

Communication Tactics in Legal Contexts: Historical Case Studies

Kagaba Amina G.

Faculty of Business, Kampala International University, Uganda

ABSTRACT

Legal communication, often dominated by complex legalese, has historically played a pivotal role in shaping the outcomes of high-profile cases and broader societal understandings of justice. This paper explores the evolution and effectiveness of communication tactics used within legal contexts, with particular attention to how these tactics function cognitively for lay audiences such as jurors. Drawing on interdisciplinary insights from cognitive science, psychology, and linguistics, the paper examines how verbal and nonverbal communication can either facilitate or hinder legal comprehension. Through historical case studies including the trials of John Brown, Susan B. Anthony, the Scopes Trial, Nuremberg, Brown v. Board of Education, the O.J. Simpson trial, and the trial of Socrates this study investigates how rhetorical strategies, visual communication, courtroom theatrics, and media influence have shaped public and judicial perception. The paper further considers the modern implications of these tactics in the digital age, with particular emphasis on coercive versus non-coercive methods of persuasion and the enduring relevance of rhetorical frameworks in the construction of legal arguments. Ultimately, it advocates for a more cognitively attuned approach to legal communication, fostering greater transparency, inclusivity, and justice.

Keywords: Legal Communication, Rhetoric in Law, Cognitive Comprehension, Courtroom Persuasion, Historical Trials, Visual Rhetoric, Legal Laypersons, Media and Law, Forensic Rhetoric.

INTRODUCTION

Legal communication is largely taken for granted. Lawyers and judges speak and write legalese, which requires years of study to master. Little thought is given to how this language is received and processed by those who hear and read it. This Article will focus on a single aspect of legal communication, namely, how the law can communicate in a manner that is clearer and easier for jurors and other legal laypersons to understand and use in making judgments. As a starting point, the primary form of legal communication spoken before jurors will be examined. Be warned: verbal communication is incredibly complex and multi-layered. The recent rebirth of cognitive science provides a broad framework for understanding how communication is received, processed, and ultimately acted on. Neuroscience, psychology, linguistics, and computer science are combining in novel ways to address the foundations of human cognition. Inferred intelligence differences in pivotal life situations, such as courtrooms, are deeply consequential, yet poorly understood. As part of this effort, this Article examines the cognitive-communication problems that arise in legal communication and offers cognitive-communication interventions to improve communication quality and patterns of legal-layperson alignment. Universally, spoken utterances give rise to a chain of cognitive tasks that must be performed if the utterance is to be understood: receiving the auditory signal, segmenting it into smaller elements, identifying those elements as words, accessing the meaning of each word, filling in missing links about what is intended, and finally assimilating the collective content such that it becomes part of an active model of the world. These tasks need to be performed in a task-completion order. Cognitive compromises occurring anywhere along this chain can disrupt intelligent comprehension of what is said. This Article will demonstrate how a wide variety of factors associated with communicating with legal laypersons affects the efficiency by which spoken legalese is received, understood, and used by jurors. The model described above demonstrates how these factors present cognitive-communication problems of varying depth and fluidity. It was found that

numerous intervening steps can be identified that may alleviate the depth of the burden and improve the chance of more efficient communication [1, 2].

The Importance of Communication in Legal Settings

Legal situations are unique and require particular techniques or tactics on the part of the participants in order to be successful. These special techniques or tactics in communication can be used successfully in order to influence and/or sway the opinions of the participants involved in the legal situation. Successful tactics enable a particular perspective or action to prevail over the other side. Each party has its own unique view upon which the presentations of the situation should be based. The parties may be individuals involved in the case or organizations desiring a certain outcome. Each side will have an attorney, or attorneys, involved in order to formulate a particular viewpoint. It is important that these views be presented properly and accurately in order to be successful. The success or failure of a case often rests solely upon how the material is presented. The ability to communicate effectively is the most important skill of the participants, especially the legal representatives or attorneys. However, communication involves much more than the spoken words. Nonverbal communication plays a tremendous role in how an idea is conveyed and how it is received. An understanding of nonverbal communication and its many intricacies enables an attorney to communicate more clearly and effectively with jurors, clients, judges, witnesses, and everyone else involved in legal proceedings. All participants in any legal situation are members of the legal system and are thus bound by the legal system. Public court proceedings must be conducted in a manner that is fair to all participants in the legal system. This does not, however, mean that the proceedings must be fair. A party's success in a legal situation is not determined by a parade of horrors. Rather, success is determined by how effectively perspectives are expressed and how difficult it is to counter an expressed perspective. As a general rule, the more difficult it is to counter a perspective or viewpoint of the situation, the more success a party will see in a legal situation [3, 4].

Historical Overview of Legal Communication Tactics

This awareness of the persuasive possibilities of visual design extends to legal communication. Legal scholarship already addresses visual rhetoric and the use of graphics in the courtroom. There are also works on how the courtroom itself can be designed to take advantage of the persuasive power of space, as well as pieces on legal education and the impact of the classroom on the learning process. What seems to be missing is a historical component. This paper looks at two historical examples of the use of visual design at pivotal moments in the legal process: the courtroom sketch as a method of eyewitness testimony in the trial of John Brown and legal arguments presented in images in the trial of Susan B. Anthony. The intent is not to make a comprehensive survey but to draw attention to these episodes and suggest the ways that investigating the past is consistent with the aim of evaluating the present. Throughout U.S. history, visual rhetoric and design have been used in conjunction with the legal system to advocate for change. About a decade before the Civil War, John Brown's raid on Harper's Ferry and the subsequent trial loomed large on the American consciousness. The event revealed and intensified divisions over slavery in the United States. A wealthy abolitionist who thought armed insurrection to be the only way to end slavery in the United States, Brown's raid was a desperate act of revolution whose support from the black community was disappointing. Following the raid, which involved a failed attempt to commandeer the U.S. armory and distribute weapons and ammunition to slave rebels, Brown was captured by federal soldiers. Arriving in quick succession, state and federal authorities planned a series of trials to confront the terrorists and prevent their martyrdom through the capture and trial of Governor Wise. However, public sentiment and support for Brown's trial made it expedient to act quickly. On the morning of Brown's trial, public desire for knowledge about the events at Harper's Ferry was satisfied in part by an extensive gallery of sketches executed by several artists present at the trial. Pencil and ink sketches appeared in daily publications from the first day of the trial and continued roll by roll and page by page. These media representations were a primitive multi-panel comic literally rendering the events of the trial as well as the characters in attendance. Cumulatively, these sketches reveal and amplify the narrative strategies operative within both the courtroom and the trial [5, 6].

Case Study: The Scopes Trial

The Scopes Trial of July 1925, known as "The Monkey Trial," took place in Dayton, Tennessee, and remains a pivotal legal case in U.S. history, influencing future trial rhetoric. John T. Scopes was charged with teaching evolution in a high school, a crime that gained substantial public attention. Following his arrest, citizens held a meeting on March 2 to strategize a defense. They enlisted Clarence Darrow, a prominent attorney from Chicago known for his anti-religious stance, who accepted the case but sought a six-week postponement, rescheduling the trial to July 10, 1925. Darrow's involvement escalated the case

to an international scale. Local businessman George W. Rappelyea played a crucial role in rallying support and generating publicity to stimulate the town's economy. The appeal was to challenge the Butler Act, which aimed to restrict educational resources and careers related to evolution. School board member Dr. Walter M. Smith recognized the growing anti-evolutionist movement, prompting a gathering of lawyers. Publicity surrounding the trial eclipsed its legal aspects, turning it into a spectacle that threatened the town's educational integrity. Scopes became a scapegoat for a larger conflict between science and religion, reluctantly stepping into a prescribed role while following directives. His preparations showcased an awkward dependency on superficial support. The focus of the trial evolved into a dramatic confrontation of ideologies, with the true orchestrator of pro-evolutionists strategizing for maximum impact, exploiting every available avenue, including media, to emphasize their agenda ahead of the trial date [7, 8].

Case Study: The Nuremberg Trials

The Nuremberg Trials aimed to uncover Nazi war crimes post-World War II and became a pioneering legal event. After Nazi Germany's defeat, an Allied military tribunal conducted the trials for key Nazi leaders. Nuremberg, significant as the site of Nazi governance, hosted what was termed the "Trial of the Century," lasting nearly a year amid worldwide anticipation. The trials showcased the justice system through a complex interplay of charges, defenses, and verdicts, although they ultimately fell short of delivering true justice or truth. The trials revealed unseemly behaviors from both prosecution and defense, often resembling tumultuous domestic court disputes rather than pure justice. Lawyers' tactics to manipulate courtroom theatrics distorted the historical narrative and left unresolved questions. Despite the trials' intent to expose the atrocities of a tyrannical regime and enforce international law, the legacies of war, including destruction, death, and a fractured social psyche, were evident. While Nazi leaders were granted a platform, the trials served broader interests in promoting the democratic ideals of the U.S. on a global scale. They represented the first legal pursuit of crimes against humanity under a new legal framework, with innovative arguments from prosecutors and challenges from defendants. Ultimately, the trials symbolized a worldwide effort to establish a consensus on human rights and the universal necessity for justice [9, 10].

Case Study: Brown V. Board of Education

For their Pointers report, the authors examined Brown v. Board of Education, the Supreme Court's 1954 ruling that invalidated segregated public education and propelled the civil rights movement. Key perspectives included the historical context, legal issues addressed by the Court, the desegregation implementation process, and educational methods to convey Brown's legacy to youth. Brown significantly impacted constitutional law over the following fifty years, reshaping legal thought. It became a benchmark for judges, lawyers, and scholars to evaluate the law's role in social change. The case raises important questions about constitutional interpretation, the influence of judicial decisions, and the effectiveness of law in addressing social injustices. It also prompts discussions on judicial accountability, the transparency of legal processes, and inclusion in the legal system. Various methods, including interviews and educational role play, can be utilized to foster understanding of the law's strengths and limitations. Students may explore themes of legal responsiveness to marginalized groups and critically assess the pursuit of social goals through law. A reading list might include works that analyze the case's outcomes and public perception, highlighting its significance for the NAACP and its resultant impact on civil rights advocacy. Brown garnered passionate support but also led to later disillusionment as its complexities became clearer [11, 12].

Case Study: The O.J. Simpson Trial

The O.J. Simpson trial has largely been regarded as having too many attorneys who did not retain sufficient control of the case. Certain rights, such as the right to a speedy trial and an impartial jury, were manipulated to the extreme as the trial was broadcast 24 hours a day. All of the experts involved in the case were arguably subpar to some of what the prosecution had in this case. In all, it goes to show that all the talent and money in the world could mean nothing if not properly controlled. Robert Shapiro began his career in New York as a litigation attorney before moving to California, where he represents high-profile clients. His specialty was in civil defense and settlement, but he was easily outgunned and could not defend against such liability as a murder charge. Twenty years into his illustrious career, he took on what would become his most high-profile case. To try a murder case was another animal entirely, especially one that had the national media coverage, a lot of things meant to promote a defense can backfire with so many eyes on the case. The trial of the century is a phrase that has been thrown about since its inception. The murder of Nicole Brown Simpson and Ronald Goldman on June 12 was horrible.

The events that would follow can only be described as tragicomedy. The events following the murders of Nicole Brown Simpson and Ronald Goldman on June 12 are nothing short of a tragedy. In what appears to be a clear open-and-shut case with fingerprints and DNA linking him to the crime scene and the victims to O.J., it seems as though the prosecution of the 25-year-old star would be a question of how long he would spend in prison. In retrospect, no one could have imagined that this case would become the most televised event since the moon landing, or have the most national coverage since Gulf War II [13, 14].

Case Study: The Trial of Socrates

Few stories have been told and retold more than that of Socrates and the trial in which he was condemned to death in 399 B.C.E. There is still little agreement, after two millennia, on what Socrates said or didn't say. Certainly, it is impossible to verify the precise occurrences that day. However, a careful reading of the three most significant accounts Plato's *Apology*, Xenophon's *Apology*, and Aristophanes' *Clouds*—and a comparison of their accounts to what would be most relevant today, may allow us to cast some light on the unbridled rhetorical genius Socrates is purported to have demonstrated in his defense. For Socrates himself has become an integral part of the sociology of politics, religion, ethics, and education. Thousands of books, articles, and theses have been written about him. It has been said he was contentious, contrary, cynical, daemonic, ironical, perverse, quizzical, resilient, and pious. Still, the accurate identification of very detailed positions on each of several Socratic doctrines is more than can be coherent within this study. The *Apology* is a complex and remarkable, fascinating and obscure text. It presents several puzzles and paradoxes that cry out for resolution. What is the relationship between Plato's Socrates and the historical Socrates? Was the historian Xenophon present at the trial? Was he a pupil of Socrates? What was his intent or purpose in writing the *Apology*? The *Apology* so fully discusses the manner of Socrates' defense that few commentaries have ventured very far afield into discussion of the significance of the personal apology for Socrates. The thrust of such discussion is usually philosophical, plot summary, or thematic in nature. A few such commentaries and retrospectives will be examined, along with consideration of biographical, stylistic, performative, and institutional aspects of the text [15, 16].

Modern Implications of Historical Communication Tactics

The implications of coercive and non-coercive communication tactics are currently significant. Coercive techniques aim to mislead audiences, making them believe false interpretations. These tactics can often be altered to convey truth, unlike non-coercive methods, which refine communication to meet audience expectations. Both tactics have positive and negative consequences if misused. The key concern is how these techniques can influence the audience's reasoning. Historical cases of these tactics remain relevant today. Modern communication methods, particularly social media, exploit traditional techniques for political persuasion. Coercive methods can be reshaped into non-coercive forms that enhance understanding rather than deception. Social media can manipulate messages exponentially, but if analyzed properly, it might empower the public positively and set legal communication boundaries. Criminal and political entities utilize sophisticated techniques to extract information, but there remains the potential for defection against such controls. Even advanced psychological manipulation can backfire on its users, as observed in recent global events. Social media serves as both a platform for expression and a tool for those tied to criminal-political agendas, often distorting logic. The nature of language allows for coercive statements to be rephrased into new insights, raising questions of legal constraints. Additionally, cyber-wars and hacking have become commonplace in contemporary political discourse [17, 18].

The Role of Rhetoric in Legal Arguments

In Pliny's *Letters*, a critique of rhetoric highlights its flaws in reasoning, suggesting that poor use can lead to losing arguments. The effective deployment of forensic rhetoric enhances persuasion but also reveals its complex role in legal argumentation today. This analysis explores how rhetorical appeals can undermine legal arguments through three case studies: the use of simplistic humor, a focus on technical soundness over argument merits, and delaying counterarguments until rebuttal. While these tactics may seem flawed, they can still serve as effective persuasive devices. Concentrating on argument lines often neglects significant counterarguments related to ethos and pathos. Despite criticisms of non-forensic rhetorical appeals, their presence in legal reasoning is notable, filled with assertions about common experiences and tropes about everyday situations. These arguments often face skepticism for their epistemological weaknesses, with many judges dismissing them. Nonetheless, it is essential to analyze these rhetorical trademarks through a biological lens, as legal theorists and the field's founders have shown how these devices can be effectively challenged [19, 20].

Ethical Considerations in Legal Communication

Scholarly work on communication tactics in legal contexts has largely focused on legal document analysis and public records of past negotiations and lawyers' statements. Although historic court cases in civic and criminal law demonstrate traditional legal-oriented communication, a systematic integration within social and communication studies remains underexplored. To address this gap, three special issues of "Language in Society" on Legal Communication, published in 2013, 2017, and 2023, compiled innovative research highlighting communication practices in legal contexts. These contributions reviewed previous studies and provided new perspectives on core issues such as power, ideologies, and social identities across various institutional settings. Additionally, unexplored historical materials were examined to incorporate diversity into the study of legal communication over time. Recent socio-legal studies increasingly acknowledge the context-sensitive nature of law and legal authority, prompting exploration of how law and language interact within specific socio-cultural, historical, political, and ideological frameworks. Despite this, empirical analysis of past societies' legal communication remains scarce. There exists a need for historical frameworks that deepen understanding of law and language performances throughout history. Historical case studies focused on the communication of law, legal processes, and rights across time can significantly enhance this scholarly conversation [21, 22].

Cultural Influences on Legal Communication

Culture serves as the common theme in this issue, reflecting a growing interest in the interplay between language and culture over recent decades. Language is now understood as encompassing various semiotic structures beyond mere grammar and semantics. Analyzing texts necessitates diverse methods: linguistics, semiotics, social dynamics, history, critical analysis, and cultural context. Languages function within distinct social networks for varying purposes related to human activities. Law influences all human conduct and aims to protect individual rights. The cultural context of law and legal language is evident in studies linking law with politics, society, and economics. Legal language is shaped by cultural influences, which can lead to misunderstandings in translation. Moreover, differing legal cultures impact perspectives on legal interpretation, lawmaking, and reform, resulting in various interpretative schools. Educational and cultural backgrounds are crucial in shaping attitudes toward law, with the term "legal culture" encompassing various meanings, including the culture of law and its manifestations. However, a stricter view confines legal culture to formal education and knowledge of the law, limiting its exploration to pedagogy. In contrast, a broader interpretation includes popular culture elements like media and literature within the realm of legal culture [23, 24].

Technological Advances in Legal Communication

While many legal communication tactics remain constant, one factor influencing these tactics is emerging technology like artificial intelligence (AI), social media, and online databases. Technological advances are often viewed as a boon to business and marketing and can enhance the effectiveness of legal communication. However, the use of technology can present many difficulties for both presenters and attorneys. New technologies can be intimidating and inefficient without adequate training and preparation. Therefore, recognizing how much communication has changed over the last few years is crucial. One subject about technological advances that is growing in importance is making technology appear seamless and effortless. Successful legal communication often relies on a presenter's understanding of the topic and delivery style as well as their ability to create an expected flow. The same holds for technology, particularly when it is the basis of the presentation. Elements that stand out too much divert focus and detract from the message being delivered. On the other hand, well-executed elements that flow seamlessly contribute positively to the impression being conveyed. There exist forms of technology that facilitate presentations more than they detract. These sophisticated tools enhance a presentation by remaining unobtrusive and thereafter blending into the background. The challenge for lawyers is to know the necessary legal communication tactics to utilize and, more importantly, operate them precisely so they are seamless. Stand-alone computers, laptops, computer networks, and even smart boards all have the power to enhance legal communication tactics. When the viewing screen of a presentation is controlled by the presenter's computer, it can serve as a delicate, subtle tool that provides significant enhancement while rarely appearing to be a distraction. However, with this power comes responsibility. The negative alternative is a presentation where technology runs amok due to a lack of training or attention. With such a scenario, the delivery would detract from the message and impression the attorney would want to convey [25, 26].

Communication Challenges in High-Profile Cases

Communication challenges in high-profile cases center on the credibility of expert witnesses and juror expectations regarding scientific evidence. Expert testimony places significant demands on witnesses addressing scientific matters. High-profile trials often attract extensive media coverage, influencing public perception and juror attitudes. Various critical issues emerge in this context, including the mediatisation of judicial processes, juror behavior on social media, and the impact of public opinion shaped by digital platforms. Traditionally, discussions around these topics have focused solely on legal perspectives. The effectiveness of televised courtroom coverage is frequently misinterpreted, yet the effects of shows like 'CSI' on juror perceptions of forensic evidence have received scant attention. Concerns over allowing cameras in courtrooms are tied to fears of unrealistic juror expectations influenced by such programming. Although some literature critiques expert witness credibility and scientific evidence portrayal, little has been explored regarding how jurors' receptions of expert testimony relate to media portrayals, particularly before and after exposure to 'CSI'. The 'CSI' franchise has shown to shape perceptions of forensic professionalism and can skew juror expectations regarding evidence admissibility. Therefore, understanding the communication challenges surrounding expert witnesses and their scientific evidence is vital for trial attorneys, providing insight into juror expectations and potential misconceptions [27, 28].

The Future of Legal Communication Tactics

Coherent scholarly literature examines the voice of law, analyzing the rhetorical tactics of lawyers, judges, jurors, witnesses, and clients. Discourse on juror notes highlights the need to embrace juror writing in legal processes. Key considerations include the limitations of lawyers, the sacrifices of laypeople, and the undervaluation of conventional integrity. These ideas are essential for theorists and practitioners, but also caution against overestimating existing arguments or models. Empirical studies aim to innovate writing worthiness and expand knowledge beyond specific contexts. Symbolic attention must address various compulsive demands and the doubts they create, urging practitioners to navigate sophisticated forces that undermine legitimacy. The most relevant literature critiques audience motives or deconstructs the act of writing against reading. The current relevance of trials concerns writers of this call, yet English journals should reference a modern History of the Trial while avoiding a false sense of inevitability. Narratives of linear progress from orality to codex appear in theses and textbooks alike. The antinomies of diachronic laws and synchronic canons offer a framework rather than contradiction, possibly embracing the strangeness and solidity of writing. This could lead to a theory of historical negligence within a modern community while recognizing the transient nature of disciplinary engagements amid global media [29, 30].

CONCLUSION

The study of communication tactics in legal contexts reveals the profound impact of rhetorical strategies on legal outcomes, public perception, and historical memory. From ancient Athens to 20th-century America, and into the digital age, effective legal communication has consistently relied on more than just the letter of the law; it has depended on how the law is articulated, visualized, and perceived. Whether through Socrates' philosophical oratory, Clarence Darrow's dramatic courtroom presence, or the media-saturated trial of O.J. Simpson, the interplay of language, gesture, and narrative has shaped the trajectory of justice. Historical case studies provide critical insights into how legal actors adapt communication to influence jurors and the broader public. In contemporary times, as legal discourse increasingly intersects with social media and digital manipulation, it becomes even more urgent to apply cognitive and ethical scrutiny to the ways legal information is conveyed. Recognizing and reforming legal communication for clarity, equity, and truth is essential to ensuring the continued legitimacy and fairness of judicial systems worldwide.

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