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Symposium: Law, Language, and Communication - Introduction

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SYMPOSIUM

Law, Language, and Communication

INTRODUCTION

Ovid C. Lewis

THE RUBRIC OF LAW, language, and communication encompasses an enormous range of questions. This introduction will raise several of the underlying questions, but the reader will probably find it more enticing than fulfilling. Yet this is as it must be,

for each article in the symposium can only provide more questions than answers because of the very nature of the subject matter. When analyzing problems of law, language, and behavior, very positive statements are generally a product of over-simplification. The issues here are extraordinarily complex and largely unanswered. In one sense, the entire symposium constitutes an introduction, one which will provide the law-trained with some new insights, a few answers, and many new questions.

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To appreciate the complexity of the topic, one can start with the question posed by Ludwig Wittgenstein: "[W]hat is left over if I subtract the fact that my arm goes up from the fact that I raise my arm?"¹ If we consider Wittgenstein's question as one involving the nature of human action, we might respond that the difference between a bodily movement and a human action is that only the latter involves *meaning*. Man, unlike other animals, possesses the capacity to conceive of the past, present, and future. Actions have meaning both to those who perform them (act meaning) and to others who observe the act (action meaning). The differentia of man is his amazing facility to symbolize and to elaborate a conceptual universe.

Yet any attempt to distinguish the conceptual from the non-conceptual is only analytical. The non-conceptual is always subordi-

¹L. WITTEGENSTEIN, *PHILOSOPHICAL INVESTIGATIONS* 161 (1953).

nate to our conceptual apparatus because it is perceived in a particular context. What we *know* through proception of the external world must filter through the conceptual artifacts that define what we *mean*. Linguistic scholars pointed out long ago that language determines the nature of the reality that one sees, and places enormous limitations on the potential development of a culture. Whorf noted that Europeans often expressed nonspatial ideas in spatial models. But Hopi Indians possess no such model and cannot use this type of conceptualization. Similarly, societies without a sophisticated language of mathematics cannot progress as far down the road to extinction as our own technological society. It is this notion, that language patterns limit developmental channels, that is often identified as the Whorfian hypothesis.²

As an outgrowth of war-related research, modern information theory was formulated by Claude Shannon in the late 1940's and demonstrated that entropy could be viewed as a measure of the absence of information about a system. Shannon's theory was essentially limited to a statistical measure of the degree of freedom we have in producing messages and was not concerned with the *meaning* of the messages involved. Nonetheless, this model was accepted

² See generally B. WHORF, LANGUAGE, THOUGHT AND REALITY (J. Carroll ed. 1956). Benjamin Whorf was naturally influenced by his teacher, Edward Sapir, who also contended that there is a linguistic determinism that operates on culture:

Human beings do not live in the objective world alone, nor alone in the world of social activity as ordinarily understood, but are very much at the mercy of the particular language which has become the medium of expression for their society. . . . The fact of the matter is that the "real world" is to a large extent unconsciously built up on the language habits of the group. No two languages are ever sufficiently similar to be considered as representing the same social reality. The worlds in which different societies live are distinct worlds, not merely the same world with different labels attached. E. SAPIR, SELECTED WRITINGS IN LANGUAGE, CULTURE, AND PERSONALITY 162 (D. Mandelbaum ed. 1949).

More recently, William Bright has observed:

Pending the outcome of extensive, strictly controlled, cross-cultural testing of the Whorfian hypothesis, we may limit our acceptance to the following modified formulation: "Insofar as languages differ in the ways they encode objective experience, language users tend to sort out and distinguish experiences differently according to the categories provided by their respective languages. These cognitions will tend to have certain effects on behavior." [J. Carroll, *Linguistic Relativity, Contrastive Linguistics, and Language Learning*, 1 INT'L REV. APPLIED LINGUISTICS 1 (1963)].

See also Bright, *Language and Culture*, 9 INT'L ENCYCLOPEDIA OF THE SOCIAL SCI. 18, 22 (1968).

It does appear that the language acquired by a person affects the cognitive apparatus, in such a way that it is easier to learn material that is structured in a fashion isomorphic with that language. See Osgood, *A Behavioristic Analysis of Perception and Language as Cognitive Phenomena*, in MODERN SYSTEMS RESEARCH FOR THE BEHAVIORAL SCIENTIST 186, 191-92 (W. Buckley ed. 1968).

and modified by psychologists who constructed a new psycholinguistic model of man's communication processes.³ Prior to this time, linguistics had generally focused on language as an abstract system with little attention directed at the characteristics of the persons using the language.⁴ The new approach required the psycholinguist to go beyond even Chomsky's view that the basic unit of study was the sentence. Now he had to analyze the entire communication act,⁵ and this required an interdisciplinary approach, including social, psychological, and even legal notions.

Suppose that Wittgenstein's hypothetical man raised his hand at an auction, or to vote. How could this act be explained apart from the social conventions involved? A vote is something that is created by convention, and unlike an arm, does not exist independent of the complex of institutions and rules that define its meaning.⁶

Along with the development of information theory in the 1940's and 50's came a number of new disciplines, including cybernetics,

³ See, e.g., Miller & Frick, *Statistical Behavioristics and Sequences of Responses*, 56 *PSYCHOL. REV.* 311 (1949); Miller, *Language Engineering*, 22 *J. OF THE ACOUSTICAL SOCIETY OF AMERICA* 720 (1950); Miller, *The Psycholinguists: On the New Scientists of Language*, 23 *ENCOUNTER* 29 (1964). For an extended discussion, see F. ATTNEAVE, *APPLICATIONS OF INFORMATION THEORY TO PSYCHOLOGY: A SUMMARY OF BASIC CONCEPTS, METHODS AND RESULTS* (1959); *PSYCHOLINGUISTICS: A SURVEY OF THEORY AND RESEARCH PROBLEMS* (C. Osgood & T. Sebeok eds. 1965). Although the psycholinguistic model is selected for discussion, there are other models that are more well-established among linguists, including: (1) the Trager-Smith-Joos model; (2) the Tagmemic model; (3) the means-ends model of the Prague School; (4) the transformational generative grammar model originated by Zellig Harris and developed by Chomsky; (5) the stratification model of Lamb (postulating four strata or levels: semology, lexology, morphology, and phonology); and (6) the system-structure model derived from Firth's work.

⁴ Actually the classical school did treat the structure of language integrally with the use of language. The classical linguist was also very much concerned with the issue of whether language was primarily a product of nature (*physis*) or culture (*nomos*) and whether it was regular (*analogia*) or irregular (*anomalia*). By the renaissance period, much of linguistic analysis involved attempts to find a unity in language based on the biblical account of Babel. In the 18th and 19th centuries, emphasis shifted to refinement of the historical method of analysis. Comparative analysis by Rask and Meillet, the comparative grammar of Bopp, the family tree model of relationship of Schleicher, Herder's thesis, and other developments necessarily involved the relation of syntactics and semantics to pragmatics. It was in the 20th century, when De Saussure in his *Cours de linguistique générale* established the dichotomy between *la langue* and *la parole*, that great emphasis was placed on the syntactic and semantic dimensions. De Saussure contended that *la langue* was the appropriate subject matter for linguists. Bloomfield and others in our time have followed De Saussure in this matter.

⁵ See generally J. SEARLE, *SPEECH ACTS* (1969).

⁶ An extensional orientation is wholly inadequate to deal with meaning. Korzybski's passion for an extensional orientation, in which all concepts are related to nonverbal realities, led him to ignore the preception problem as well as the logical priority of intensional orientations for evaluation. How would one ever know whether an extensional orientation is adequate without first establishing intensional criteria?

general systems theory, and operations research. The new outlook that emerged required a broader perspective; traditional concepts seen through the spectacles of these new disciplines were forced to change. For example, as Frick observed when commenting on the impact of the psycholinguistic model: " 'Instead of a *stimulus* causing a *reaction* when the *threshold* is exceeded, we now think rather in terms of a *signal* which may be obscured by *noise*, providing the *information* needed to *select* a response.' " ⁷ Such a model is much less restrictive than psychological models, such as that proposed by B. F. Skinner, and is accordingly more appropriate for understanding complex adaptive systems capable of goal-changing feedback and other forms of behavior not easily accommodated within a stimulus-response model.

[U]nlike a stimulus, a signal (which should be regarded as the output of a transmitter) . . . implies a set of alternatives and thus emphasizes the effect on behavior of what might have been as well as what is immediately present. Furthermore, a signal in this sense functions purely as the basis for response selection. It can, according to the theory, be coded into a variety of physical forms and embedded in a variety of signal sets, without effect on its selective function.⁸

The view of man that emerges with the aid of the psycholinguistic model emphasizes his capacity to encode, transmit, receive, process, and create information.⁹ In his interaction with the world, man perceives his environment and fashions conceptual models that are more or less adaptive in his struggle to persist.

How the physical laws of thermodynamics apply to man's creation of symbol worlds is not yet clear, but it is clear that, in the act

⁷ Quoted in Grossman, *The Measure of Discriminability*, 7 Q. J. EXPERIMENTAL PSYCHOL. 176 (1955).

⁸ Frick, *Information Theory*, in 2 PSYCHOLOGY: A STUDY OF SCIENCE 611, 630 (S. Koch ed. 1959).

⁹ [I]nformation in its fuller sense is first and foremost a relation or mapping between sets of constrained variety contained in behaving systems, such that the transmission of physical signals of a certain sort (a subset drawn from a predetermined variety pool according to set constraints — for example, language) performs a selective function on the systems' repertoire of tendencies to act in certain ways. Hence, being relational, the "meaning" or "information" carried by the physical signals does not reside in these signals but is a function of the larger system made up of the states of the sending and receiving units and their relevant environment. Buckley, *Information, Communication, and Meaning*, in MODERN SYSTEMS RESEARCH FOR THE BEHAVIORAL SCIENTIST 119, 121 (W. Buckley ed. 1968).

For a more detailed analysis, see Lewis, *Systems Theory and Judicial Behavioralism*, 21 CASE W. RES. L. REV. 361 (1970); Lewis, *Universal Functional Requisites of Society: The Unending Quest*, 3 CASE W. RES. J. INT'L L. 3 (1970).

of creating the organizational negentropy required for symbol production, the individual must expend energy in the cerebration process and in the external coding process. This does not mean, however, that there has occurred some transfer of negentropy from the mind to the message vehicle, whether it be a page of writing or an oral statement. In the case of writing, we can consider that the mental pattern produced by cerebration has acted as a template for the writing process which has produced a particular organization of ink on the paper. We have produced merely a template which is transmuted into information again when read. Thus, negentropy does not exist apart from a perceiver, and the reader expends mental energy in reading meaning into the visual organization of the marks on the page.

Quite clearly, these templates will convey distinctive thoughts to different readers, and different templates distinctive thoughts to the same reader. As obvious as this differential phenomenon is, its implications are profound. First, if some templates convey more information than others, would it not be true that if all templates of a particular type were destroyed that a certain amount of negentropy would also be destroyed? At the least, the organization of the template is lost, in apparent contradiction of the principle of conservation of energy. Second, some individuals are clearly superior to others in their capacity to encode, process, and create information. An Einstein could produce templates with far greater information content than most of us. Does that mean that there is some kind of phylogenetic as well as ontogenetic negentropic input into gifted individuals that offsets their disproportionate negentropic output? Third, if we are not bound in producing information by conservation of energy are we free to make any kind of world we desire, subject only to the limitations imposed by physical regularities?

Several fascinating problems arise concerning this last point. Some contend that our conceptual models are isomorphic with the physical universe because they are produced by structures underlying both our minds and the external world.¹⁰ In other words, we "naturally" conceptualize the way the universe operates. In a related vein, Noam Chomsky contends that the universality of the syntactical structures of various languages is evidence that there is an innate neurological mechanism in the mind that generates the

¹⁰ See, e.g., INTRODUCTION TO STRUCTURALISM (M. Lane ed. 1970).

structure of language.¹¹ If this view (the phenomenological view) is correct, then truly free generation of concepts would require manipulation of the phylogenetic input. But even given a phenomenalist stance (holding to the view that the mind is a *tabula rasa*), the Whorfian hypothesis might indicate that where we can go conceptually is constrained by where we are now.

Although the modern information theory model indicates that we must take into account not only what is but what possibly could be, how can we pierce the conceptual blinders of our culture and language? We know that no model constructed by man is entirely veridical since it never reflects completely all of reality.

We also know that an overlapping of complementary models can add perspective and that we can generate more refined and sophisticated models. But will we not always generate our next model with the preconceptions of the path already taken? When we evaluate any social system, our evaluation is necessarily encapsulated in our own system perspective. The capacity to formulate language and other symbol systems entails the capacity — or perhaps better — the *incapacity* not to respond to the meaning of the symbol systems, including metalanguages.

If we are confined by our existing conceptual tools it is just possible that we are traveling the wrong path. Short of accepting a teleological notion that man's reason will inexorably guide him to an ultimate state of perfection, it seems highly unlikely that we are following the *best* path among those possible. It has been suggested that our information-processing cousin, the computer, may help in surmounting this paradoxical situation and free us from the perspective of our historical moralities. But it seems unlikely that the computer holds any such promise.¹²

A slight modification of Wittgenstein's arm-raising example offers a useful vehicle for elaboration of many of the difficulties confronting the psycholinguist. Let us assume that as Wittgenstein's man raises his arm he states, "I have the right." Consider the com-

¹¹ A good introduction to Chomsky's work appears in J. LYONS, NOAM CHOMSKY (1970).

This is not to say that there is not great variation in languages. In Turkish we can state the cause of most wars in the one word: *Sevistirilemedikjerinden* ("because of their not having been able to be made mutually to love one another"). In Hawaiian we find 5 vowels and 6 consonants, but in Abkhaz 68 consonants and only 2 vowels. Great variation in phonemes, morphemes and lexemes may exist without contradicting Chomsky's thesis since universality still exists as to the way in which the language is learned.

¹² See generally Lewis, *Universal Functional Requisites of Society: The Unending Quest*, 3 CASE W. RES. J. INT'L L. 3 (1970).

plexity of the transacting systems involved in determining the meaning of this communication act.

First, the psycholinguist must understand the nature of man as an information-processing entity.¹³ This has forced psycholinguists to deal with man's ability to act as simultaneous transmitter and receiver of information. It was also necessary to take into account the limits imposed by his physical nature, such as the capacity to process, at most, 20 decisions per second.¹⁴ There must be input, but neither too much nor too little, and it must be organized (negetropic) to maintain a person's mental health.

Furthermore, man's channels of communication are varied and subtle. Wittgenstein's man is transmitting at the gestural communication band, as well as by a speech act. Since human communication is invariably social, the transactions — both past and present, cultural and ontogenetic — among the communicating systems are highly relevant. While speaking, an individual conveys all manner of information about his emotional and physical state, education, attitudes, socio-economic class, etc.

The psycholinguist is himself using language (a metalanguage) to explain another's use of language. If the psycholinguist fails to distinguish language involved in talking ("I have the right") from characterization of the talking ("right" is a noun, etc.) and from explanations of the communication act (what we are now about), his model cannot be accurate.

It is natural to stress the role of language in communication since it is man's most significant symbol system. Speech is a wonderful method for communication. It requires no tool, needs no light, varies in intensity, requires little energy, and goes around objects.¹⁵

¹³ See generally R. TRAVERS, *MAN'S INFORMATION SYSTEM* (1970).

¹⁴ This limit may account for the universality of degree of complexity of natural languages rather than Chomsky's thesis that there is an innate neurological basis.

¹⁵ Much communication occurs without words, involving not only visual-gestural signs (kinesics), but touch, odor, warmth, and variables as subtle as the austere arrangement of a lawyer's office, the dignity of a courtroom and the barren nature of the interrogation room.

The interrogator should sit fairly close to the subject and between the two there should be no table, desk, or other piece of furniture. Distance or the presence of an obstruction of any sort constitutes a serious psychological barrier and also affords the subject a certain degree of relief and confidence not otherwise attainable. . . . As to the psychological validity of the above suggested seating arrangement, reference may be made to the commonplace but yet meaningful expressions such as "getting next" to a customer by a salesman. F. INBAU & J. REID, *CRIMINAL INTERROGATION AND CONFESSIONS* 14 (1962).

And where language is involved, the breaks in voice, tone, rate of talking, pauses, and other aspects of paralinguage are of significance.

Judges, legislators, and lawyers, members of the same speech community, speak ordinary English. Yet, by virtue of its unique structure, English is not entirely adequate for their purposes, and so they create a superposed variation or argot. Although legal terms often sound like ordinary English, their meaning in the argot of the law may vary considerably. Law teachers know all too well that "much of a student's confusion, bewilderment, and frustration arises because he is not being taught law only — he is being taught a foreign language as well."¹⁶

The "language of the law is [thus] a convenient label for a speech pattern with a separate identity,"¹⁷ — "the customary language used by lawyers in those common law jurisdictions where English is the official language"¹⁸ — although "the language of the law is not officially English."¹⁹ It is suggested that the language of the law involves a peculiar type of directive utterance and is distinguished from ordinary English in that it is precise, hortatory, impressive,

Language . . . can be used to communicate almost anything. By comparison, nonverbal behavior is very limited in range. Usually, [nonverbal behavior] is used to communicate feelings, likings and preferences, and it customarily reinforces or contradicts the feelings that are communicated verbally. Less often, it adds a new dimension of sorts to a verbal message, as when a salesman describes his product to a client and simultaneously conveys, nonverbally, the impression that he likes the client.

A great many forms of nonverbal behavior can communicate feelings: touching, facial expression, tone of voice, spatial distance from the addressee, relaxation of posture, rate of speech, number of errors in speech. Some of these are generally recognized as informative. Untrained adults and children easily infer that they are liked or disliked from certain facial expressions, from whether (and how) someone touches them, and from a speaker's tone of voice. Other behavior, such as posture, has a more subtle effect. A listener may sense how someone feels about him from the way the person sits while talking to him, but he may have trouble identifying precisely what his impression comes from. Mehrabian, *Communication Without Words*, PSYCHOLOGY TODAY, Sept. 1968, at 53.

See also M. WIENER & A. MEHRABIAN, LANGUAGE WITHIN LANGUAGE: IMMEDIACY, A CHANNEL IN VERBAL COMMUNICATION (1968); THE COMMUNICATION OF EMOTIONAL MEANING (J. Davitz ed. 1964); Wescott, *Introducing Coenetics: A Biosocial Analysis of Communication*, 35 AM. SCHOLAR 342 (1966). See generally Allen, *The Dynamics of Interpersonal Communication and the Law*, in READINGS IN LAW AND PSYCHIATRY 24 (R. Allen, E. Ferster, & J. Rubin eds. 1968) (reprinted from 3 WASHBURN L.J. 135 (1964)).

¹⁶ Hager, *Let's Simplify Legal Language*, 32 ROCKY MT. L. REV. 74, 77 (1960). Holmes once commented: "I often doubt whether it would not be a gain if every word of moral significance could be banished from the law altogether, and other words adopted which could convey legal ideas uncolored by anything outside the law." Holmes, *The Path of the Law*, 10 HARV. L. REV. 457, 464 (1897).

¹⁷ D. MELLINKOFF, THE LANGUAGE OF THE LAW 3 (1963) [hereafter cited as LANGUAGE OF THE LAW].

¹⁸ *Id.*

¹⁹ *Id.* at 10.

and durable.²⁰ The difficulty, however, is that the search for precision may detract from one of the other attributes.

Tradition in certain respects adds precision to the language.²¹ Indeed, in some instances the etymology of a legal term is a prerequisite to appreciating its true significance.²² But if the reason for the use of a particular foreign or archaic term in the law is solely an historical accident, why retain it when ordinary English would achieve greater understanding? "[T]he language of the law should not be different without a [valid] reason."²³ Yet, if legal terminology is more precise, shorter, more intelligible, or more durable, the use of legal argot may be justified. Lawyers clearly are conservative in their use of language. Rather than innovate and discard worn out terms, such as "malice," "conclusive presumption," "aforesaid," "and/or," "forthwith," "hereafter," "hereby," "herein," etc.,²⁴ the lawyer retains these instruments of confusion for fear that their omission will make his language "too plain and simple to be clear and unambiguous, or so plain and simple as to be devoid of legal meaning, or both."²⁵

"That is the fear," cautions Mellinkoff, "that freezes lawyers and their language. It is precise now. We are safe with it now. Leave us alone. Don't change. Here we stay till death or disbarment."²⁶

The language of the law is generally hortatory. This is natural, considering the normative nature of law.

²⁰ See S. HAYAKAWA, *LANGUAGE IN THOUGHT AND ACTION* 107-08 (2d ed. 1963).

²¹ Holmes would find that the language of the law reflects tradition to the extent the law is a "witness and external deposit of our moral life." Holmes, *supra* note 16, at 459. This is true of all language which is "a depository of the accumulated body of experience to which all the former ages have contributed their part and which is the inheritance of all that is yet to come." Anshen, *Foreward to LANGUAGE: AN ENQUIRY INTO ITS MEANING AND FUNCTION* xvi (R. Anshen ed. 1957).

²² Consider the meaning of the term *voir dire*.

In Modern French *voire* means in truth, but without the *e*, is *voir*, the meaning is to see. A conclusion from Modern French could be that *voir dire* . . . carry [its] Old French meaning to speak the truth, the same meaning as Old French *voir dit*, which ended up in English and Modern French as *verdict*. *LANGUAGE OF THE LAW* 101-02 (footnote omitted).

²³ *Id.* at 285 (emphasis added). Holmes was more colorful in his denunciation:

It is revolting to have no better reason for a rule of law than that so it was laid down in the time of Henry IV. It is still more revolting if the grounds upon which it was laid down have vanished long since, and the rule simply persists from blind imitation of the past. Holmes, *supra* note 16, at 469.

²⁴ See *LANGUAGE OF THE LAW* 305, 306, 310, 312, 313, 315; Chafee, *The Disorderly Conduct of Words*, 41 *COLUM. L. REV.* 381, 393 (1941).

²⁵ Morton, *Challenge Made to Beardsley's Plan for Plain and Simple Legal Syntax*, 16 *J.S.B. CALIF.* 103, 105 (1941).

²⁶ *LANGUAGE OF THE LAW* 295.

Language is not only descriptive, in the sense of supplying verbal "maps" of nonverbal "territories." It is also prescriptive or directive in the sense of supplying us with verbal "blueprints" of nonverbal "territories" which we intend through our own efforts to bring into being. The language of law is of necessity, therefore, to a large degree hortatory. In addition to prescribing certain forms of behavior it must also create the intent, the resolve, to follow the prescription. The judge is to a large degree a preacher. The trial is to a large degree a morality play.²⁷

When we say the language of the law is impressive, we are talking primarily about its impact on the layman. For when he goes to court he seeks justice, and it is a function of the language of the law to provide an *impression* that justice was indeed meted out. The effort to impress a client by using legal argot is often absurd, yet it continues because lawyers believe the practice is profitable.²⁸

Whatever criticism is leveled at the language of the law for its notoriously imprecise and equivocal terms,²⁹ it does appear that lawyers choose their words more carefully than non-lawyers, including the selection of vague or ambiguous terms which serve a useful function by virtue of their lack of precision.³⁰ And so it is that law-

²⁷ Hayakawa, *Semantics, Law, and "Priestly-Minded Men"*, 9 W. RES. L. REV. 176, 179 (1958).

²⁸ David Mellinkoff points out that most lawyers are not wont to disappoint their clients' expectations as to archaic words:

A lawyer may find it difficult to hand an old and profitable will-changer a *will* instead of a *Last Will and Testament*. Or to sell a confirmed landlord on a lease without a *Witnesseth*. Or to convince a businessman . . . that his contract doesn't need a *said* or a *herein*, a *null and void*, or even a *Whereas*. The client may feel cheated. Or let down. . . . In such cases, diplomacy is called for, and small continued doses of word opiate may still be the better part of valor. LANGUAGE OF THE LAW 448.

²⁹ See S. CHASE, *THE TYRANNY OF WORDS* 324 (1938). There is no lack of criticism of the language of the law. See, e.g., Chafee, *supra* note 24; Williams, *Language of the Law*, 61 L.Q. REV. 71, 179, 293, 384 (1945).

Roscoe Pound has suggested that this uncomplimentary image was produced by the clerical jealousy of the burgeoning legal profession on the part of 12th century priests and monks, and perpetuated by other professionals jealous of lawyers' prestige. Jerome Frank concluded that the image was based on a belief that lawyers unduly complicate the law. Numerous other explanations have been proposed (see E. CHEATHAM, *CASES AND MATERIALS ON THE LEGAL PROFESSION* 117-30 (2d ed. 1955)), but probably the most reliable and relevant explanation for contemporary discontent with the legal profession is provided by the Missouri-Bar Prentice-Hall Foundation Motivational Study of Public Attitudes. That study indicates, *inter alia*, that: (1) lawyers' clients have a lower opinion of lawyers than individuals who have never obtained a lawyer's service; (2) dissatisfied clients complained that their attorneys treated them with indifference and condescension; and (3) lawyers are failing to educate the public about what is involved in the practice of law. See *The Legal Profession: What Lawyers and Laymen Think About It*, 35 N.Y.S.B.J. 374 (1963). This deplorable state of affairs does not speak well for the communication skills of lawyers, especially as they are enmeshed in law — "a profession of words." LANGUAGE OF THE LAW vii.

³⁰ In an important sense legal rules are never clear, and, if a rule had to be clear

yers tend to develop a special legal style, including such phrases as "we must assume as proved," "it appears to be without foundation," and "we cannot justly doubt."

The purpose of phrases such as these is to make inconspicuous the difference between the real degree of probability and the value of the inference drawn. In the place of direct assertion, lawyers' language asserts an obligation to believe, and this modifying factor is afterwards disregarded. Wurzel concludes that lawyers have a distinctive verbiage which conceals the real nature of their reasoning process, and "[n]o small part of the training of practical lawyers consists in becoming accustomed to such forms of expression and processes of thought."³¹

Given the central role of language in the legal process, why have law schools and lawyers devoted so little attention to the study of linguistics?³² There are at least two reasons that come to mind.

First, lawyers generally operate fairly well without formal training in linguistics. They are not going to invest extensive time and effort to acquire the argot and tools of linguistic theory unless they are persuaded that there is a demonstrable payoff.

Second, many of the recent developments in linguistic theory have dealt with the deep structure of language and the transformational rules by which users generate surface structure. Although this type of theory helps eliminate syntactical ambiguities, as does symbolic logic, it sheds little light on the meaning of vague terms. If we pursue definitions to the most basic terms we often end up with a colloquy such as: "What do you mean by the term 'man'?" "A man is a male human." "What do you mean by male?" "You speak English, don't you!"

before it could be imposed, society would be impossible. The mechanism accepts the differences of view and ambiguities of words. It provides for the participation of the community in resolving the ambiguity by providing a forum for discussion of policy in the gap of ambiguity. Levi, *An Introduction to Legal Reasoning*, 15 U. CHI. L. REV. 501 (1948).

³¹ J. FRANK, *LAW AND THE MODERN MIND* 27-28 (1936). Justice Schaefer of the Supreme Court of Illinois believes though that "[w]hat is happening is that courts and lawyers are not stopping with the conceptual phrases. They are digging under them to see what lies there — to see what results are produced." Schaefer, *Foreword to The Language of Law: A Symposium*, 9 W. RES. L. REV. 117 (1958).

³² Jurisprudents in their analysis of law have at times become quite involved in linguistic analysis. The most notable example involved H. L. A. Hart and Lon Fuller. See Hart, *Positivism and the Separation of Law and Morals*, 71 HARV. L. REV. 593, 607 (1958); Fuller, *Positivism and Fidelity to Law — A Reply to Professor Hart*, 71 HARV. L. REV. 630 (1958).