Chapter 19

EVOLUTION OF STRATEGIES IN COURTROOM DISCOURSE

Zaitseva M. O., Malieieva T. Ye.
DOI https://doi.org/10.30525/978-9934-26-425-2-19

INTRODUCTION

The issue of strategy is analysed in a significant number of works. The common point for them is defining it as a plan or an organisation: "A plan of action designed to achieve a long-term or overall aim"[1]; "A careful plan or method"[2]; "A method or plan chosen to bring about a desired future, such as achievement of a goal or solution to a problem"[3].

However, such interpretations are devoid of the original meaning of the word "strategy", which denoted the art or skill of the military in conducting campaigns: "the art of the General"[4]. It is, among other things, to be different from others: "…strategy is about being different"[4]. Orientation to resolve the contradiction formed in science, insufficient study of strategy as a means of communicative influence in courtroom discourse with its practical importance testifies to the **relevance** of the topic of our research.

Thus, the **aim** of the paper is to identify the concept of strategy in the courtroom discourse, forms of its verbal expression in the narratives of the prosecutor, the defense lawyer, and the judge. To achieve the stated goal, it is necessary to perform several **objectives**.

First, it is important to clarify the concept of strategy in the context of its communicative influence. **Second,** to determine its verbal expression in different subtypes of courtroom discourse. And **third,** to trace the evolution of strategies in courtroom discourse.

The corpus material is opening and closing speeches of prosecutors, defense lawyers and judges, delivered at authentic US trials (The Trial of Bernhard Goetz 1987; The Amadou Diallo Trial 1999-2000; the Casey

[1] Стратегія. URL: https://termin.in.ua/stratehiia/
[2] Жаліло Я. Економічна стратегія як категорія сучасної економічної науки. *Економіка України.* 2005. № 1. С. 19–27.
[3] Мартиненко М.М., Ігнатьєва І.А. Стратегічний менеджмент. К. : «Каравелла». 2006. 320 с.
[4] Moon Hwy-Chang. The Art of Strategy. 2018. URL: https://shorturl.at/yJM37

Anthony Trial 2011; The Brendt A. Christensen Trial, 2019) both in paper form and e-form, as well as YouTube video recordings.

The methods of analysis differed at each of its different stages. The clarification of the position of the authors of this article concerning the definition of the concept of strategy was carried out in the process of the analysis of the interpretation of the named concept presented in the theoretical sources. With the use of methods of comparison, the approaches to interpretation of this concept and types of signs of the considered phenomenon, generalization (which generalized the general and differing views of the authors), and argumentation were compared.

For performing other tasks, the method of discourse analysis was chosen, which necessitated the determination of the features of three types of contexts: social, pragmatic, and linguistic. In analyzing the social context, we focused on identifying the specific features of the judicial social context and the status roles of different agents of courtroom discourse.

In characterizing the pragmatic context, we proceeded from the fact that the main (illocutionary) goals of the speakers (in our case, a defense lawyer, a prosecutor or a judge) are conditioned by their status functions (the prosecutor – to prove the guilt of the defendant; the defense lawyer – to prove the innocence of the defendant or to mitigate the punishment; the judge – to administer justice and to impose a penalty).

While determining their intentions at different stages of utterance production the methods of intent-analysis, component analysis (when revealing the ways of language expression of intentions) and partially functional-stylistic analysis (in cases of emotional tension of utterances) were used.

The method of modeling was applied to form the structure of the analysis according to the following features: revealing the essence, types, forms of representation, type of communicative strategy, ways of its linguistic expression. A typified characterization of the three discourse contexts (social context, pragmatic context, and linguistic context) was created using a design method: the results of observations of actual trials in the United States (and, in some cases, other countries) were projected onto each of the named contexts of the courtroom discourse.

In identifying the features of the speeches of defense lawyers, prosecutors, and judges we applied the techniques of component analysis: the semantic components (seven) meanings of words and phrases that represent the strategy, as well as those that ensure the effectiveness of its influence on the audience. The method of classification was exploited in highlighting the specific signs of the strategy in the courtroom narrative, while the method of generalization was used to draw conclusions on the results of the study.

The strategy is undoubtedly related to the mental processes in human activities. It has a cognitive dimension and depends on the way of thinking. So, it plays a key role in any success. In view of the above, we want to integrate those approaches and suggest a broader perspective in analyzing the **strategy** as the art of creating one's position/line, model of behaviour to achieve a leading goal.

1. Strategies in subtypes of courtroom discourse

Strategy presents a versatile scenario for achieving a goal, which involves changing the model of discursive behaviour depending on internal and external factors. Thus, strategy is a more complex form of human activity than tactic.

The concept of strategy is inextricably linked to discourse. T. van Dijk and W. Kinch in their work "Strategies for Understanding Discourse" (1983)[5] define discourse as a sequence of speech acts, arguing that discourse is a strategy-based model. So, every discourse has its own strategy. Discourse strategy is the actor's projective conceptual vision of his/her discourse behaviour, based on the awareness of the ways/tactics of optimal goal achievement in the conditions of social interaction as well as the ways of their expression in specific linguistic means.

The strategies presented in courtroom discourse are diverse, due to the heterogeneity of the discourse community, which consists of competing discourse personalities. In "Genre Analysis: English in Academic and Research Settings" (1990) by John Swales, the discourse community is characterised by: 1) a wide range of social goals; 2) the existence of mechanisms of mutual communication; 3) specific means of information transmission; 4) the presence of typical genres; 5) special terminology; 6) discursive competence of participants[6].

We distinguish the following subgroups of the legal discourse community in courtroom discourse: the discourse community of judges, the discourse community of defense lawyers and the discourse community of prosecutors. Each of these professional discourse communities within the courtroom discourse has common features and own peculiarities.

Treating the courtroom discourse as a cognitive and communicative phenomenon, we have identified the types of discourse personalities that create it: dominant, provocative and inflictive discourse personalities. There are also submissive discourse personalities. But we don't put our focus towards them today. Well, all of them demonstrate certain speech behaviours using different strategies and tactics in court debate.

[5] Van Dijk, Kintsch, W. Strategies of Discourse Comprehension. 1983. New York : Academic Press. 389 p.

[6] Swales J.M. Genre Analysis: English in Academic and Research Settings. 1990. Cambridge. 260 p.

Being goal-oriented to achieve a specific end-state, result, they produce particular subtypes of courtroom discourse:

a) discourse of the prosecution with the verdictive strategy and tactic of persuasion. Verdictive statements have an obvious connection to truth and falsity in terms of being justified or unjustified or fair or unfair. Verdictives consist in the delivering of a finding, official or unofficial, upon evidence or reasons as to value or fact;

b) discourse of the defense with the strategy of refutation and tactic of suggestion. Refutative statements are used when challenging and wishing to argue in order to influence people's minds, to motivate people to act and even to manipulate people.

c) judges' discourse with the exersitive strategy and tactic of coercion.

Exercitive statement is used when making a decision in favour of or against a certain course of action. It is a ruling that something should be so-and-so in opposition to a judgement or as a confirmation of a judgement.

All of them are determined by communicative intentions and adjusted depending on the specific situation.

The distinction of the above types of strategies and tactics may seem arbitrary since they are diffuse in courtroom discourse. However, there is a central idea in each subtype of discourse that determines its nature and purpose.

In other words, the participant receives information, processes it, and transmits it to the recipient, while expressing their assessment of the information received.

Thus, taking into account their goal setting, which is also influenced by the extra-linguistic factors, ritual and ceremonial nature of the trial, the sender of the speech determines the strategy and chooses the relevant tactics for presenting the content, taking into account the linguistic, syntactic and grammatical means used to convey the message, which ultimately allows achieving the desired perlocutive effect.

In relation to the above extra-linguistic factors, we would like to cite an interesting statement by John Rupert Firth: "Conversation is much more of a roughly prescribed ritual than most people think. Once someone speaks to you, you are in a relatively determined context and you are not free just to say what you please. We are born individuals. But to satisfy our needs we have to become social persons and every social person is a bundle of roles…"[7].

To sum up, we would like to emphasise that the distinguished strategies and tactics are usually mixed, but a goal-oriented strategy and leading tactic dominate in each subtype of courtroom discourse.

[7] Firth J. The Technique of Semantics. *Transactions of the Philological Society*. 1935. № 34. P. 66.

2. Discourse of prosecution

Discourse of the prosecution is regulated and uniform. It is justified by the fact that the speaker in this case is on the side of the state and must be ceremonial and impartial. As a rule, the representative of the prosecution raises the issue of the sociopolitical assessment of the crime and the characteristics of the defendant's personality. As well as the public danger of the crime, aggravating and mitigating circumstances. He also has a comprehensive analysis of the evidence collected and verified during the court hearing, which serves as the basis for conclusions about the defendant's guilt and the required punishment.

However, any prosecutor is a person. Therefore, the prosecution cannot remain completely unbiased, which explains the evaluative, emotional, emotive and expressive nature of their speech. Moreover, an indicting speech should have a moral, and educational orientation, or so-called axiological component, which is determined by ethical and cultural guidelines and rules existing in society. All this leads to certain models or patterns of the prosecutor's behaviour.

So, if strategy is defined as the art of creating a line of behaviour, model of behaviour, that helps create a position and expresses the desire for a specific end state, a result, it is not entirely correct to understand it as an attack or influence, because the desired result of the prosecution in court is to obtain a guilty verdict, not to attack or influence. In addition, the strategy is mostly the one and only. That's why we speak about the verdictive strategy.

In accordance with the chosen verdictive strategy, the prosecutor tries to create **modality of confidence** in the truth of the proposition and to give the discourse an **accusatory tonality** through the use of persuasive tactic and a set of particular stratagems.

In our understanding, modality refers to the addresser's attitude towards reality, complicated by existing philosophical, political, socio-ideological theories and determined by the communicative situation.

We can illustrate this – creating modality of confidence – with the example of the prosecutor's accusatory speech in the case of Bernhard Goetz (The Trial of Bernhard Goetz 1987):

*By the **defendant's own admission, tape recorded admission** that will be played for you at this trial; …**the defendant admits** that before the last shot was fired…*

The words we have highlighted convey the prosecution's complete confidence in the information provided, for example, the words "admission", "admits"; we can also note the use of the Present Simple tense in relation to events in the past, which is used if the speaker summarises, sums up; if he believes that the fact was true, is true now and will be true in the future; this tense is also used for generalisation.

We interpret **tonality** as the emotional tone used by the speaker in a communicative event (discourse):

*Most of the passengers in that car were preoccupied with their **own affairs**, **minding an infant child**, **reading, dosing**, **staring blankly into outer space**, or **lazy**. Suddenly, however, that day that had begun so **ordinarily**; turned into a **nightmare**; In a brief compunction of **violence** the defendant **deliberately shot** and **seriously wounded**…; One of the two individuals, **who was shot** in the back, was **a 19-year-old young man** by the name of Darrell Cabey, **shockingly** (The Trial of Bernhard Goetz 1987).*

In the first example, the accusatory tonality is actualised through antonymic relations: everyday affairs – nightmare (the attack of the accused); in the second example, through the use of lexical units with the seme "deliberate cruelty"; and in the third example – through the emphasis on the age of the victim and the generalised adverb "terrible".

Let us now dwell on the concept of persuasiveness and explain why a persuasive tactic, rather than, for example, an argumentative tactic, acquires the status of the main tactic in this subtype of courtroom discourse.

What is persuasion? Speech communication as a special type of activity aimed at forming views and beliefs has always attracted the attention of researchers in various fields of scientific thought. Communication activity, especially in recent years, has been analysed not only from the point of persuasiveness and effectiveness of speech but also its trendiness and media popularity.

After all, the emergence of new pragmatic criteria (success, entertainment, hype, and creating the illusion of independent decision-making) developed in the course of various contemporary discursive practices provokes the question of the "insufficiency" of argumentation and rhetoric in their classical sense as the art of using language which aimed at an aesthetic effect to give enjoyment to an audience or to demonstrate the imaginative and linguistic skills of the speaker or writer.

In practice, we live in a society where numerous message sources are constantly fighting for our attention. And unfortunately, most people just let messages wash over them like a wave, making little effort to understand or analyze them. As a result, they are more likely to fall for half-truths, illogical arguments, and lies. Are all those people stupid or all those numerous messages strongly argumentative? No, it is because of involving persuasive mechanisms.

When you start to understand persuasion, you will have the skill set to actually pick apart the messages being sent to you and see why some of them are good and others are simply not. When we understand how persuasion functions, we'll have a better grasp of what happens around us in the world. We'll be able to analyze why certain speakers are effective persuaders

and others are not. We'll be able to understand why some public speakers can get an audience eating out of their hands, while others flop.

So, today, the importance of understanding the power of persuasive messages is greater than ever because people are exposed to tons of information and political propaganda every day not saying about social and psychological influencing on them in a courtroom.

In this regard, we should mention the research by Daniel O'Keefe "Conviction, Persuasion, and Argumentation: Untangling the Ends and Means of Influence" (2011), in which he examines persuasion from a slightly different perspective, distinguishing between the traditional concepts of "conviction", "persuasion" and "argumentation":"Specifically, the traditional conviction-persuasion distinction's identification of two different kinds of communicative ends, influencing the understanding and influencing the will, can usefully be reformulated as a difference between influencing the audience's attitudes (''the understanding'') and influencing the audience's behavior (''the will'')"[8] [p. 24].

So, argumentation is the basis of both persuasion and conviction since it appeals to reason as rational thinking (or the capacity for it; the cognitive abilities). However, argumentation alone is insufficient. According to Robert J. Yanal: "Every day juries are convinced either by plaintiff's arguments or by defendant's, but not by both, though plaintiff and defendant both think their arguments good. Of course, not all arguments thought good are good, but some are; and it is a plain truth that there are good arguments that fail to convince their audience as well as bad arguments that effect conviction. After all, a conclusion is a stage in an argument, while conviction is a state in a person. Having achieved the former, the latter does not automatically follow."[9]

Being a cognitive phenomenon, argumentation requires the actor to perform certain mental actions, based on the ground of his or her perception of the addressee. It aimed at developing such a system of arguments, that is intended to change the addressees' beliefs (in the case of conviction) and/or actions (in the case of persuasion):

*But **when they got out of the car**, we will prove when they got out of the car **in front of Amadou Diallo's home in the early morning** of February 4, **they made the conscious decision to shoot him**. **They made the conscious decision to shoot a man standing in a confined space of a vestibule** that was **not much bigger than an elevator**. **They made the conscious decision to shoot** into the vestibule of an occupied apartment building **where people***

[8] O'Keefe D. J. Conviction, persuasion, and argumentation: untangling the ends and means of influence. *Argumentation*. 2011. 26(1). P. 19–32. URL: https://doi.org/10.1007/s10503-011-9242-7

[9] Yanal R. J. Argument and Conviction. *OSSA Conference Archive.* 1997. 110. URL: https://scholar.uwindsor.ca/ossaarchive/OSSA2/papersandcommentaries/110

lived in the early morning hours, *when* ***most of them would be home*** *(The Amadou Diallo Trial 1999).*

There is another theory that does not separately identify conviction. According to which conviction is not distinguished separately: "persuasion is as an attempt to get a person to behave in a manner, or embrace a point of view related to values, attitudes, and beliefs, that he or she would not have done otherwise"[10].

In line with our analysis, we can draw the following conclusion. In fact, discourse of the prosecution is persuasive, as they need to influence the judge and jury in such a way as to not only convince them of the desired understanding of the problem but also to make them act relevantly: to deliver a charge and guilty verdict.

Persuasion in courtroom involves three components: a logical component, an axiological component, and an emotional component.

3. Discourse of defense

When it comes to the activities of a defense lawyer, the term "advocate's discourse" is used in modern linguistics. However, the development of modern scientific thought is characterised by processes of differentiation since they help to describe a certain phenomenon in more detail. As a result, we consider it appropriate to propose the term "discourse of the defense" instead of advocate's discourse. Since there is some confusion about terminology today between these two concepts – advocate's discourse and advocacy discourse – we want to provide our comments on this issue.

Advocacy discourse is now understood as a moral discourse, as a form of reconciliation between the person whose case is being heard in court and those who are trying the case. On the other hand, advocacy discourse is represented through the discourse of such famous personalities as, for example, Martin Luther King. The activities of such people are considered to be the activities of people who seek reconciliation, caring for the good and appealing to conscience. However, very often in court trials it is not about reconciliation at all, but about confrontation with a clear desire to win the dispute by any means, so we find it more justified to distinguish between these terms and to single out the term "discourse of the defense".

The prosecutor acts for the state and must be ceremonially impartial. This rule has been mitigated in relation to defense lawyers. Recently, it has even been proposed to include an amendment in Article 43 of the Code of Conduct for Advocates in Ukraine.

The interests of the client become a priority, which inevitably leads to changes in the discursive behaviour of defense lawyers.

[10] Perloff R. M. The dynamics of persuasion: Communication and attitudes in the 21st century (2nd ed.). 2003. Lawrence Erlbaum Associates Publishers. 648 p.

In a court hearing, a defense lawyer seeks to take the initiative in the trial and, accordingly, resorts to the **strategy of refutation** when trying to contradict the position of the prosecutor. The advocate thus performs a provocative function in an attempt to identify the most sensitive points to target to create a situation of controlled emotional escalation:

*Casey was **raised to lie**. This happened **when she was 8 years old**, and **her father molested her**. But, **she went to school and played with other kids as if nothing had happened**. **Sex abuse does things to us, it changes you** (The Casey Anthony Trial 2011).*

The term "provocative" indicates, first of all, the actor's conscious desire to perform actions that will provoke the recipient to a certain response expected by the actor in advance. The semantic scope of the concept of "provocation" is multifaceted and is developed both positively and negatively. In our understanding, provocativeness is more neutral and in courtroom discourse it is connected with a challenge, activation, inducement. Therefore, we are actualising the term "provocativeness" in an effort to get rid of the negative connotation ingrained in the notion of "provocation".

Let us now dwell on the concept of suggestion and explain why a suggestive tactic acquires the status of the main tactic in this subtype of courtroom discourse.

What is suggestion? In a court hearing, the discursive behaviour of the defense and the prosecution represents opposing programmes due to the confrontation between the parties. It determines the choice of discursive strategies, appropriate tactics, and stratagems, which are characterised by communicative tension, expressed in the desire of one party to change the behaviour of the other: for the defence, it is a refutative strategy and suggestive tactic.

Suggestion is fundamentally different from persuasion. Unlike persuasiveness, suggestion is inherently tolerant of logical contradictions and appeals to a large extent to the irrational and emotional in the psyche of the recipient. The main characteristic of an utterance is its ability to express truth or fallacy, that is why logic distinguishes between actual truth, i.e. conformity of an utterance to the actual state of affairs, and logical truth, i.e. conformity to the rules of logic. The persuader/prosecutor relies on factual truthfulness (he uses real facts), while the suggestor/defense lawyer relies on logical truthfulness: when there are not enough or no real facts, he uses linguistic means.

As a consequence of this purposeful choice, language as a "medium" has a powerful influence on the course and outcome of the recipient's mental process. It is no coincidence, therefore, that there are collections of speeches by famous lawyers, but we are not aware of such collections of speeches by prosecutors.

Suggestion is also different from manipulation. Though, there are many papers that interpret these concepts as synonymous, for example, suggestion is "psychologically manipulating or guiding someone's behavior or thoughts"[11].

But, given that a prerequisite for manipulation is the concealment of both the fact of influence and the intentions of the manipulator, on the one hand, and, on the other hand, the influence on the suggerend against their will: "...the message... is delivered in such a way as to make the target think or believe something regardless of their will"[12] [p. 8]. So, we comprehend suggestion and manipulation as overlapping but different forms of speech influence.

In their speeches, all defense lawyers criticise and put into question the official conclusions about the actions of the accused, so all the means used in this type of discourse are aimed at creating a **modality of doubt** about the truth of what is alleged in the prosecutor's statements. The above can be illustrated by giving examples from the defense lawyer's speeches at the Trial of Bernhard Goetz 1987:

During the course of the summation, I ***scratched my head*** *and* ***wished I had a tape recorder****. So that* ***at the end of this case*** *I could* ***play you back that opening statement****; But Mr. Waples* ***forgot to tell you*** *was* ***that these four predators*** *of society* ***surrounded Bernhard Goetz*** *on December 22nd, 1984 on the IRT subway* ***with the intention to rob him.***

The modality of doubt is expressed through the subjunctive mood, which actualises the impossibility of performing an action (*wished I had a tape recorder, could play you back that opening statement*); on the other hand, the defense lawyer ironically reminds the court and the jury that the accuser *forgot to tell you* about an "insignificant" fact: the "passengers" in the carriage, whom the defense lawyer called *these four predators of society*, had the *intention to rob him.*

As can be seen from the examples, the creation of the modality of doubt in the truth of the facts put forward by the prosecution is achieved through the modal category of **tonality**, which expresses emotional and evaluative information, represented at all language levels (lexical, grammatical, syntactic, morphological). The chosen tonality, as a rule, for the defence discourse is a negative-critical one:

On June 16, 2008, ***after Caylee died, Casey did what she's been doing all her life, hiding her pain, going into that dark corner, and pretending that she does not live in the situation that she's living in****;* ***it all began when***

[11] Walters J. How The Power Of Suggestion Works — And How To Use It Wisely On Yourself. 2023. URL: https://www.yourtango.com/experts/jean-walters/how-use-power-suggestion-advantage

[12] Sahakyan, I. The persuasive vs. manipulative power of multimodal metaphors in advertising discourse. *ELAD-SILDA [Online]*. 2020. 5. P. 1–33. URL : https://publications-prairial.fr/elad-silda/index.php?id=851

Casey was 8 years old, and her father came into her room and began to touch her inappropriately and it escalated *(The Casey Anthony Trial 2011).*

The refutative discursive strategy used by the defense side requires the use of suggestive tactic. If suggestion, as the research has shown, implies the impact on the emotions of the suggerand (sympathy, empathy, desire to justify, to restore the truth), irrationality of his consciousness with the help of images (good, evil, beauty), experiences, that is, the subject's awareness of a certain phenomenon as an event of his own life, his logic as a desire to correct the previous opinion presented with the help of subjective argumentation as erroneous (logic of backward influence), then the suggestive tactic is based on such stratagems as the stratagem of appealing to ethos/habitus, the stratagem of appealing to interaction, the stratagem of appealing to emotions, the stratagem of appealing to the irrational, and the stratagem of appealing to backward logic.

4. Judges' discourse

While working with court materials, we noticed that the judges' discourse is fundamentally different from the discourse of the defense and the discourse of the prosecution.

In our opinion, it is the functions performed by the discursive person, the judge, his or her discursive role that differentiate judges' discourse from other subtypes of courtroom discourse. Justifying our position, let us turn to a brief characterisation of the concepts of "metacommunication" and "meta-metacommunication" in the conditions of judicial process.

We define metacommunication as communication about communication: it is about how communication is organised and how it is exercised, it is text about text, discourse about discourse, utterance about utterance. Metacommunication is a secondary communication about how a piece of information is meant to be interpreted.

The functions of metacommunication can be commenting, explaining, stating or evaluating communicative messages, both one's own and others'.The non-verbal cues that are so important. Things like tone of voice, body language, gestures and facial expressions can contain meanings that sometimes don't match up with the actual words being said.

Lawyers perceive information from defendants, witnesses, experts. They process it, trying to present the events in the right perspective and deliver it in the right way. Prosecutors examine the materials of the court case and also provide their version of the perspective of the case. It is as if there is a layering of communication on communication, which complicates the process. In the process of communication, they learn information, compare it, analyse it, interpret it, control it, deliver it and also influence through information. It allows us to treat as metacommunicative the discourse of the defense and the discourse of the prosecution.

In stating the difference these discourses and the judges' discourse, we were driven by the fact that the judge receives already interpreted information from lawyers, prosecutors, witnesses, experts, plaintiffs, defendants, when the facts of reality (initial communication) are so "loaded" with interpretation (metacommunication) that it sometimes loses its original meaning: "That is, the actual message (the communication) being conveyed is *overwhelmed* by the metacommunication, so that the initial meaning is lost"[13].

At the same time, the information received by the judge is subjected to professional processing by specialists. In this complex information space, the judge has to orientate himself: to sort out the true facts from the artificially transformed facts and to make a decision. In addition, the judge's function is to exercise control over the entire process, positioning himself as a representative of the power to which the state has given the authority to administer justice.

The discursive role of a judge requires of the following functions to be fulfilled:

1) creating a credibility image of the judge to organise an effective communicative process;

2) regulating and stimulating the communication process to obtain full information from the interactants of the trial;

3) ensuring alteration, i.e. substitution of speaker and listener to guarantee the adversarial principle of the parties;

4) monitoring message comprehension and feedback to avoid communicative failure;

5) stating their position to focus the jury's attention

6) articulating the court order in such a way as to eliminate the possibility of further appeal.

It can be summarised that the functions performed by the discursive personality of the judge, who displays power to exercise control over the trial, determine the specificity of judges' discourse as coercive and refer it to meta-metacommunicative discourse.

What is coercion? In Collins English Dictionary coercion is defined as "the act or process of persuading someone forcefully to do something that they do not want to do. Synonyms: force, pressure, threats, bullying"[14]. But we reckon that this concept is much broader than this definition. It is not by chance that many philosophers, politicians, sociologists, legal theorists from time to time consider coercion, finding new facets and shades of its meaning.

[13] Metz M. Understanding Metacommunication. 2017. URL: https://jmetz.com/2017/09/understanding-metacommunication/

[14] Collins English Dictionary. URL: https://www.collinsdictionary.com/dictionary/english/coercion

Recently, there has been considerable debate over reconceiving coercion-based criminal defenses, for example, Galoob Stephen and Erin Sheley (2021). "Reconceiving Coercion-Based Criminal Defenses"[15].

We do not have time to characterise coercion in all its aspects, thus, let us dwell on our understanding of it.

As Kant puts the point, the goal of the state is not the good and happiness of each and every person, but the condition of the greatest conformity of the state structure with the principles of law. This fundamentally distinguishes Kant's views from the traditions of ancient philosophy, which regarded the achievement of the common good as the goal of the state. The common good, in Kant's view, is not a legal principle, because it cannot be realised universally and understood by each citizen in their own way. He considers coercion as a dual phenomenon: both restraining the human will and promoting human freedom, because coercion in the form of law prevents violations of the rights of some citizens by others. And only such coercion can be justified.

Nowadays, echoing Kant, in *A Theory of Justice*, John Rawls says that by enforcing a public system of penalties government removes the grounds for thinking that others are not complying with the rules[16].

With this story as background, we realise that coercion is inextricably linked with law as a form of power. In general, law as a special semiotic system is closely connected with the demonstration of realia and symbols expressing the social status and authorities of the subject or agent of power. It generates its own discourse, a discourse of power.

In judges' discourse as a special ritualised form of power, to find out the truth methods of observation, qualification, classification, punishment as a demonstration of power are used. Relying on their authority, the judge makes a differentiation and puts forward a final sentence. During the proceedings, the judge constructs a certain model of their discursive behaviour using an excercitive strategy and tactic of coercion.

The chosen exersitive strategy and coercive tactic establish the **modality** of strict veracity of the reported message by means of speech acts in which the speaker states the proof of the incident and obliges to fulfil the decision made, using **an authoritative tonality**:

*Before we begin, **I'm going to give you some preliminary instructions** that will **help you understand the process and follow along** with the case (The Brendt A. Christensen Trial, 2019).*

These speech acts are exercitives (according to J. Austin). They serve to exercise power and/or influence, so called verbal exercise of power.

[15] Galoob S., Sheley E. Reconceiving Coercion-Based Criminal Defenses,. *The Journal of Criminal Law and Criminology*. 2021. 112: 265–328.

[16] Rawls J. A Theory of Justice: Original Edition. Harvard University Press, Belknap Press. 1971. 624 p. URL: https://doi.org/10.2307/j.ctvjf9z6v

Thus, the exercitive strategy involves a demonstration of power and aims at affirming and stating the event that was denied before as a fact. Exercitives can be described as acts of exercising authority: a speaker can be taken as performing an exercitive only if she is also recognized as having some kind or degree of authority or authoritativeness. While the coercive tactic aims at creating an authoritative tonality in the judge's discursive behaviour. So, they help not only to evoke a coercive-persuasive background but also to force the recipients to reason in the right register to avoid their objecting to the final decision:

*First, the **defendant is presumed innocent until proven guilty**. The **indictment brought by the government** against the **defendant is an accusation, nothing more**. It is **not proof of guilt or anything else**. The **defendant therefore starts out with a clean slate** (Brendt A. Christensen Trial 2019).*

Such strategy and tactic are based on the stratagems of appealing to ethos/morals, manifesting legitimate power/authority, and manifesting equality of parties.

CONCLUSIONS

Strategy is the art of creating one's position/line, model of behaviour to achieve a leading goal. Tactics involve methods of creating one's position/line of behaviour to achieve a certain goal/goals, and stratagems are a step-by-step action plan.

Types of discourse personalities that create courtroom discourse are dominant, provocative and inflictive discourse personalities.

Depending on the set goal courtroom discourse consists of: a) discourse of the prosecution with the verdictive strategy and tactic of persuasion; b) discourse of the defense with the strategy of refutation and tactic of suggestion; c) judges' discourse with the exercitive strategy and tactic of coercion.

In accordance with the chosen strategies, the participants try to create a certain modality and tonality.

Modality refers to the attitude towards reality, complicated by existing philosophical, political, socio-ideological theories and determined by the communicative situation.

Tonality is interpreted as the emotional tone used by the speaker in a communicative event (discourse).

Prosecutors create a modality of confidence with the help of an accusatory tonality; defense lawyers – a modality of doubt and a negative-critical tonality; judges – a modality of strict veracity of the reported message and an authoritative tonality.

In the past the reasoning was more ornate and extensive, whereas today it is, firstly, time-limited; secondly, it relies on data from various expertise. In the early twentieth century, representatives of the prosecution often

involved religious values, but in the current circumstances of increasing diversity of universal values, such an appeal is becoming less and less effective. It is more common to appeal to democratic rights and freedoms as a system of ideals and values that are inviolable for American society, or to universal values. If in the early 20th century, the prosecution appealed more often to practical wisdom, in the modern context they more often appeal to emotional intelligence.

Worldly wisdom is not so strict and tolerates derogations. Stratagem of appealing to interaction: at the beginning of the 20th century, phatic communication used to create a kind of etiquette (ritual) communication. In modern courts it becomes more personal and encourages emotional involvement of all participants in communication.

The process of appealing to emotions has also undergone changes concerning the fact that in modern litigation, lawyers, firstly, mention very frank details, and secondly, their impact has become not so explicit.

Concerning appealing to the irrational: in the current context it is based on the phenomenon of transgression. Next is appealing to backward logic: in the early 20th century, it was realised by means of framing; whereas today – through priming as a form of psychological manipulation.

Manifesting legitimate power and authority as well as manifesting equality of parties in front of court have remained virtually unchanged. We may point out that sometimes modern judges allow themselves short personal digressions.

SUMMARY

The issue of strategy is analysed in a significant number of works. The common point for them is defining it as a plan or an organization. However, such interpretations are devoid of the original meaning of the word “strategy”, which denoted the art or skill of the military in conducting campaigns. Thus, the aim of the paper is to identify the concept of strategy in the courtroom discourse, forms of its verbal expression in the narratives of the prosecutor, the defense lawyer, and the judge. This goal has given rise to the following objectives. First, it is important to clarify the concept of strategy in the context of its communicative influence. Second, to determine its verbal expression in different subtypes of courtroom discourse. And third, to trace the evolution of strategies in courtroom discourse. The results of the study are as follows: strategy is the art of creating one’s position/line, model of behaviour to achieve a leading goal; verbal expression of strategies is determined by the modality and tonality that dominate in the subtypes of courtroom discourse; the strategies that have been analysed in the paper have remained unchanged due to the communicative role of the participants in the proceedings.

Bibliography

1. Стратегія. URL: https://termin.in.ua/stratehiia/ (дата звернення: 22.01.2024).

2. Жаліло Я. Економічна стратегія як категорія сучасної економічної науки. *Економіка України.* 2005. № 1. С. 19–27.

3. Мартиненко М.М., Ігнатьєва І.А. Стратегічний менеджмент. К. : «Каравелла». 2006. 320 с.

4. Moon Hwy-Chang. The Art of Strategy. 2018. URL: https://shorturl.at/yJM37 (дата звернення: 22.01.2024).

5. Dijk van T., Kintsch W. Strategies of Discourse Comprehension. New York : Academic Press. 1983. 389 p.

6. Swales J.M. Genre Analysis: English in Academic and Research Settings. 1990. Cambridge. 260 p.

7. Firth J. The Technique of Semantics. *Transactions of the Philological Society.* 1935. № 34. P. 66.

8. O'Keefe D. J. Conviction, persuasion, and argumentation: untangling the ends and means of influence. *Argumentation.* 2011. 26(1), P. 19–32. URL: https://doi.org/10.1007/s10503-011-9242-7(дата звернення: 22.01.2024).

9. Yanal R. J. Argument and Conviction. *OSSA Conference Archive.* 1997. 110. URL: https://scholar.uwindsor.ca/ossaarchive/OSSA2/papersandcommentaries/110 (дата звернення: 22.01.2024).

10. Perloff R. M. The dynamics of persuasion: Communication and attitudes in the 21st century (2nd ed.). Lawrence Erlbaum Associates Publishers. 2003. 648 p.

11. Walters J. How The Power Of Suggestion Works – And How To Use It Wisely On Yourself. 2023. URL: https://www.yourtango.com/experts/jean-walters/how-use-power-suggestion-advantage (дата звернення: 22.01.2024).

12. Sahakyan I. (2020). The persuasive vs. manipulative power of multimodal metaphors in advertising discourse. *ELAD-SILDA [Online]*. 2020. 5. P. 1–33. URL : https://publications-prairial.fr/elad-silda/index.php?id=851 (дата звернення: 22.01.2024).

13. Metz M. Understanding Metacommunication. 2017. URL: https://jmetz.com/2017/09/understanding-metacommunication/ (дата звернення: 22.01.2024).

14. Collins English Dictionary. URL: https://www.collinsdictionary.com/dictionary/english/coercion (дата звернення: 22.01.2024).

15. Galoob S., Sheley E. Reconceiving Coercion-Based Criminal Defenses. *The Journal of Criminal Law and Criminology.* 2021. 112. P. 265–328.

16. Rawls J. A Theory of Justice: Original Edition. Harvard University Press, Belknap Press. 1971. 624 p. URL: https://doi.org/10.2307/j.ctvjf9z6v (дата звернення: 22.01.2024).

Information about the authors:
Zaitseva Margaryta Oleksiivna,
Doctor of Sciences in Philology, Professor,
Associate Professor at the Department of Foreign Languages
Yaroslav Mudryi National Law University
77, Hryhoriia Skovorody str., Kharkiv, 61024, Ukraine

Malieieva Tetiana Yevhenivna,
Senior lecturer at the Department of Foreign Languages
Yaroslav Mudryi National Law University
77, Hryhoriia Skovorody str., Kharkiv, 61024, Ukraine