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COMMUNICATION IN THE EDUCATION OF LEGAL ADVOCATES

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At the 1975 SCA Convention, the writer presented a paper titled "Communication Emphasis in the Education of Legal Advocates." It began with a quotation from Earl Johnson, then Professor of Law at the University of Southern California:

Broadly conceived, the law is an exercise in communication; and the lawyer, more than anything else, is a communicator. Yet there has been virtually no research concerning special communication problems in the legal process and no educational effort to make the lawyer an effective communicator. Law schools have concentrated almost exclusively on teaching legal theory and, at the better institutions, the underlying socio-economic rationale for that theory. Schools of speech, on the other hand, have tended to focus their attention on educating students about policy issues in generalized situations. Schools of communication and schools of law could profitably collaborate in the endeavor to develop the specialized communication skills required by the lawyer in certain typical very specific situations.¹

In 1975, the thrust of Professor Johnson's statement seemed accurate; certainly others in his field and in ours had engaged in similar critiques. A study reported in that year surveyed American law schools to assess their contribution toward producing lawyers conversant with communication theory and capable of effective advocacy. The study consisted of a mail survey of 109 of the then 149 accredited law schools, a study of law school course bulletins, and interviews with law school faculty and former students. Survey data

provided broad support for the hypothesis that most law schools paid minimal attention to the development of legal-related communication theory and skills. (See Table 1.) Four specific conclusions were drawn:

- (1) Practice court or moot court experience represented the primary communication training for most students of law, and many of these experiences were learning-by-doing without organized instruction.
- (2) Basic literature from speech communication, both theoretical and experimental, appeared unknown to or was ignored by most law school instructors.
- (3) The academic background of the professors responsible for what would appear to be communication-oriented courses often did not include significant communication training.
- (4) A very small number of speech communication professionals were directly involved in assisting law schools to prepare lawyers as communicators.

In the years since that study, many changes were likely to have occurred. A second study in 1984 replicated the basic features of the earlier research. Questionnaires were sent to the 168 accredited law schools and, after three mailings, a gratifying 138 responses were received. Follow-up interviews were conducted with twenty-two law school deans or, in a few cases, with faculty members assigned by the deans. The writer conducted seventeen of these interviews, and five speech com-

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¹ Campus memo to Professor James McBeth, University of Southern California, October 28, 1971.

munication colleagues assisted with interviews in their areas.² In general, a comparison between the 1975 and 1984 studies bears out the hypothesis that significant changes have occurred in law school attitudes toward communication and in greater emphasis upon communication in course content.

One important new question in the 1984 survey asked law school responders to indicate whether during the past few years their emphasis on communication theory and skills was "increasing," "decreasing," or "about the same." Eighty-three percent said emphasis had increased, seventeen percent reported no change, and no responder reported a decrease. (See Table 2 for specific data.)

Although trial practice and moot court, frequently as part-credit courses, are still taken more often than any other courses with direct communication application, a number of new course offerings have appeared. Seventy-seven percent of responding schools now teach a course stressing jury advocacy, compared to a previous fifty-three percent; fifty-one percent have courses in appellate advocacy, compared to the previous twenty-five percent; and seventy-five percent offer courses treating problems and skills in interviewing, counseling, and negotiating, contrasting with fifty-four percent in 1975. Follow-up interviews confirmed significant growth of communication-oriented courses, particularly in trial advocacy and in counseling and negotiation. Interviews also suggested that trial practice and moot court participation are

being preceded by and accompanied by more organized instruction.

Changes are observable, too, in the communication background of the faculty members teaching communication-oriented courses. The number of teachers with "substantial communication background" has increased significantly from fourteen percent to forty-six percent; team teaching between regular law faculty and communication adjuncts has grown from two percent (two schools) to five percent (seven schools); three communication specialists now teach courses alone where none was reported doing so in the earlier study.

In regard to communication literature, especially in areas like argumentation, persuasion, and jury analysis, improvement has been unimpressive. Those respondents who indicate that their students are exposed to all or parts of an argumentation textbook increased only from twelve to eighteen percent; those exposed to all or portions of a persuasion text from ten to fifteen percent; those exposed to empirical studies of jury behavior, whether in legal or communication journals, from twenty to twenty-four percent; the use of "practical volumes of advice and folklore from successful attorneys" remained virtually unchanged. Unfortunately, neither survey included a question about special course books prepared by law school instructors, and a number of those are in use. Some of these volumes do treat argumentation and persuasion topics without quoting from argumentation or persuasion textbooks. Whether such treatment was included in responses to other questions is uncertain.

The final two sections sought information about attitudes toward communication instruction and communication teachers. Responders were asked to check their choice among three options: "one or more courses treating systematically the study of communication and persuasion is desirable in the law school curriculum";

² The author conducted interviews at the following institutions: UCLA, George Mason, George Washington, Hamline, Lewis and Clark, Loyola, Minnesota, Oklahoma, Oklahoma City, Oregon, Pepperdine, USC, Southwestern, Whittier, Willamette, and William Mitchell. Other persons conducted interviews as follows: Ronald Matlon, Arizona; Jerry Crawford, Drake; Don Boileau, Howard; Ann Burnett, Utah; Michael Hazen, Wake Forest; and Wayne Callaway, Wyoming. The author extends thanks to those colleagues.

TABLE 1
SUMMARY OF LEGAL CURRICULUM SURVEY RESPONSES—1975
(TOTAL SAMPLE: 109 SCHOOLS)

	Responses	%
A. <i>Moot Court Participation Programs</i>		
1. Offered as a full-credit course	78	72
2. Available to first-year students	97	89
3. Required for first-year students	75	69
4. Available to second and third-year students	89	82
5. Required of second and third-year students	25	23
6. Include organized and systematic instruction in courtroom persuasion	45	41
B. <i>Other Communication-Oriented Courses</i>		
1. Offer one or more courses (exclusive of moot court) which treat primarily or exclusively persuasive communication to juries	58	53
2. Offer one or more such courses treating appellate oral advocacy	27	25
3. Offer one or more courses treating communication problems and techniques in interviewing and counseling	59	54
4. Rely primarily on oral practice to teach communication and persuasion theory and skills	34	31
C. <i>Principal Titles of Communication-Oriented Courses</i>		
1. Trial Advocacy or Trial Practice	49	45
2. The Lawyering Process	25	23
3. Courtroom Persuasion	22	20
D. <i>Instructors of Communication-Oriented Courses</i>		
1. Regular law school faculty without special academic training in communication, argumentation or persuasion	89	82
2. Regular law school faculty with extensive academic communication background	15	14
3. Faculty member from a speech-communication academic department teaching alone	0	0
4. Team teaching by law faculty member and speech-communication faculty member	2	2
5. Teaching by advanced law students with demonstrated communication competence	23	21
E. <i>Reading Materials Included in Course Offerings</i>		
1. One or more argumentation textbooks	6	6
2. Selected portions of such textbooks	6	6
3. One or more persuasion textbooks	3	3
4. Selected portions of such textbooks	7	6
5. Practical volumes of advice and experience written by successful trial lawyers	37	34
6. Reports of empirical studies of jury behavior from legal or communication journals	22	20
7. Kalven and Zeisel's <i>The American Jury</i>	22	20
F. <i>Value Judgments About Communication Emphasis</i>		
1. One or more course treating systematically the study of communication and persuasion should be offered	65	62
2. Smaller units within regular courses should give heavy emphasis to communication and persuasion	26	25
3. No systematic instruction need be given in communication and persuasion	13	12
G. <i>When a Communication-Oriented Course Is Taught, Who Should Teach It?</i>		
1. Regular law-school faculty member	54	53
2. Specially trained speech-communication faculty member	3	3
3. Jointly taught by the professors listed above	45	43

TABLE 2
SURVEY OF COMMUNICATION EMPHASIS IN LAW SCHOOL CURRICULA—1984
(TOTAL SAMPLE: 138 SCHOOLS)

	Responses	%
A. <i>Please check those responses which best describe your moot court program:</i>		
1. Available to first-year students	18	13
2. Required of first-year students	100	72
3. Available to second or third-year students	95	69
4. Required of second or third-year students	21	15
5. Constitutes a full credit course	87	63
6. Includes organized and extensive instruction in courtroom persuasion	63	46
7. Includes both appellate and jury pleading	42	30

TABLE 2
(CONTINUED)

	Responses	%
B. Please check those responses which most accurately describe your communication-oriented course offering:		
1. We offer one or more courses (exclusive of moot court) which treat primarily or almost exclusively persuasive communication to juries	106	77
2. We offer one or more courses (exclusive of moot court) which treat exclusively or primarily appellate oral advocacy	71	51
3. We rely primarily on oral practice to teach courtroom persuasion	38	28
4. We offer one or more courses which treat very extensively communication problems and techniques in interviewing, counseling, and plea bargaining.	104	75
C. Please check below those titles which are identical to or similar to your own communication-oriented courses:		
1. Trial Practice	133	96
2. Criminal Trial Advocacy	51	37
3. The Lawyering Process	50	36
4. The American Jury	3	2
5. Communication and the Lawyer	6	4
6. Courtroom Persuasion	13	9
D. Please check below those responses which best describe the instructors responsible for communication-oriented courses:		
1. A regular member of our faculty with no special academic training in communication, argumentation, or persuasion but with extensive courtroom practice.	103	75
2. A regular faculty member with extensive academic communication background but without much courtroom practice.	29	21
3. A regular faculty member with both extensive communication training and extensive courtroom practice	35	25
4. A regular faculty member with neither extensive courtroom practice nor academic training in communication	16	12
5. Regular law faculty team teaching with a faculty member from a Speech Communication academic department	7	5
6. Faculty member from a Speech Communication academic department	4	3
7. Advanced law students with demonstrated communication and persuasion competence.	17	12
E. Please check the response that best indicates present trends, if any, in the emphasis given to communication understanding and skills by your instructional program:		
1. Increasing	108	83
2. Decreasing	0	0
3. About the same	29	17
F. Please check below those source materials to which your course offerings routinely would expose your students.		
1. One or more college textbooks in persuasion	7	5
2. Selected portions or one or more of these books	18	13
3. One or more textbooks in argumentation	7	5
4. Selected portions of one or more of these books	14	10
5. Practical volumes of advice and courtroom folklore from successful trial lawyers	46	33
6. Kalven & Zeisel's <i>The American Jury</i>	11	8
7. Reports of empirical studies in jury behavior, found in legal journals and speech-communication journals	33	24
G. You can assist us by reflecting your own value judgments about communication emphasis in law school courses. Please check the statement which most closely describes your attitude.		
1. I believe that one or more courses treating systematically the study of communication and persuasion is desirable in the law student curriculum.	91	66
2. I believe that smaller units within other courses should give heavy emphasis to communication and persuasion	51	37
3. I believe that no systematic instruction need be given in communication and persuasion.	2	1
H. Please check the following options in 1, 2, 3 rank order. If a full-credit communication-oriented course is to be taught, I believe it should optimally be taught by:		
1. A regular member of the law school faculty	60	47
2. A specially trained member of a speech-communication department faculty	3	2
3. Jointly taught by the professors listed above	64	51

"smaller units in other courses should give heavy emphasis"; or "no systematic instruction need be given." The percentage recommending one or more full courses was virtually unchanged at sixty-three percent; preference for small units in other courses increased from twenty-five percent to thirty-five percent; and responders indicating that no systematic communication instruction was needed dropped from twelve percent to two percent, down from thirteen respondents to only two—a significant and encouraging shift of attitude. Several respondents chose to list both the full course and the special units of other courses.

The final question on both surveys asked respondents to indicate their preference for the teaching assignment of communication-oriented courses; the choices were a regular member of the law faculty, a specially trained speech-communication faculty member, or a law professor and a communication professor teaching jointly. Again, a favorable attitude shift was reflected. Responders preferring one of their own faculty members declined from fifty-three percent to forty-seven percent; three responders continued to prefer a communication professor teaching alone, no change from 1975; and those preferring a team-teaching arrangement increased from forty-three percent to fifty-one percent, a shift in attitudes apparently reflected by the increase of speech faculty appointments from two to seven in the past nine years.

In general, more communication-oriented courses are being recommended and more are being taught today than in 1975. Teachers of such courses are better prepared to teach communication theory and skills, and several of these teachers are communication department adjuncts teaching alone or in collaboration with law faculty. Four out of five survey responders believe that their institution is now placing heavier emphasis on commu-

nication than in past years.

Despite these findings, those of us interested in encouraging better communication teaching and learning at law schools should not be complacent. The additional courses noted in the 1984 survey are almost all electives, and only a minority of students have the opportunity to take them. Seven speech communication adjuncts is a small number for the 138 law schools surveyed, and resistance to such appointments persists among many deans and law faculty. Some still need to be reminded that the art of oral communication is much more than just style and delivery, and that speech professionals teach skills that are useful both inside and outside the courtroom. Many of the responders who favor heavier communication emphasis, in theory, revealed in follow-up interviews some practical reservations about making the indicated changes. Also, much of the communication literature that we might regard as expected reading remains unknown to most law school students.

One related development is worth noting: communication opportunities for undergraduate pre-law students have been enhanced in the past decade. Undergraduate courses in legal communication, legal persuasion or legal rhetoric are increasing; several colleges and universities now have a pre-legal track within a speech communication major; and a small number of speech communication departments are participants in interdisciplinary law and society majors or minors. SCA programs and short courses have given increased emphasis to legal communication; and more research is occurring in legal areas, especially in jury research. Such classes, programs and research projects should be encouraged. With our continued help, legal educators can improve the quality of legal advocacy as they address the need for greater knowledge and skills in lawyer communication.

The climate for significant improvement appears favorable. For several years criticisms from within the legal community have been growing. They have included public statements by Chief Justice Warren Burger and reports by the

Legal Education Committee of the American Bar Association. The 1984 survey of law school emphasis on communication competency suggests that progress is occurring; it also suggests that much remains to be accomplished.

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