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# The Study of Communication as Preparation for Law School: A Survey Interview Study

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TRADITIONALLY, many students who have majored in communication studies as undergraduates have chosen the study of law to further their education and careers. During the 1992-1993 academic year, for example, 1,102 first year law students reported that they had majored in communication (Carr, 1994) while approximately 3% of all students who took the Law School Admissions Test during the same year were communication majors (Carr, 1994). The link between the study of communication and law is apparently becoming stronger as litigation expands, trials are increasingly televised, and prospective law students become cognizant of the competitive field they have chosen. This study focuses upon one aspect of legal preparation where effective communication skills are crucial, trial advocacy. Instead of relying on experimental research designs that typically employ mock trials, the present investigation queried practicing attorneys about the role of communication in the everyday conduct of trial procedures. Through survey interviews, the benefits of a communication education become apparent in this study. In particular, communication administrators and advisors may find much of value in exploring the importance placed on communication in legal careers by attorneys in advising undergraduates who hope to go to law school. Furthermore, as the interdisciplinary appeal of communication studies becomes enhanced in this area, justification for curriculum development becomes evident. While some communication departments already offer courses in "Communication and Law" and "Legal Communication," others may find that adding a similar type of course could prove beneficial in attracting new majors who express interest in pursuing admissions into law school following graduation.

The importance of communication in law is well established in scholarly research. This is not surprising given that almost all forms of legal transactions incorporate a type of communication. It has been demonstrated that communication plays a critical role in opening statements (Wagoner, 1992), closing arguments (Dixon, 1992), testimonies (Dixon, 1992), storytelling (Bennett & Feldman, 1981; Scheppele, 1989), use of visual aids (Mauet, 1992), the use of rhetorical questions (Jeans, 1993), anticipating the opposing counsel's arguments (Mauet, 1992), and in effectively using nonverbal cues (Bell & Loftus, 1989; Richmond et al., 1991). Together, these studies emphasize the critical role of communication in legal contexts. From opening statements to closing arguments, the trial process is dependent upon effective communication strategies.

Certainly, this expanding body of research in communication contributes to scholarship both theoretically and in application. We believe, however, that this research is limited in two ways. First, the vast majority of these studies have employed experimental research designs. Typically, this has involved the construction of pseudo events for data collection, such as mock trials. In mock trials, legal transactions are simulated with actors used to fill the role of jurors, judge, attorneys, plaintiff, defendant, court reporter, and bailiff. The result is to create a physical environment resembling the courtroom. Perhaps it is understandable that an actual trial cannot ethically or legally be used to manipulate and control variables for the purposes of a communication study. This limitation, however, should be taken seriously in the interpretation of data elicited in this manner. The consequences of one's rhetoric in a simulated environment diminish in importance. Most would readily agree that receiving extra credit for participating in a study, for example, is not the same as actually sending someone to the gas chambers. Furthermore, mock trials do not give the actors playing the roles of attorneys the challenge of addressing unexpected events in the same manner as a real courtroom proceeding does. The unpredictable circumstances that arise in the courtroom are merely relegated to the "error factor" in experimental research. Ecological validity may, indeed, be difficult for the communication researcher to obtain in studies concerning the role of communication in the courtroom. As such, we are not suggesting that the use of mock trials in research be eliminated. Instead, we are arguing that ecological validity poses a limitation in the interpretation of research findings using this method and that caution is warranted in deriving generalizability of these studies.

Second, practicing attorneys are rarely questioned about the role of communication in the legal profession. While some communication researchers have used transcripts of trials as data (i.e., Penman, 1990; Bennett & Feldman, 1981), attorneys do not usually participate as subjects in communication studies. Limiting our inquires to courtroom transcripts omits a wealth of information concerning the beliefs that undergird attorneys' communication strategies. Given the significance of our legal system on our society, the pioneering research that is beginning to focus on courtroom discourse is promising. By eliciting data from the sources of legal discourse, an understanding of the role of communication in the courtroom can only be enhanced. That is specifically what the present study is designed to accomplish.

## METHOD

*Overview of Procedure*

Survey interviews were conducted to explore and describe how attorneys communicate in the courtroom. The personal nature of the interview format facilitated the establishment of rapport with the interviewees, which, in turn, encouraged fuller and more informative responses to questions. While the interpersonal nature of survey interviews may be advantageous for soliciting rich data, a tradeoff may lie in a potential bias that often results from the relationship that evolves from the interviewer and interviewee. It has been suggested, then, that researchers attempt to make sure that the interviewers are in crucial ways similar

to the interviewees (Douglas, 1985). In the present study, the interviewer shared her interest in the practice of law as a recently admitted law student. As such, respondents were encouraged to be candid, honest, and helpful in providing thoughtful information.

Survey interviews are traditionally thought to be relatively high in internal validity since the opportunity exist in a face-to-face interview format to probe, clarify, and ask follow-up questions (Frey et al., 1991). External validity, however, is sometimes questioned in such studies where a small sample (in this case 30 interviewees) are assumed to be generalizable to the population at large. The present investigation makes no such claim but instead suggests that the sample of 30 attorneys interviewed represents a well justified case study. Since the constraints of actual courtroom discourse remain fairly similar across various jurisdictions and types of courts, the experiences shared may constitute a more representative sample than at first recognized.

*Subjects*

A sample of 30 attorneys within a 100 mile radius of a medium sized Southern city voluntarily participated in this study. None of the subjects were compensated in any way. Of these participants, 27% were female and 73% were male. Ages ranged from 27 to 66 with the mean age being 43. Ninety-three percent were Caucasian while Hispanics and African-Americans each comprised 3.5% of the sample. Considering that in the state in which this sample was solicited minorities make up about 3% of the total number of practicing attorneys, the sample was deemed sufficient (1994). Eighty-three percent received their legal training from public universities while the remaining attorneys attended private universities. Their areas of legal practice varied: 37% practiced general law, 17% criminal law, 13% personal injury law, 13% commercial law, and 20% civil law. All attorneys had trial experience in the courtroom. The mean number of years participants had been practicing law was 15.

*Interview Format*

Normally the interviews were conducted in the lawyer's office at an agreed upon time. All interviews were audio recorded and portions were transcribed for the purposes of this study. The average length of the interviews was 40 minutes. Following the interview, a one-page questionnaire was given to the respondent that solicited demographic information that was used later to identify the sample.

The interview schedule was designed to follow the funnel format in that it began with general questions and gradually the questions became more specific. The twelve questions in the interview schedule were open-ended and the interviewer often probed by asking for greater clarification when needed. (See Table 1 for the interview schedule.)

**TABLE 1**

INTERVIEW SCHEDULE OF QUESTIONS AND RESPONSES

| | Response | Cohen's Kappa Coefficient |
|---|---|---|
| 1. Do you think that communication is important in the courtroom setting? | | |
| a. Yes | 100.0% | |
| b. No | 0.0 | |

| | | Response | Cohen's Kappa Coefficient |
|---|---|---|---|
| If so how? | | | .86 |
| a. | Communication is single most important element in the courtroom. | 33.3% | |
| b. | Communication creates understanding in the courtroom. | 30.0 | |
| c. | Communication facilitates effective representation for client. | 20.0 | |
| d. | Communication is used to persuade judges and/or juries. | 16.7 | |
| 2. | What do you feel constitutes "good communication" in the courtroom? | | .81 |
| a. | Adapting to the audience with appropriate language and vocabulary. | 63.3% | |
| b. | Persuading the finder of fact to decide in your favor. | 13.3 | |
| c. | Knowing your subject and client well. | 10.0 | |
| d. | Being concise and clear. | 10.0 | |
| e. | Being able to present a good drama; storytelling. | 3.3 | |
| 3. | In your experience what specific skills have you seen that make an attorney a competent communicator? | | .90 |
| a. | Ability to adapt to a jury so that one is understandable. | 50.0% | |
| b. | Ability to establish credibility. | 26.7 | |
| c. | Preparation for trial. | 10.0 | |
| d. | Ability to use common sense. | 6.7 | |
| e. | Being able to present a good drama; storytelling. | 3.3 | |
| f. | Good organization in speech. | 3.3 | |
| 4. | When you question a witness how do you get them to say what you want without asking a leading question? | | .94 |
| a. | Prepare the witness; "woodshedding." | 73.3% | |
| b. | Prompt the witness with questions. | 16.7 | |
| c. | Try to sound "conversational." | 10.0 | |
| 5. | Does your courtroom communication change on whether the audience is composed solely of a Judge or Jury? | | |
| a. | Yes | 96.6% | |
| b. | No | 3.3 | |

| | | Response | Cohen's Kappa Coefficient |
|---|---|---|---|
| If yes, how does it change when speaking to a Judge? | | | .82 |
| a. | Less is communicated since the judge has been predisposed to case via written documents. | 36.7% | |
| b. | Vocabulary becomes more technical and precise. | 33.3 | |
| c. | Position is presented faster; less repetition. | 23.3 | |
| d | Communication avoids appeals to feelings personalities and biases. | 6.7 | |
| If yes, how does it change when speaking to a jury? | | | .89 |
| a. | Case is presented "step-by-step," communication is simplified. | 53.3% | |
| b. | Appeals are made to feelings, personalities, and biases. | 23.3 | |
| c. | Incorporate theatrical elements; stories are communicated. | 23.3 | |
| 6. What nonverbal techniques do you incorporate into your courtroom delivery? | | | .95 |
| a. | Gestures and body language. | 40.0% | |
| b. | Do not know, not conscious of nonverbals. | 26.7 | |
| c. | Eye contact. | 13.3 | |
| d. | Wear appropriate clothing and accessories. | 10.0 | |
| e. | Voice intonation; inflection. | 6.7 | |
| f. | Exhibit visual aids. | 3.3 | |
| 7. Do you mentally rehearse or practice before going into the courtroom? | | | |
| a. | Yes | 86.7% | |
| b. | No | 13.3 | |
| If so, how? | | | .85 |
| a. | Only mentally anticipate presentation. | 63.3% | |
| b. | Write a script and/or outline. | 23.3 | |
| c. | Rehearse in front of a mirror. | 6.7 | |
| d. | Rehearse in front of others and/or videotape. | 6.6 | |
| 8. What characteristics do you look for in a Judge or Jury in order to "read" them? In other words, what cues do you look for in order to be persuasive? | | | |
| For a Judge: | | | .87 |

| | | Response | Cohen's Kappa Coefficient |
|---|---|---|---|
| a. | Do not know; Judges are too hard to read. | 50.0% | |
| b. | Prior knowledge of Judge is used. | 20.0 | |
| c. | Facial cues and eye contact. | 13.3 | |
| d. | The Judge's questions are informative. | 6.7 | |
| e. | No response. | 10.0 | |

9. In your opinion, does an attorney's gender or ethnicity have any influence on persuading a Jury?

| | | | |
|---|---|---|---|
| Influence of gender: | | | .91 |
| a. | Yes | 60.0% | |
| b. | No | 30.0 | |
| c. | Uncertain | 10.0 | |
| Influence of ethnicity: | | | |
| a. | Yes | 77.0% | |
| b. | No | 20.0 | |
| c. | Uncertain | 3.0 | |

10. Do you believe communication skills are ever more influential In trials than the actual evidence?

| | | | |
|---|---|---|---|
| a. | Yes | 76.6% | |
| b. | No | 16.7 | |
| c. | Uncertain | 6.7 | |
| If yes, then how? | | | .96 |
| a. | Poor communication with good evidence can cause defeat. | 53.4 | |
| b. | Poor evidence can be skillfully turned around to support your position. | 40.0 | |
| c. | Uncertain | 6.6 | |

11. In your opinion, are Judges or Juries ever too easily influenced by the communication skills of attorneys? .96

| | | |
|---|---|---|
| a. | No, Judges nor Juries are too easily persuaded. | 53.3% |
| b. | Yes, Juries are too easily persuaded but Judges are not. | 23.3 |
| c. | Yes, Judges and Juries are both too easily persuaded. | 16.7 |
| d. | Yes, Judges are too easily persuaded but Juries are not. | 6.7 |

| | | Response | Cohen's Kappa Coefficient |
|---|---|---|---|
| Explanation for assessment of Judges: | | | |
| a. | Judges can see through an attorney's rhetoric. | 50.0% | |
| b. | Judges usually know the law and will do the right thing. | 40.0 | |
| c. | Even judges have biases. | 6.7 | |
| d. | Uncertain | 3.3 | |
| Explanation for assessment of Juries: | | | |
| a | Jurors can easily be persuaded by an attorney's communication skills. | 43.3% | |
| b. | Jurors can see through an attorney's rhetoric. | 26.7 | |
| c. | Jurors usually do the right thing. | 23.3 | |
| d. | Uncertain | 6.7 | |
| 12. | What would be most helpful for new law students to learn about communication in the courtroom? | | .90 |
| a. | Study communication directly by taking communication courses. | 36.6% | |
| b. | Observe attorneys in the courtroom. | 23.3 | |
| c. | Be prepared, know the facts of your case. | 13.3 | |
| d. | Be yourself; communicate sincerely. | 13.3 | |
| e. | Apply the "KISS" rule: "Keep it simple, stupid." | 3.3 | |

*Text and Coding*

After carefully analyzing all of the audio taped interviews and transcribing portions of the responses, a content categorization scheme was devised for each of the twelve open-ended questions. The content categorization schemes were inductively generated based on the face validity of the data. That is, the categories developed reflected the attributes or content of the concepts being investigated. This inductive procedure was preferred because it allowed for "generalizations to be built from the ground up" (Frey et al., 1991, p. 233). Another way of describing this method for accumulating data is called presuppositionless research. Anderson (1987) explains: "The term does not mean that the researcher is somehow a cultural blank without norms, values, and ideology. It means that the researcher makes his or her own norms, values, and ideology apparent and does not assume that they are those of the members" (p. 242). In presuppositionless research, investigators set aside what they think they will find and remain open to what the data indicate.

Inductive research of this sort, however, has been criticized for lacking formal structure. For the purposes of the present study, though, inductively generating content categorizations seemed most appropriate given the exploratory nature of this study. Since no published study to date directly questions practicing attorneys about their courtroom discourse, it seemed important to rely on the face validity of their responses rather than superimposing a previously used content categorization scheme that might not apply to the context of courtroom discourse.

The two authors collaboratively devised the content categorization schemes for each of the twelve open-ended questions. Six of the twelve questions were worded in such a way that

a yes/no response was first elicited (Questions 1, 5, 7, 9, 10, & 11). Probing for an explanation followed these responses. Then the explanations were content categorized. In addition, questions 5, 8, and 9 each contained two parts. In these cases, the separate parts were individually coded.

A sample of ten of the thirty interviewees' responses were then content categorized independently by the two authors in order to establish intercoder reliability. The calculation of Cohen's Kappa (Cohen, 1960) for each of the questions provided a straightforward approach for checking reliability. Reliability coefficients ranged from .81 to .96 (see Table 1 for individual reliability coefficients). These scores were deemed sufficient since researchers generally have established .70 as the minimum acceptable index of reliability (Bowers & Courtwright, 1984). After independently coding each question, the researchers collectively resolved any differences in their coding schemes.

## RESULTS

Results of the coding of the twelve open-ended questions posed in the interviews are summarized in Table 1. To simplify, the findings of this study will be presented in topical categories, not necessarily in the order solicited in the interviews.

*Overall Importance of Communication*

Two questions directly addressed the overall importance of communication. Question 1 inquired, "Do you think that communication is important in the courtroom setting? If so, how?" Question 2 asked, "What do you feel constitutes 'good' communication in the courtroom?" *All* attorneys (100%) responded that communication was very important in the courtroom. When responding to the follow-up question concerning how communication was important, roughly a third (33%) said that communication was the single *most* important element in the courtroom. As one respondent explained, "Communication is crucial in the courtroom. It is the heart of litigation. That's what court is all about." Sixty-three percent of those interviewed agreed that "good" communication in the courtroom exists when the attorney creates an understanding between the sender and receiver by using appropriate language and vocabulary. "The jury has to hear what the attorney thinks he/she is trying to say," responded one lawyer. Another said, "You can't talk over a jury's head. They don't understand legal terminology, nor do they care to. You have to speak their language - sometimes this means using a simpler vocabulary than you normally use." The vast majority of participants recognized the importance of creating an understanding in the courtroom and defined this process as "good communication."

*Attorney Characteristics that Influence Communication*

Five questions focused on specific characteristics attorneys may possess to influence communication in the courtroom (questions 3, 4, 6, 7, & 9). Question 3 asked, "In your experience, what specific skills have you seen that make an attorney a competent communicator?" The most frequent response was that "competent" attorneys adapt to their audiences (63%). Twenty-seven percent of the participants remarked that appearing credible was a skill that made an attorney competent. "You have to establish credibility with your jurors. Always be sincere...they can tell when you're not," suggested one lawyer. From the responses gathered, adaptation was the most influential characteristic that effective attorneys possess.

In question 4, lawyers were asked, "When you question witnesses, how do you get them to say what you want without asking a leading question?" Seventy-three percent agreed the way to do this is to prepare the witnesses before trial to present a position in the best possible light. This tactic frequently mentioned by the interviewees is known as "wood shedding."

Question 6 proposed, "What nonverbal techniques do you incorporate into your courtroom delivery?" The most popular response was body language. Forty percent said that they strategically use body language, including hand gestures, into their courtroom deliveries. Good eye contact and concern about appearance were also mentioned. One attorney advised, "You should wear something you'd wear to church or a funeral. Don't wear anything flamboyant like a wild necktie with girlies on it or wild jewelry...Attorneys should wear brown because it suggests honesty. You want the jury to trust you." Appearance, eye contact, and body language were frequently reported as nonverbal cues considered important in courtroom delivery.

Eighty-seven percent responded to question 7 by saying that "yes", they do mentally rehearse or practice their courtroom delivery. Most simply mentally rehearsed their arguments (63%) while others wrote scripts or made notes and/or videotaped a practice session.

Question 9 asked, "In your opinion, does an attorney's gender or ethnicity have any influence on persuading a jury?" Sixty percent suggested that gender does have an impact in that male attorneys are often afforded greater influence in a trial than are female attorneys. Slightly less than a third (30%) stated that gender, per se, does not have any influence on the jury. Sixty-seven percent of the respondents said that ethnicity does have an effect on persuading a jury and that "Yes, racism is still a factor." One-fifth (20%) felt that the attorney's ethnicity had no impact.

*Adapting Courtroom Communication*

Question 5 and the follow-up question inquired about altering or adapting an attorney's courtroom communication in response to the audience functioning as the trier of fact. In response to the question, "Does your courtroom communication change depending on whether the audience is composed solely of a judge or jury?," a consensus of 97% agreed that indeed their courtroom communication did change. To probe this response, the follow-up question was asked, "How do you persuade them differently?" Thirty-seven percent responded that an attorney communicates differently with a judge because a judge has usually been predisposed to a case through written documents. In addition, many respondents noted that the judge has more experience in dispute resolutions than jurors. An interviewee remarked, "You use language of a higher intellect with a judge." On the whole, less discourse takes place between an attorney and a judge than between an attorney and a jury because the judge is, presumably, already familiar with the case and has legal expertise.

When speaking of jurors, 53% of the interviewees replied that attorneys communicate more simply with jurors by leading them through a case step-by-step. Twenty-three percent of the attorneys believed one communicates with jurors by appealing to their feelings, sympathies, personalities, common sense, and biases. Of the participants, another twenty-three percent communicated differently with jurors by incorporating theatrical elements and storytelling. "Drama keeps a jury's attention. Jurors are used to watching television attorneys. The jury wants to see some drama like they see at the movies," said a respondent. The responses to this question reiterates an earlier response that adapting to one's audience is the most important characteristic of an attorney who communicates well.

*Persuading Judges and Jurors*

The issue of trying to interpret a judge or jury's reaction during a trial was addressed in this set of questions. Question 8 probed, "What characteristics do you look for in a judge or jury in order to 'read' them? In other words, what cues do you look for in order to be more persuasive?"

In reference to judges, 50% admitted that they did not know because judges are too hard to "read." Twenty percent believed they usually knew a judge well enough to predict how he or she would rule before the trial. Thus, the attorneys did not need to "read" the judge during

the trial. Thirteen percent relied on facial cues such as head-nods, frowns, smiles, and eye-contact. Ten percent had no response to this question while 7% tried to "read" judges by assessing the types of questions he/she asked the attorneys. In reference to jurors, 33% said they try to "read" jurors during voir-dire jury selection. Twenty-two percent believed that facial cues were most important while 20% said they watched for whether or not jurors were being attentive to their presentation. "If a juror is going to sleep on you, you know you're in trouble," chuckled one attorney. Still, the remaining attorneys interviewed admitted they did not know because you can never tell what a jury will decide. Overall, responses explaining how attorneys "read" a jury were divided.

*Influence of Communication on Legal Decision Making*

Two questions inquired about the influence of the attorney's communication skills on a trier of fact's legal decision-making. Question 10 asked, "Do you believe communication skills are ever more influential in trials than the actual evidence?" A total of 77% said, "Yes." A follow-up question asked, "In what way?" Fifty-three percent believed that poor communication, even with good evidence, can cause one to lose a trial. Forty percent believed that an attorney can take poor evidence and turn it around so that it supports a position. One lawyer explained, "The failure to communicate well can be more influential in the outcome than the actual evidence."

Furthermore, question 11 asked, "In your opinion, are judges or juries ever too easily influenced by the communication skills of attorneys?" Fifty-three percent said that neither judges nor juries were too easily influenced; 23% believed that judges were not but that juries were; and 17% thought that both judges and juries were too easily influenced by rhetoric. In reference to jurors, 43% of the interviewees agreed that jurors are persuaded by an attorney's communication skills.

*Advice to Law Students about Communication*

Finally, the attorneys offered suggestions for new law students. In question 12 participants were asked," What would be most helpful for new law students to learn about communication in the courtroom?" Thirty-seven percent replied that communication should be studied directly by taking communication courses. Twenty-three percent said that they should watch lawyers in the courtroom to learn about communication. Three percent offered some version of what many attorneys called the K.I.S.S. rule: "Keep it simple, stupid." Thirteen percent urged that new law students always be prepared and know the facts of their case. Another 13% recommended that attorneys learn to "be themselves." Others gave anecdotal advice.

## DISCUSSION

The results of this investigation provide strong support for the study of communication in preparation for a career in law. Importantly, *all* of the attorneys indicated that communication is very important in the courtroom while 77% felt that communication can be more influential than actual evidence in trials. More than a third (37%) directly advised that incoming law students focus on communication skills in their training. While it is true that most law school curriculums incorporate some type of "trial advocacy" course, apparently the fundamental processes of communication are not being addressed sufficiently in those courses. In particular, the attorneys interviewed repeatedly suggested that *adapting to one's audience is* a critical skill. This skill, however, is not easily translated into a one page handout. Instead, gaining an understanding of the nature of communication as generating meaning and constructing reality as explained in basic communication theory or interpersonal communi-

cation courses provides the pre-law student with a much more robust wealth of knowledge that, overall, facilitates adaptive communication in the courtroom.

The results of this investigation also suggest that much scholarly research on legal communication (especially trial advocacy) may be merited. Most communication researchers usually mention that there are contextual constraints inherent in any communicative event but few specify those constraints. The courtroom provides a unique opportunity for communication researchers to be fairly unequivocal about the context. Additionally, those communicating in the courtroom tend to maintain a higher level of awareness of communicative goals and intentions than in everyday, routinized situations. This context, then, may prove to be ideal for the study of communication competence, especially where goals are scrutinized. As such, communication theory, generally, may be extended by a closer examination of trial advocacy.

Of course, a fuller understanding of courtroom discourse may, alone, be deemed valuable. Given the prominence of our legal system on everyday behavior and our society as a whole, communication researchers could make a significant interdisciplinary contribution towards an understanding of litigation. Beginning to include attorneys in such studies, as the present study has demonstrated, would certainly add a heuristically useful dimension to this growing area of research.

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