Assessing Communication Skills in Legal Education

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ABSTRACT

Communication is an indispensable facet of legal practice, integral to interviewing, advocacy, negotiation, and client relations. Despite its centrality, legal education has historically underemphasized communication training, particularly nonverbal and contextual communication, within curricula dominated by doctrinal instruction. This paper critically examines the multifaceted challenges and evolving methodologies in assessing communication skills among law students. Drawing on comparative models, pedagogical theory, and empirical case studies, it highlights the inconsistencies in defining, teaching, and evaluating communicative competence in legal training. It proposes a recalibrated model of assessment that integrates verbal and nonverbal communication, leverages technology, and fosters reflective learning through feedback mechanisms. The study underscores the need for a robust, context-sensitive, and formative approach to communication skill assessment to prepare law graduates for the complexities of modern legal practice.

Keywords: Legal education, Communication skills, Nonverbal communication, Curriculum design, Assessment tools, Professional competence.

INTRODUCTION

From Socrates' dialectic methods through to latter-day moot courts, a large and elaborate structure of communication goals has undergirded Australian legal education's "Bartlett" model of skills and experience-based learning. These goals have outgrown generic, social-transactional speaking and listening skills, and encompass more highly specialised "learning targets." In this respect, they can be compared to the attainable outcomes of communication skill-based legal education programs. Such "learning targets" might be distinguished from goals and process more broadly, and also from informal or internal criticism that such philosophy, criteria, and goal ordering might seek to mask or evade. Nevertheless, students now arriving at and passing through universities technically graduate aware of little more than definitions of negotiative, interlocutionary, examining, and expert questionings, even if having credibly participated in all of them. It is both procedurally and substantively inaccurate to build skills components about the would-be formative evaluation of individual, inexperienced practitioners' communication skills. Procedurally, existing, notwithstanding the decades-long existence of individual-coded ratings proffered by the clinician and peer-operatory observers for specific performances, are wholly reliant on checklists of adjunct, objective, and external criteria. Substantively, such matriculation does little to ensure much deleting/moding/laminating/encapsulating/packaging of otherwise well-familiar materials into information enough for foreign, net-new writers. The resulting "forgotten fifth," namely, so-called extra-epistemic inputs, self-evidently underfeeding missing lines that might, on 3rd iteration, hang-up score cards on which administrators' palms swell bloodlessly. Thus it is time to go back to rhythm, oratiques, opening hours and all, if students are ever to be better armed with the means, underlying concepts and historic episteme of their own sometimes unrevisable, unmoatable and unfurling "what if?" questions [1, 2].

The Importance of Communication In Law

Research on cognition and social-behavioral psychology has established that communication, particularly nonverbal communication, is critical to social interaction. Approximately three-fourths of what is communicated is done so nonverbally through vocal tone, facial expressions, gestures, posture, and proximity. A principal method of lawyering is communication: in interviews, meetings, negotiations, and

litigation; with clients, witnesses, juries, judges, legislators, and opposing counsel. Nonverbal signals greatly affect how verbal messages are communicated and received. They determine whether the listener will pay attention to the words spoken and whether the words will be credited as honest or deceptive. Despite the importance of good communication, there is very little instruction on how to interview or conduct a meeting at traditional law schools. Consequently, law students and practitioners learn communication skills osmotically by watching others communicate. Often this is done at firms that overemphasize what to say at the expense of how to say it. This loss of the nonverbal communication component has adverse effects on how the law is practiced and justice is served. Many themes emerge from the teaching of nonverbal communication in an internationally recognized communication skills program at an American law school. Most apparent is the realization of how little lawyers understand the nonverbal communication counterpart to what they were taught about verbal communication. The importance of context and degree of confirmation is also widely underestimated. The emphasis on verbal content widens the gap between what listeners think was communicated and what was intended. An inability to present a case properly can cost one's career. A poor witness can yield an undeserved verdict and obstinately maintain a false assessment of a very real situation. This underscores the gravity of the tension between objectivity and subjectivity. Efforts to inculcate knowledge of nonverbal communication may be futile as long as the culture of the law regards communication as merely a reporting of factual observations. The sexual and temporal integrity of conversations renders altered ideas worthless. The lawyer who conveys something novel is fated to be discounted and distrusted [3, 4].

Defining Communication Skills

While references to "communication skills" abound, few definitions are found. This paper is an attempt to describe "communication skills" as that term is used in the discipline of speech communication. Without common definitions or criteria for what constitutes "communication skills," both student efforts aimed at acquiring those skills and teacher efforts to instruct in those skills will be necessarily unfocused and hence inefficient. To be sure, specific students acquire communication skills, on which they receive high evaluations from teachers and/or peers for their presentation of informative or persuasive speeches. But whether or not those evaluators agree on exactly what constitutes the impressive or deficient communication skills is not clear. There are various courses labelled "speech," "communication," and so forth. Each not only implies communication skills instruction, but via titles like "oratory," "communication skills," and "public speaking" assures that such skills instruction will occur. It is precisely to such courses that many students flock, with the idea of honing their communication skills. There is an equally powerful need and thus great applicability for a focused understanding of communication skills at the secondary and elementary education levels. Communication skills are needed not only in business and government agencies, but in social groups, within families, and among friends. The necessity for a focused understanding of communication skills extends to these levels because a more or less standardized definition of the concept would provide useful information as guidelines for successfully functioning in these spheres of human endeavor. Thus, persons who are responsible for formulating curricular development as well as course content can be aided by knowledge of the links between communication skills, subject content, and communication competency [5, 6].

Methodologies For Assessment

An assessment tool designed by a professor to assess the traditional classroom competencies of legal research and writing might include the following components. A multiple-choice quiz covering the relevant legal principles and citation rules. A super-short briefing on how to prepare a memorandum for office use. A typed written assignment on a specific fact situation. Typically, three-hour initial drafts and one-to-two-hour edits. An ungraded revision of the first-drafted memorandum on a new fact situation. A short-graded revision of the first-drafted memorandum on a new fact situation, in which students are required to provide justifications and rules in cases (3-5 citations per case) for a (60-70% of overall mark). A second, mostly untimed revision of the original draft on a different fact situation (30-40%). The legal writing professor then might give a second or two-part exam, which might include (1) a parenthetical referencing test similar to the in-class exercise with the stated purpose of discerning whether students are correctly and consistently applying the rules and (2) a passage from a judicial opinion in the form of an essay question, again similar to in-class questions but without the aid of computers or notes. The legal research professor might give this type of exam the week before finals, when the main assessments are due. The need for added assessment arose from the discrepancy between (1) the need for each paper to have a superior thesis which has nothing to do with whether doctrinal or analytical and (2) the fact that few students appear to be doing adequate research since most do not cite any cases in their research from the Research and Writing Class [7, 8].

Curriculum Design

The thriving of the legal profession in the 21st century requires competent and professional lawyers who possess critical thinking and problem-solving skills, can communicate and collaborate effectively, and exhibit professional ethics and social responsibilities. Most leaders of universities and schools of law are aware of the need for a transformative approach to the curriculum that emphasizes professional competence and value to address the rapidly changing demands of the legal profession. It has been recognized that the ability to communicate is a cornerstone of professionalism and professional competence. This paper starts from the relationship of communicative competence and professionalism and addresses the current situation of communication skills instruction in legal education in China. It explores how to incorporate communicative competence into the legal education curriculum design and how to teach and assess communication skills. The importance of communication skills instruction in legal education has been emphasized by both the AALS and the American Bar Association. Unfortunately, however, a decade-long effort by scholars and law schools to increase the quality and quantity of communication skills instruction in law schools has not yet yielded satisfactory results. Troops of law instructors are attempting to rectify this blatant deficiency in the quantity and quality of communication instruction. Yet the lack of widespread resources in the law schools and a proper culture for sharing resources is putting a damper. It is therefore believed that a direct and workable approach for law professors to remedy the situation is to conduct research on the pioneering law school communication courses and share the lessons and experiences learned. Developing a benchmark for assessing various models of law school communication training can serve as a guide for law teachers who have little prior experience assessing communication training courses before embarking on the difficult journey of curriculum design. Based on multiple information sources, seven top-scoring law school communication courses are identified, analyzed, and compared with the curriculum design. Lessons learned from the analysis and the comparisons can hopefully clarify what to improve for law schools that wish to better foster their students' communication skills. This line of research is anticipated to generate new insights for law professors and law schools to utilize in enhancing the quality and quantity of communication coursework and training in law schools, hence contributing to the formation of competent and professional lawyers [9, 10].

Assessment Tools

Assessment of communication skills can often prove challenging, as these skills must be both evaluated and taught. However, giving a student an objectively measurable written examination like multiple-choice questions is often unsatisfactory. With this concern, started to explore both measures of the outcome of communication skills work as well as measures of the work itself. Legal educators generally want students to develop clients' case theories, explain how some aspect of law or its professional application was relevant, communicate with an interviewee and elicit information, provide different kinds of explanation within a single communication, effectively elicit information and perspective in a mediation or negotiation, and minimize misunderstandings. Any of these would seem to be a valid and sensible area of assessment. It may be surprising that no one has mentioned providing a score on a paper evaluation of one of these tasks in terms of these elements, although it is imaginable that one could devise such a system. With something like an 8-point scale, one ideally would have multiple assignments assessing the same communication at 2 points along a time span of analysis. Such out-of-class assignments have the potential for a form of reliability if one aimed it at visible punctuation points in the set of elements. They would be reasonably uncomplicated to setup. On the other hand, a written evaluation may well be easier on a colleague than directly watching performance in the moment. Presumably this written evaluation could be converted into a small number of general categories. It is easy to imagine each being impossible to score as the scales would often be inconsistent. Inter-rater reliability would often be an issue. Such a scoring system would be a fair amount of work on every performance assigned. Thus, it mainly depends on what the goals are. For the respondent, it felt comfortable giving a pass grade on most performances and would never want to see scores on them. Observation during or by videotape otherwise sounds more equitable and reasonable. In order to have something to employ, viewing some other options would seem to be a necessary step. Learning new communication skills assessment video exercises would normally means purchasing something. Eventually, less costly alternatives would be socialization that happened in these efforts, which would not exist if another team had such efforts done. These forums tended to be committed and committed contributors. A team of this nature is a reason to try to work together [11, 12].

Challenges In Assessment

Assessing communication skills in legal education presents a number of challenges that legal educators need to be aware of. These challenges stem, in part, from the myriad of student communication behaviours that can be evaluated, as well as the tests that can be used in assessing such behaviours. In addition, students often become anxious when evaluated. Accordingly, explanations are provided on how legal educators can respond to these challenges in order to achieve better assessment results. As noted, communication skills can be assessed in many ways. In fact, the decision as to how to assess communication skills can be daunting for educators due to the myriad of options available to them. These options can vary in many respects, such as the skills being tested, and whether the assessment takes a formative or summative form. To assist legal educators in selecting the type of assessment that is best for their intended purpose, two general (although not exhaustive) categories of assessments are presented. The first are standard assessments, which are straightforward and well-detailed types of assessments that legal educators can apply to their students without great modification. These include multiple-choice questions, short-answer questions, class participation, peer review, and self assessment. While used less frequently in the assessment of communication skills, other standard assessment tests can likewise be used. The second are Customised Assessments, which are assessments that legal educators have designed to address their specific focus in assessing student communication, or students attending skills conferences. The challenges to effective evaluation are well informed, often taking decades to develop, and materials to assist with implementation are available. Legal educators may wish to apply these evaluations in their courses. Anxiety due to perceived stigma is an inevitable product of student assessment in communication skills. Students might view such evaluations in a similar vein as psychiatric testing or an intelligence quotient test; tools designed to reveal otherwise hidden failures. As a result, students often fear being graded poorly or even exposed as inadequate communicators. Such fear is understandable; after all, students might have embarrassment or distress in being assessed as poor communicators, both of which are often viewed as a fundamental life flaw outside of education. Therefore, when viewed on their own, the options preceding may seem to ring hollow or impractical for legal educators wishing to apply them in their evaluations [13, 14].

Case Studies

Assessment methodologies can be grouped under four headings, measuring: (1) practice skills (observation); (2) Understanding of skills (examination); (3) Self-awareness (self-evaluation); and (4) perceived performance (external evaluation). Each category has its strengths and weaknesses, which should be understood when developing an assessment program. The first method, assessment of skills in practice or "observation", occurs by way of direct observation of a skill in practice, where the observer refers to predetermined assessment criteria. A variation of this is the method of "observational checklist," where a template is filled out as the observer watches the skill or performance in practice. These approaches can also be applied to the use of visual technology, wherein samples of videotaped interactions are observed, coded, and assessed by a rater. Observational approaches work best when skills are being assessed, where the outcome is clear-cut, for instance, the quality of a negotiation in a moot context. The range of skills being assessed should be restricted in any one assessment event, normally to one or two skills, so that the context is much simpler and easier to measure. Nevertheless, questions of reliability and validity will be raised if the nature of the assessment event means that it is singular, solely low stakes, and does not meaningfully integrate the assessment of skills across the full range and expectations of their use. A further limitation with video-taped assessment is that assessing with one-dimensional observation or checklists, or codes means that it will be more difficult to recognize and assess diverse skill-tool use and user styles. When assessing clinician-staff interaction in the health sector, for example, the intended outcome of implementation of a communication skill may be both different at the operational level and more complex in terms of anticipated outcomes than in the more controllable, simple, single behaviours of a legal negotiation [15, 16].

Feedback Mechanisms

Communication skill development is an ongoing process that draws extensively on feedback. This feedback might come from a variety of sources, including peers, assessors, educators, and technology. Once feedback has been received, students should respond to this feedback by addressing questions such as "What did I do well?" "What did I do poorly?" "What is the next step I will take to address the feedback?" or "What do I need to do to improve?". The growing emphasis on feedback in higher education presumes that its use leads to better educational outcomes. This feedback may occur formally, in assessment items, or informally, in everyday conversations. Feedback can be verbal or written and provided in various media, such as in-class comments, annotated rubrics, or comments on assessments,

Page | 4

peer-to-peer dialogues, and discussions via online forums. Feedback settings can differ both conceptually, where it is more micro-level or macro-level, and practically, philosophically, pedagogically, and technologically. Feedback has been used to assess students and their communication skills in the literature. Despite the prominent role of feedback in student success and ongoing research on feedback usage, little is known about students' feedback responses. Feedback interventions in higher education systems tend to be improvised rather than explicitly organized, monitored, and assessed. If students do not adjust their approaches post-feedback, and appraise feedback positively or negatively, educational justifications for assessment systems may be compromised. An understanding of undergraduate students' responses to feedback practices in legal skills assessments is critical to their effective use and potential refinement. Beyond better learning and work performance, it stands to reason that feelings of ownership and efficacy regarding self-directed approaches to feedback will foster self-confidence, resilience, and lifelong, autonomous learning. To this end, students need feedback on feedback usage and consultations about potential improvements [17, 18].

Role of Technology in Assessment

Reasons to incorporate technology into the assessment of communication skills. Of course, the technology identified above may not always enable faculty to assess the communication skills in a law student's work product. The potential advantages of technology in that regard remain real, however. Some of them are – it enables faculty to assess students' work product without the time lag that often consumes lawyers' time and effort in preparing for oral privilege challenges. Students may write with speed since the time required to grade a student's assignment is lessened due to technology's power to automate the assessment process. Faculty would be wise to explore whether technology can serve to enhance findings of a student's communication-related strengths and weaknesses before a challenge to attorney-client privilege must be made. Principal factors to consider in the use of technology to assess communication skills. Law schools should assess the technology they use to consider the effectiveness of assessing a law student's communication skills. Three principal factors are central to that analysis: 1. Clarity: Can the output of the technology omit a substantive issue that is "material" to a task's "message"? 2. Acceptance: Has the technology been accepted by the relevant community of audience and practice? Is it generally accepted either by the profession's large task-designers who can deem a task valid or by the community to which a message is addressed? 3. Validity: Is the technology's output "ever likely to bear a significantly discriminatory meaning" on a relevant substantive issue? Based on these factors, an evaluation of possible technologies may lead law schools to identify software programs, algorithms, processes, and techniques that may best facilitate the teaching of discrete practical skills in legal technology courses or a special topics course in computer-forensics and technology-based evidence in law and law-related fields [19, 20].

Future Trends in Legal Education

As communicated above, liberal glocalization attempts to be a theory of how the world religion functions and not a prescriptive theory as to how it ought to work, let alone how to transform it. While lamenting aspects of injustice and threatening violence can be part of a cultural discourse, there are also humanitarian, developmental, and legal discourses on the same topics. Intra-civilizational criticisms may then be heard. Why doesn't peer in any one civilization take a deeper interest in redressing the harms within their societal frameworks? Why have crusades against poverty in African nations arisen only from outside, with the result of mostly buying off the leadership class? Are African societies, or for that matter, the societies of indigenous peoples, or any other 3rd-tier "postcolonial" societies capable of being anything other than the lapdogs of the aristocracy of choice in the Anglophone nations? Would not the linguistic and cultural bridges forged amongst the sparsely educated poor be far harder to traverse? The stigmatized may not riot within the confines of the urban palaces of the elite (and have no infrastructure to do so even if they wished to), but prefer to bask outside in the fresh breezes of the suburbs. Whether perceptions of colonialism conform with views about the legitimacy of non-communicative violence when directed at the wealthy and privileged to transform their modes of existence, how and from where divine resources might arise to legitimize the enterprise and how the possible outcomes compare with the potentialities of reigning amidst their abundance for selfhood and conscience rather than as hunted beasts, are questions that will draw on all that is known through the thousands of years of reflections. But the paradigm of being as a social construct free from the constraints imposed by a deliberately intervening divine casting and contestation of that shaping sameness will certainly not inform them. While blessedness and its public-domain enactments cannot be fathomed in awareness as all of those enacting them understand legitimacy, the social construct vis-a-vis the transportation of the good news of the inclusive reign of a personal deity will always be foreseen for what it is; apartheid in something other than race [21, 22].

CONCLUSION

In a profession where words shape rights, arguments, and lives, communication is not an ancillary skill—it is the medium of the legal craft. Yet, legal education often treats communication as an implicit outcome rather than a core competency to be explicitly taught and rigorously assessed. This paper reveals that the traditional focus on verbal expression and doctrinal knowledge neglects the nuanced, performative, and interpersonal aspects of legal communication. Standardized tools and assessment rubrics—when used in isolation—fail to capture the full range of communicative proficiency needed in the legal field. Integrating observation, technology, peer interaction, and iterative feedback into legal pedagogy provides a more holistic approach. The path forward must embrace interdisciplinarity, transparency in skill benchmarks, and investment in educator training. Only then can law schools fulfill their mission of cultivating practitioners equipped not just with knowledge of the law, but with the communicative dexterity to practice it ethically and effectively.

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