break: **PSY** “I instructed him not to look in the eye. Depressives never look in the face.”

It was not uncommon for listeners, often playing the role of litigants, to arrive with their hair and clothes (in advance) out of order, or to behave in an odd way, or to overplay a very striking character trait.

After the instructions, the magistrate called the target listener and with a catchphrase such as “you can get into your roles now” the exercise started.

Simulation

The simulation itself should last 30 minutes. Sometimes **HIM** helped **AUD** with time control. The first issue around the simulation was **AUD**’s choice of which actors to bring into the audience, and in what order. An example: let’s take a custody hearing. The judge has to hear the mother, father and child. He can bring all three in and hear them together, or one by one, or, in fact, almost any way he wants. The fact is that he or she will be evaluated on the effectiveness of one strategy or the other, more than on the procedural-legal appropriateness of his or her choice.

The ritual always started with the presentation of **AUD**, who was named, as read from the file, and then asked questions. The focus of the exercise was on the interaction between **AUD** and the listeners, who played the role of litigants, all of which took place face-to-face.

Even if sometimes laughter broke out, the serious taking of the roles of all the participating listeners surprised the observer. One of the greatest challenges of the exercise was the call to order that **AUD** would have to face in the face of numerous “secular” repetitions, clearly produced as pedagogical facts intended to test skills of concentration, authority and calm, and finally, a skill called (among them) “coaching”. Several examples have been observed:

AUD “I’ll explain: there was a party at your house that went badly and the gendarmes

had to intervene.

JUS “That’s not it, ma’am.”

AUD “let me finish, then I’ll listen to you.”

AUD “Would you agree to mediation? »

JUS “Yes, if you want”.

AUD “No, it’s not if I want, I’m asking your opinion.”

AUD “they give you advice instead, Madam, the PMU”.

JUS “No, it’s more of a reproach, ma’am. “**AUD** “No, ma’am, it’s advice to help you take better care of your child. You have to agree to the measure”.

JUS “There’s no point in asking our opinion. We don’t have a choice.”

AUD “It’s my decision, but it would be better if we were together.”

AUD “So your companion comes before your child? That’s what you’re telling me, ma’am. “

JUS “I don’t have a choice.”

AUD “I see rather a choice, ma’am.”

JUS “Hey, well... »

AUD “I’d like to finish my sentence, ma’am. I’ll think about my decision for a few minutes. You may leave my office.”

AUD “We’ll see if it’s possible.”

JUS “Yes, it’s possible.”

AUD “No, it’s not safe.”

JUS “Yes, the D.A. told me. “

AUD “The prosecutor has given you information. I’m giving you another one. It’s to treat your addiction, sir, that you’ve already been granted two convictions. “

AUD “Sir, it’s been tried, I’m not going to try you again. I’ve asked you to be quiet twice.

JUS “But it’s an injustice “.

AUD “You’ve been convicted, sir.”

JUS “what’s the point of all this? »

AUD “If your behavior is confirmed in this way, I cannot adjust your sentence.”

Even if sometimes there were such legal categorization issues - such as the litigant simulating the misunderstanding between conviction and sentence - the exercise basically consisted in “conducting” a hearing, in other words, knowing how to “supervise” the “layman” and manage the conflict and stress situations that, according to the institution’s practice, make up a judge’s daily work.

To finish a dynamic built like a theatre, all the simulations observed ended with a strong applause from all present.

Debriefing

Right after the applause, the listeners come out of their roles. **AUD** often marks the end of the exercise with a strong gesture of relief. Immediately **MAG** and **PSY** begin the debriefing, the part of the exercise where **AUD** will receive comments and criticism. What happens in this part of the exercise, which lasts from ten to twenty minutes, is a speech by **MAG**, followed by a speech by **PSY**, ending with a small exchange, which most of the time is focused on **AUD**, but may also involve other listeners, having participated in the simulation or not.

The meaning attributed to the exercise, this time observed on the “jury” side, is really focused on assessing **AUD**’s situational and interactional management capacity. Feedback may, especially from **MAGS**, relate to procedural issues. However, even in this case, it is

a matter of legal categorization, of adapting procedural frameworks to very specific and practical contexts. The essence of the feedback received was very directly addressed to coaching and hearing management skills as a ritual of focused interaction, in which the figure of the judge as a guardian of the proceedings is more important than as a “decision-maker”. Rather, let us look at some examples:

PSY “You both have quiet authority. Take this time, it’s important to calm anxieties. However, there are some language concerns for a four-year-old [laughter]... legal frameworks to pass on to a four-year-old is not easy. I think it comes with time and experience. It doesn’t worry me at all.

MAG “Here’s the thing about this case, these parents are hateful. You’ll see that. Don’t lecture me so much. You’ve been reminding people all the time of the obligations of parents who may have come to you to tell you that they want to or can’t take care of the child”.

AUD “can we listen to the child alone? »

MAG “Look, in my experience it’s rare, but sometimes you have to do it. But it’s very violent, because the parents always suspect some kind of plot against them”.

PSY “And also calls into question the child’s ability to speak in front of adults, in front of the parents”.

MAG “Avoid negative questions. “I’m not here to judge you.” No! Don’t say what you’re not here to do. Instead, say, “We’re here to... I’m... my job is “Except for the last few minutes, you drove very well, you were almost at the membership.”

PSY “Take the case as long as you want, take your time, you’re the judge, people will wait”.

MAG “Those were great ratings, you two are ready to go to the stage. But we have to justify our salary, and I have to say a couple of things. Of course, the membership: you said “would you be willing to collaborate in an investigative measure? “If they tell you “no” you’re going to do it anyway, see? »

PSY “...trespassing can happen in family hearings, minors... »

MAG “But not morals. There when you say “it’s good for the child that his parents are together”, it’s frankly overflowing.

PSY “The goal is to put the magistrate who you are in trouble. Well, go be. Thanks to your active listening skills, you’re able to bring the man out of his torpor. It’s going to touch us behind the magistrate’s robe, the irruption of a feeling, a declaration of love in front of a judge, where there is no need for it”.

MAG “It was good that you searched without getting intimate, sometimes you have to go further. For us judges, a silent litigant is much worse than an overflowing one”.

PSY “A hearing... there are those who can get drunk on drugs before they come, you must be careful with that”.

AUD “What would you have done?”

MAG “Ah, I would have at least tried to get the grandparents to agree to be present. You can play with that, the Code says “adjournment”, but I think it’s like a suspension. So suspend the hearing for ten minutes and look at the file, it can be done.

AUD “Wasn’t that too intrusive? »

PSY “What’s the point of this concern? »

MAG “Why didn’t you protest being left outside? A surprise for you... »

AVO “A real lawyer would have done it.”

MAG “And he’d be right. Well, lawyers in these trials, they say what the person wanted to hear. It doesn’t help us, but it’s part of the attorney-client relationship. The lawyer’s speech was a little annoying [laughter] but what they’re here for, that’s what they’re here for, they’re entitled to, they’ll try to destroy what you’re building.

Thus, it can be seen that innovative training is taking place. In form, the simulations of civil hearings in the office make all the participants of the pedagogical framework go out of the classical posture and position of the teacher-student relationship. The classroom must otherwise be tidied up and roles played, which means overplaying the role of the student as well as the role of the teacher. From an interactionist point of view, the exercise allows the construction of hyper-contextual links between the teacher and his past experience as a judge, as well as between the student and his future professional role. Basically, we have observed a pedagogical situation where knowledge is replaced by skills (or abilities).

Workshops at the EFB

As at the ENM, the EFB’s student lawyers receive part of their initial training at the school before leaving for an internship. The whole of this training includes lectures, language courses and also workshops, a particular interest of this work. This mode of teaching has attracted the attention of this research because the EFB claims its practical, innovative and formative character.

Beyond being an activity entirely based on a “practical case”, the dynamics of the course are not at all similar to what is traditionally done in law schools.

This section will present direct observation data from five workshops, each lasting approximately three hours: Civil Procedure, Legal English, Enforcement of Judgment and Provisional Measures, Summary and Emergency Proceedings, and Proceedings before the Court of Appeal.

The scene, the actors and the provocation

The workshops take place in traditional classrooms: the whiteboard, three rows of tables and chairs, all facing the board. Both instructing and student lawyers participate. Each actor will be represented:

Training Lawyer **AVO**

Student Advocate **ELE**

Dynamics is more like an emulation than a simulation. It starts with **AVO** entering the room, which always starts the dynamics with an announcement, which, in the 5 observed workshops, combined presentation and announcement on the course of the session:

AVO “Workshop is not a lecture course, we’re here to practice. You already have the common basis of civil procedure, which is the core subject of our profession. what I propose is to divide you into two groups: one makes the claim and the other defends it, as in our profession. The aim is to find the answers in the code, you have to know how to find them”.

AVO “You’re going to split into two groups, until 3:30 p.m., you’re going to prepare a draft act. Have those who have completed their internship already drawn up a writ of attachment with a JEX [enforcement judge]?”

AVO [After writing a date on the board] “Do you know what that date is? It’s not my date of birth, I wish I did. It’s the date I was sworn in as a lawyer. ... So, we only have two hours for emergency measures, I won’t give you a lecture on that, we’ll go straight to the practical case. You can work in twos, threes, fours, do groups, turn around, that’s it.

AVO “I’m campaigning for the EFB to be less academic. So, since you have had time to prepare our practical cases, I call you 4 by 4 on the board to present what you have done. The CPC [Code of Civil Procedure] is well done. Me, I advise EFB students to read five articles a day. That way, at the end of your training, you would have read the whole code. You laugh but my words are sincere.

Unlike the NHS, at the EFB the practical cases were not distributed in advance, they were distributed at the start of the workshop. It was a half sheet with a fictitious situation description representing a legal problem. The strategy adopted was to share the promotion between lawyers for the plaintiff or the defendant. The students should not write the whole act, but develop relevant legal arguments, with the help and consultation of the Code of Civil Procedure and the Code of Civil Procedure of Enforcement.

Student lawyers interact

The second part of the workshop consisted of this work in small groups. The students arranged the classroom in such a way that it could be used for this purpose, as in the picture below:

For almost an hour and a half they worked in groups on the practical cases with very little interaction and very low speech. They often consulted the website “legifrance.fr”, the common source of official legal texts in France. During this hour and a half **AVO** was sitting at his table most of the time. Sometimes he would go around to answer questions or give instructions:

AVO “Beforehand: those who are going to represent the defense, there is the adversarial process, so know that the other group wants to know what your demands are, don’t put forward your arguments, but present your demands”.

AVO “I’m not even going to tell you everything, go and see” [by laying your finger on the code]. “We do law, not coffee. The answer is legal, you must answer in law”.

AVO “How far along are you? We can give you a little more time, we got it. Did you write anything up? You want to write the subpoena?”

ELE “No, not the subpoena, just a few lines like that.”

AVO “The important thing is to justify your choice”.

During these small moments, the observer could spot the “call to order”, the meaning of the EFB training. More than practical and dynamic, the workshops were aimed at teaching students how to be a lawyer both orally and in writing. Although there were times when issues related to legal categorizations were identified, the focus was really on the acquisition of reading, writing, and professional behaviour skills. There was a “lawyer’s way” of constructing and conveying reasoning. This became clearer in the next part of the workshop.

The instructor returns

When **AVO** cuts the second part of the exercise, the students are, group by group, called to present the results of this reaction preparation time to the practical case, as in the picture below:

This last part of the workshops basically consisted of a lively and almost violent exchange between **AVOs** and **ELEs**. The spirit of the exercise was to take advantage - especially of mistakes - as pedagogical facts. This in a special way, let’s see instead:

AVO [**ELE** Interrupts Violently] “So, I hear the defendant’s coffee findings? “pleases the execution judge.”

ELE “Yes, yes, “pleases the execution judge.”

AVO “Before moving on to the operative part, we need to give reasons for section 700, it’s a very simple sentence, we hear it all the time”.

AVO [Irritated] “Does anyone have any idea how to write a device, improvising, like that? “Pleases the summary judgment judge”, “on these grounds?”

AVO “sometimes a client doesn’t hold on to a lot of things. That’s how I lost a client because of 250 euros in non-written referral fees. You have to tell customers “I’ll ask for the full amount”. That’s why I insist”.

AVO “You have half a lawyer’s robe on your shoulders, as a lawyer you have to speak loud and clear” [after a question asked voice down by an **ELE**].

AVO “Speak up, I’m deaf. You’re going before the judge, is that how you talk? Speak up because it’s interesting what you’re saying. And what do you say? “on these grounds,” right?”

AVO “What do you call a decision that no longer has any appeal, neither suspensive nor non-suspensive?”

ELE “Definitive?”

AVO “No, the code calls the decision on the merits final, that’s it. So a final decision is subject to appeal. It is called an irrevocable decision”.

This “synthesis part” of the workshops had two main meanings. First, it was necessary to remind the **ELEs** of the professional framework at all times. Minor written and oral errors, especially those relating to key “palate” expressions, were corrected with a razor blade. Secondly, and more importantly, the **AVOs** tried to find out if the **ELEs** discovered the pitfalls that were set somewhere in the practical cases: a null summons because it was without address; the loss of non-referred expenses; the possibility to ask for penalty payments to force a payment in money; the difference between a final decision and an irrevocable decision; the nullity of postulation with regard to the new “Macron Law”.

Acknowledgments

None.

Conflicts of interest

There are no conflicting interests declared by the authors.

Funding

None.

References

1. Bulmer Martin. The Chicago school of sociology. Chicago: University of Chicago Press. 1984.
2. Champy Florent. The sociology of professions. Paris: PUF. 2009.

3. Fontainha. The French judicial public competitive examination, the candidates and their files: construction and self-construction in non-face-to-face interaction. *New Cultural Frontiers: Sociological Review*. 2010;1:17–138.
4. Fontainha. The strategic dimension of legal education: the ethnography of a debriefing. *Law and Cultures*. 2013;63:165–192.
5. Billand Emilie, Israel Liora. At the school of law: the contributions of the ethnographic method to the analysis of legal training. *The Law Notebooks*. 2011;52(3–4):619–658.
6. Miaille Michel. Fontainha Fernando de Castro. Legal Teaching in France. *Revista Direito GV*. 2010;6:1–10.
7. Boigeol Anne. The training of magistrates: from apprenticeship on the job to professional school. *Proceedings of social science research*. 1989a;76(1).
8. Boigeol Anne. History of a claim to the School of the Judiciary 1945–1958. *Notebooks of the Vaucresson Interdisciplinary Research Center*. 1989b;7.
9. Boigeol Anne. Transformations of the modalities of entry into the magistracy: from social necessity to professional virtues. *Pouvoirs. French journal of constitutional and political studies*. 1995;74(1).
10. Boigeol Ann. Women and the courts. The difficult implementation of gender equality in access to the judiciary. *Genesis*. 1996;26(1)
11. Boigeol Anne, Bancaud Alain, Rosset Gerard. Comment Devient-on Magistrat ? Survey of three cohorts of listeners. *CRIV:Research Report*. 1991.
12. Dalle Hubert. The recruitment and training of magistrates: a question of legitimacy. *French Journal of Public Administration*. 1991;1(57).
13. Fillon Catherine, Bonichi Marc, Lecompte Arnaud. Devenir Juge, pour-quoi, comment ? *Research Report: Law and Justice Research Mission*. 2006.
14. Martaguet Pierre. How do you become a magistrate? *Pouvoirs – French journal of constitutional and political studies*. 1981;1(16).
15. Miaille Michel. Predispositions to esprit de corps: candidates for the judicial examination. In: Guglielmi Gilles, Haroche Claudine, editors. *Esprit de Corps: Democracy and public space*. Paris: PUF. 2005.
16. Oger Claire. Candidate-models, cultures and methods: the general culture test in three selection competitions for elite civil servants (School of War \ Higher Staff Course, National School of Administration, National School of Magistracy). *Discourse analysis of jury reports*. Thesis: Language Sciences: Université de Paris XII; 2002.
17. Fontainha. The (in)games of the competition: an interactionist analysis of recruitment at the National School of the Judiciary. Saarbrücken: European University Publishing. 2011.
18. Pierre-Louis Naud. The National School of Magistracy and the auditor of justice. *Learning a trade and a way of life*. DEA thesis: Sociology: University of Bordeaux 2. 1996.
19. Abbott Andrew. *Department & Discipline: Chicago Sociology at One Hundred*. Chicago: University of Chicago Press, 1999. *The system of professions: an essay on the division of expert labor*. Chicago: University of Chicago press. 1988.
20. Coulon. *L'École de Chic The Chicago School*. Paris: PUF. 1992.
21. Fontainha Fernando de Castro. Strategic Interaction and Public Tenders: An Ethnography of the Contest of the French Magistracy. *Data*. 2015;58:1057–1098.
22. Durkheim Émile. *sociology and philosophy*. Paris: Librairie Félix Alcan; 1924.
23. Simmel Georg. *The sociology of Georg Simmel*. Glencoe: Free Press. 1950.
24. Garfinkel Howard. *Studies in Ethnomethodology*. Cambridge: Polity Press. 1967.
25. Goffman. *Encounters. Two studies in the sociology of interaction*. New York: Bobbs-Merryl; 1961.