

A Multimodal Study on Lawyer's Courtroom Communication Management

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Abstract. All human experiences are sensory-based and lawyer's courtroom communication is not the exception. Traditional sensory communications will never be out of date with contemporary technological communications raising the efficiency and veracity. Communication skills from the multimodal perspective help the lawyer to promote trial comprehensive review and realize legal interests.

Introduction

Communication in the courtroom is a very obvious occurrence. Plainly, in any courtroom a great deal of communication occurs: the witnesses, clients, lawyers, jury members, and judges all communicate amongst themselves. Lawyers, in particular, are essential in the outcome of a court case. They communicate all of the facts of the case, along with their client's arguments, to the judge and/or jury that rules on the case.

Even in traditional courtroom, lawyers invariably communicate in multiple modalities: the eyes, gestures, and tones of voice merge with the perceived affordances of the surroundings into an integrated and partially shared experience. Especially in the high-developed contemporary modern courtroom, the multimodality of lawyer's communication is inevitable and playing its vital role, including different communicative modes of internet, lie detection and technology management.

Multimodality is the study of interrelationships and interdependence between different communicative modes, no matter whether they are written or oral, visual or auditory. It is a term widely discussed by linguists and semioticians in recent years in the social semiotic circles in western countries. It is also a way to transcribe the meaning of discourses composed of different semiotic modes. Despite the central importance of communication to lawyering activity, no multi models of communications have ever been studied for this legal profession. From the multimodal perspective to study lawyer's communication in courtroom will enrich legal languages and promote trial comprehensive review.

Lawyer's Traditional Sensory Communication Management

Because the lawyer's communication is so crucial to the outcome of a case, the topic at hand is how the lawyer's verbal and nonverbal communication can change the outcome of a trial. The physical world has a vast number of quantities which can be detected by human beings by their sensory system (1968). Human beings experience the world through the channels of their five senses: sight, sound, touch, taste and smell (1962). In the legal process of traditional courtroom, lawyers should be able to use the multi models of communications.

Lawyer's auditory communication

Listening to another person's speech can provide the lawyer with very detailed information about the speakers' ideas. Usually communication is partially conscious, and partially unconscious. The content is usually conscious but the process is largely unconscious. While listening, the lawyer can detect speakers' experience or thinking process which are represented consciously. This will be very helpful for lawyers to get effective information and come to correct judgment, as follows:

Lawyer: I hear it sounds true to me.

Lawyer: From his words , I can come to a conclusion that is unbelievable.

The first rule of listening is to be present. That means the lawyer is actually there with the other person, not mentally going over his to-do list while they're talking. When the lawyer is really listening, he imagines what it might be like to live in their world. Each of us has our own preconceived notions and judgments. We listen through filters and we often resort to a certain style of listening. The more the lawyer takes responsibility to become aware of his own filters and styles, the better able he is to put these filters and patterns aside and truly listen to others. Sometimes what is not said is much more important than what is said. Is the other person upset? Angry? Hurt? What is the emotion behind the words? Is she ashamed to tell you something? What details is she leaving out? Is he embarrassed to tell part of the story? Does the other person feel betrayed? What is the commitment behind the betrayal? Has some standard been violated? A lawyer should listen to what they say and what they don't say. A lawyer should also create the environment for listening. In the office, it is often a good idea to meet clients in a conference room or other neutral place where the distractions on your desk do not claim your attention. Close the door, turn off phones, sit quietly and put all your attention on the client. Make sure others know that you are not to be interrupted except in case of a real emergency. Of course, not all listening is done in the office. There are many ways to create safe and calm environments for creating the focus for listening. When talking on the phone, it may be useful to try closing your eyes and concentrating on listening (rather than playing a computer game). In a public place, it may be useful to step aside, look directly into the person's eyes; if appropriate you may even touch him or her on the arm to make connection.

Lawyer's oral communication

All human experiences are sensory-based. No matter how abstract and intangible a word may appear to be, its meaning always relates back to information acquired through the senses. Lawyer's communication must be based on human being's basic senses, especially oral communication.

Therapists have a technique called active listening that is very helpful. In active listening, a lawyer repeats back what the other person said. This can feel awkward at first but it is an amazing tool. As he repeats it back, the other person knows he has heard the communication and is empowered to move on to the next concept. So a lawyer should be clear about the content of what he has heard. Often, clients come to lawyers when they are very angry. They may also feel embarrassed, betrayed, helpless, upset, sad, etc. Reflecting back the emotion the lawyer hears expressed by the other person has multiple purposes. First: it helps the lawyer to clarify what emotions are attached to the other person's story. Second, knowing the emotions are there can help identify what the other person really wants in crafting a solution. Third, because the other person is acknowledged, she/he is better able to feel your compassion and to know you understand. But very often, lawyers will jump right to the legal issues. Their clients may be upset because they can't differentiate between legal, financial or emotional issues. For some people, the issues are all meshed together. The lawyer can acknowledge the frustration, and then help the client sort out the issues into these categories.

Lawyer's kinesthetic communication

Few professions are engaged so constantly in communication as a lawyer. In oral communication, the effectiveness of these functions is often dependent on the lawyer's ability to establish a rapport with the other person. In fact, the informational and rapport functions of communication are often considered to be inseparable. The better a lawyer is at these skills, the better the reputation the lawyer is likely to achieve. Therefore, lawyers will also express their feelings in communication, as follows:

Lawyer: His attitude is overpowering. I can feel that. Although it is hard to start up, the information strikes me as deserving my solid effort. I feel I can handle it now.

From "overpowering" we can see how strong his will is. From "hard", "strike" and "solid" we can see how surprising it is to the lawyer. All the kinesthetic words will help the lawyer to achieve his goal of communication.

A large part of a lawyer's daily activity consists of conversations with clients, witnesses, judges

and other lawyers. Lawyers must gather and convey much information orally and the traditional sensory communications are helpful for them.

Lawyer's Contemporary Technological Communication Management

Everything has been changed with the quick development of high technology, especially for lawyers who depend on abundant data, immediate negotiation, quick reaction and reliable evidences. So in the modern society lawyer's contemporary technological communications are sure to be indispensable.

Internet in Lawyer's Communication

An Internet lawyer is an attorney who provides legal advice and assistance to individuals who need help with legal matters. Internet has become the most important medium for lawyers to communicate. This may include a wide range of legal issues related to the Internet, ranging from matters involving intellectual property on the Internet to criminal issues like cyber stalking. A good internet attorney not only understands the law as it applies to cyber-law and the web community as a whole, they also understand technology and the backend systems used to drive it. Most internet lawyers bring strong technological work experience to the table.

Online legal question sites have different methods of operation, but typically allow users to post questions that lawyers can answer. In some cases, the answers are provided for free by lawyers who can include their name and contact information in their public answer. This type of online lawyer service provides lawyers with an opportunity to market themselves online and to supply individuals in need of advice with legal guidance. Other online legal services require users to pay for answers that are then provided by lawyers with whom the service has a contract. The lawyers can make money from answering these questions, and in return the users may get more comprehensive legal advice than they would get from a free site.

For another reason, many people do not have a family or personal attorney to whom they can turn with legal questions. Some companies now offer online legal services through which lay people can ask questions and receive answers from credentialed lawyers. In many cases, these websites are operated by companies that contract with attorneys to answer the questions. So online lawyer communication involves a hybrid of online document preparation and actual, live legal representation and direct answers to questions. Some lawyers offer an online service whereby a client can complete the necessary legal forms for an uncomplicated case, such as an uncontested divorce. The forms may then be forwarded to a sponsoring lawyer who reviews them and then meets the client at the courthouse so that the client does not have to represent himself in front of a judge. This system can save the client money by reducing the amount of time the lawyer has to spend on counseling the client and preparing his case.

Lie Detection in Lawyer's Communication

The U.S. judicial system places great weight in the belief that juries are effective and reliable in determining the credibility of the witness. Yet, behavioral and social research has shown that humans are good at lying and quite poor at lie detection (Vrij, 2008). Progress in the use of functional magnetic resonance imaging (fMRI) of the brain to differentiate lying from truth-telling has created an expectation of a breakthrough in the search for objective methods of lie detection. Now lies can be detected scientifically and lie detection is also one important part of lawyer's communication.

In the courtroom everything is based on facts while the past is irreversible. When the parties cannot agree to each other, the lawyer will ask a lot of questions to test if they are lying. For example,

Sample I:

Lawyer, "So even when the store had been closed for three hours last night, you were still stealing the goods in the shop, right?"

Defendant, "Well, I... I can't remember, at that time it was late."

Lawyer, "What you said indicates that the theft of the night did exist. "

Defendant, "But...,but.... "

Sample II:

Lawyer, "How much can you get each month?"

Defendant, " I have no fixed job, 300-500\$ for each month. "

Lawyer, "How much can you save in the bank?"

Defendant , "It's very hard for me to make a living. No extra money for bank. "

Lawyer, "So you have no passbook. Why did you say you withdrew cash from your passbook for Mr. Johnson? "

Defendant , "Uh..... "

These two lawyers above used many questions in communication and made the nervous defendant inconsistent in answers. We believe that, at the present stage of development, both technical lie detect and lawyer's questions are important communications in courtroom for evidences.

Courtroom Technology Management in Lawyer's Communication

Communication constitutes a major factor in the courtroom. Its far-reaching effects can influence everyone in the courtroom in a variety of ways, including the judge, the jurors, and the lawyers. Communication can also alter the outcome of a case based upon both the manner in which it is presented and whether or not the attorneys have properly executed the guidelines of lawyer-client confidentiality. Along with fast economic development and the continuous development of science and technological, the electronic computer is infiltrating slowly to all aspects of the social production and the life including courtroom.

All CTMS (Courtroom Technology Management System) courtrooms include multiple flat-screen displays allowing the judge, jury and gallery to view unobstructed presentations of evidence with the ability to pause, enhance, annotate and print. The courtrooms contain touch-screen panels for the judge, clerk and users (i.e., attorneys) to manage multiple microphones and video displays located at the judges' bench, clerks' station, court recorder station, attorney tables and podium, jury box and spectator gallery. Advisements and arraignments are conducted on a daily basis, both locally and remotely, from any of the high-tech courtrooms saving significant staff and travel time. The evidence presentation system provides for various electronic evidence sources including CD/DVD/VCR, document camera, enhanced x-ray, computer video and multi-audio interface with annotation and printing capabilities.

ISA is a French acronym for "Interface de salle d'audience". ISA will allow digital networking of all the actors in a trial, especially the judge, the lawyers and the parties. In practical terms, each actor will be able to access, through a digital tablet or an intelligent phone connected to Internet, to a personalized interface allowing himself or herself, at the appropriate moment, to control the relevant courtroom functions. For example, a lawyer will be able, during the questioning of a witness, to directly display any digital documentation onto the courtroom screens and underline the most relevant elements through real-time annotations. In turn, the witness will be able to access the digital documentation on its tablet and to review it at its pace, in addition to being able to annotate it. Access to the mobile interface will be granted and removed by the clerk of the court at the appropriate moment, as directed by the judge.

Conclusion

Effective management of communication skills requires a lawyer's attention to the process as well as the content of communication. To study the interrelationships and interdependence between different communicative modes, multimodality has been applied for both the traditional sensory and contemporary technological communications in the courtroom need lawyers' outstanding communication skills. We must however recognize, in an operational angle, that ISA's large-scale implementation would require the existence of three conditions. First of all, an equipment allowing information sharing between technological tools should be available in the relevant courtrooms.

Subsequently, clerk of the courts in the said courtrooms should receive an accelerated training regarding ISA's operation, use and management. Finally, an information package should be made available to judges, lawyers and parties who may use the ISA-equipped courtrooms.

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References

- [1] Allen. (1964). *The Dynamics of Interpersonal Communication and the Law*. Washburn L. J.
- [2] Chen Jianmin. (2011). *A Pragmatic Research on Courtroom Discourse Adaptation*. Shandong Social Sciences. Shandong Academy of Social Science Community.
- [3] J. Gibson. (1968). *The Senses Considered as Perceptual Systems*. Greenwood Press.
- [4] L.&M. Mile. (1962). *The Senses of Animals and Men*. Atheneum.
- [5] Mason. *Triadic Exchanges: Studies in Dialogue Interpreting*. St Jerome Publishing.
- [6] Sapir, E. (1921). *Language: An Introduction to the Study of Speech*. Harcourt, Brace&Co.
- [7] Vrij, A. (2008). *Detecting lies and deceit: Pitfalls and opportunities* (2nd ed.). Chichester.
- [8] Wadensjö, C. (2001) *The interpreter's position in therapeutic encounters*. Jerome Publishing.