UDC 811.13:340. 113 (73)
DOI https://doi.org/10.32782/2710-4656/2024.1.1/17

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NEW FORMAT AND TRANSFORMATION OF TACTICS AND STRATAGEMS IN COURTROOM DISCOURSE

The paper analyses the notions of tactics and stratagem and their roles in American courtroom discourse. Given the fact that a new format has been used as well as new insights into previously unexplored areas have been provided, it is possible to say about the novelty of the research. To achieve the goal, there are several objectives: to clarify the concepts of tactic and stratagem in the context of their communicative influence; to determine their verbal expression in different subtypes of courtroom discourse; to establish tactics and stratagems in different subtypes of courtroom discourse. The aim was reached by using different methods: the method of comparison; classification (to distinguish tactics and stratagems in different subtypes of courtroom discourse), generalisation (to summarise information), and argumentation (to justify the author`s position). The choice of approaches to the analysis was determined by modern scientific paradigms: cognitive linguistics, pragmatic linguistics, communicative science, and methods of lexical and semantic analysis. Elements of cognitive analysis helped to reveal the dependence of courtroom discourse on social conditions.

The corpus material was opening and closing speeches of prosecutors and defense lawyers delivered at authentic US trials, both in paper form and e-form, as well as YouTube video recordings.

The findings of the study were as follows: new format definitions of tactics and stratagems have been suggested. 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. It has been proven that stratagems in the discourse of the prosecution are of appealing to a logical component/reason, appealing to ethos, appealing to phronesis; in the discourse of defense – of appealing to ethos/habitus, appealing to interaction, appealing to emotions, appealing to the irrational, and appealing to backward logic.

The study shows promise as it would be intriguing to explore this issue from the perspective of the evolution of tactics and stratagems in judges` discourse.

Key words: *discourse of defense, discourse of prosecution, tactics, stratagems, transformation.*

Problem statement. Currently, there is a lack of consensus in the scientific literature regarding the concepts of tactics and stratagem. This is evident in the varying definitions provided by different researchers. Thus, stratagem is defined as "a maneuver in a game or conversation; as an artifice or trick in war for deceiving the enemy; deceptive device; secret plot; evil machination; (obsolete) a violent deed; a tactic or artifice in military operation; a tactic or artifice designed to gain the upper hand, especially one involving underhanded dealings or deception; a scheme or maneuver designed to achieve an objective, as in surprising an enemy or deceiving someone; the devising or execution of such schemes or maneuvers" [7].

Whereas a tactic is interpreted as "a specific, prioritised and executable task, among other defined tasks, that needs to be accomplished, either daily, weekly, monthly, quarterly or even annually, in order to attain collectively the ultimate outcome of the strategy; that's to say, it's tactical in execution" [7]; "Tactic is a series of small steps, manouvers, achieving that plan"; "If the strategy is the long-term plan, tactics are the short-term steps that help you hit smaller goals. Tactical planning is the act of breaking down your strategic plan into short-term actions" [9]; "as the communicative steps that contribute to solving the strategic task under the control of the appropriate strategy. Communicative steps are represented by a set of speech actions used to implement one or another strategy [3, p. 8].

So, even a brief overview indicates that the problem is underdeveloped. Therefore, we can consider the research topic to be **relevant**.

The corpus material was opening and closing speeches of prosecutors and defense lawyers delivered at authentic US trials, both in paper form and e-form, as well as YouTube video recordings [5].

Analysis of recent research and publications. Among recent studies we can mention the work

by Harro von Senger "Stratagems as a Means of Achieving Justice and Spreading Truth" (2023) [8]. The author examines stratagems in court on the basis of well-known Chinese stratagems (36 Chinese stratagems), defining stratagem in a positive way from the standpoint of Chinese philosophy as cunning ("To produce something extraordinary [and thus achieve] victory") and in a negative way from the standpoint of Western philosophy as devilish cunning or even deception ("Cunning is a vice and consists of someone wanting to achieve a goal by dishonest means") [8, p. 36]. He discusses the use of stratagems and how they can be used to establish justice in the form of the realisation of a human right in the absence of legal remedies [Senger]. Moreover, as we see it, stratagems and remedies are not mutually exclusive concepts, as the use of stratagems allows one to "get" a remedy. In addition, we approach the concept of stratagems from a more universal perspective, going beyond the 36 Chinese stratagems.

Tactics are commonly defined as techniques, for example, by Colleen Glatfelter (2017) [6] or by Christopher D. Armstrong (2023) [1] and many others. Though, their interpretation is at odds with our own understanding of tactics.

So, taking into account the numerous academic studies devoted to the notions of tactics and stratagems, we note that the problem of conceptual approach to them has not received a proper theoretical and practical solution.

The theoretical and empirical analysis of the problem of tactics and stratagems in courtroom discourse has revealed a number of the contradictions justifying the aim of the paper.

The aim and objectives of the research. These inaccuracies prompted the **aim** of this study – to identify the concepts of tactic and stratagem in the courtroom discourse. To achieve the stated goal, it is necessary to perform several **objectives**.

First, it is important to clarify the concepts of tactic and stratagem in the context of their communicative influence. **Second,** to determine their verbal expression in different subtypes of courtroom discourse. And **third,** to establish tactics and stratagems in different subtypes of courtroom discourse.

Methods of research. At the stage of terminological substantiation, the main method was the method of comparison. At the second and third stages, the following methods were used: classification (to distinguish tactics and stratagems in different subtypes of courtroom discourse), generalisation (to summarise information), and argumentation (to justify the author`s position). The choice of approaches to the analysis was determined by modern scientific paradigms: cognitive linguistics, pragmatic linguistics, communicative science, and methods of lexical and semantic analysis. Elements of cognitive analysis helped to reveal the dependence of courtroom discourse on social conditions.

Results and discussion. Discourse of prosecution. Based on the above methods we can lay out how we understand these concepts. **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. Stratagems are the mechanics of executing the plan. Tactics, and stratagems – they all work together but they aren't the same thing.

The concept of stratagems is introduced through the interpretation of courtroom discourse as a discourse of confrontation, and a stratagem vision is usually a vision through the prism of conflict, a confrontation between someone and someone else. That is, stratagems are focused on solving conflict problems. They are in demand in situations of military, commercial, political, and interpersonal confrontation. They are applicable in all areas of competition. They are also effective in the courtroom confrontation between the parties because they are primarily used as a weapon, a tool of struggle.

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.

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. Thus, a persuasive tactic is grounded on the following stratagems as appealing to reason, appealing to ethos, appealing to phronesis.

Stratagem of appealing to a logical component/ reason entails referring to rational thinking. We would add that, along with completeness, consistency and irrefutability, arguments in court should also create an image. The image that will be created from the point of view of its "success" in influencing the recipient is determined by many factors, for example, the addressee's style of thinking, peculiarities of his/ her character, chosen rhetorical techniques of speech construction, etc. Thus, entering into a discourse, the argumentator subconsciously chooses a relevant system of arguments, their structural organisation, and constructs a certain behaviour model according to his or her cognitive, existential and social attitudes. In support of our position, let us mention the statement given by W. Brockriede: "Arguments are not in statements but in people" [2, p. 179].

However, if argumentation has been studied by many scholars since antiquity to the present day as far as rhetorical techniques, structural organisation of argumentation, theoretical issues, and so on argumentation as a model from the standpoint of the cognitive approach has received insufficient attention, so we consider it appropriate to present a synthetic model of argumentation as a cognitive-communicative phenomenon in which the argumentator's thinking activity is embodied in the communicative one.

Thus, in order to characterise argumentation, it is necessary to study not only the different types of arguments, but also the cognitive processes they result in, as well as the cognitive processes they trigger. For example, a message that the argumentator intends to be persuasive may have the opposite effect on the recipient. This phenomenon can be explained by interpreting argumentation as a complex structure with a two-level structure: the surface structure, determined by the nature of the language, and the deep structure, determined by the nature of the person's psychological and intellectual features.

Based on the results of the study, we note that all the deep-level arguments presented by the prosecution perform the main function of proving the defendant's guilt; the surface-level arguments perform the secondary function of creating a positive image of the plaintiff and a negative image of the defendant. In the absence of strong evidence, these functions swap. And then the main function becomes the creation of a negative image of the defendant and a positive image of the plaintiff, as in the case below.

In 1921, New York, USA, there was a trial for attempted murder in the first degree, assault in the first and second degrees. The prosecution tried to appeal to the logic of the judge and the jury, without such indisputable evidence as, for example, the results of fingerprinting. So, with the help of circumstantial, indirect evidence, the prosecutor drew accusatory conclusions based on his inferences:

Just how many shots were fired or who fired, all of them ***I don't pretend to be able to show****. As is very common in such cases, where the whole thing happens in a very, few minutes, and where all the persons, engaged were laboring under very great excitement****, it is impossible to tell*** *or to get the witnesses to agree to all the shooting that was done*.

The prosecutor is eventually forced to admit that he does not know for sure who fired the shot, but he considers it proven that it was the defendant:

He was fired at as he went back, but whether by Eastman not, we ***do not know, but we presume by Eastman****….*

In the same case, arguments aimed at creating an image of the plaintiff and the accused are noteworthy. Once again, due to the lack of deep-level arguments, the so-called surface-level arguments can be used to compensate for the absence of the former.

However, in this case, due to the lack of direct evidence, it was not possible to create a clear negative image of the defendant, and the creation of a positive image of the plaintiff failed due to his weak moral character, which the argumentator tried to correct by characterising his father *(the son of a* ***man distinguished in public life in the United States***), and the emphatic use of the word "kid" in describing the plaintiff, who was very drunk:

At half-past ***two o'clock in the early morning*** *of the 2nd of February last, a young man,* ***very much under the influence of liquor****,* ***staggered out*** *of Jack`s* ***all-night restaurant****;* ***drunken boy****,* ***drunken kid***.

A completely opposite picture can be seen in the high-profile case *the Freedom Summer Murders Trial 1964*. The prosecutor John Doar presents strong evidence for the murder of the three black civil rights activists. He argues that it was a carefully considered murder, which qualifies as an aggravating factor:

The boys are alive at ***10:30 when they were released****, the station wagon is* ***on fire at 12:45 o'clock*** *located* ***fourteen miles northeast of Philadelphia****. The Neshoba County law enforcement officer, Cecil Ray Price,* ***controlled the time of release****, he* ***could have released them an hour later****, he* ***could have released them an hour early****, but he* ***released them just so*** *they would go to their deaths*

Regarding cases in which a significant evidence base has been collected, it appears clear that the arguments used by the prosecution represent deep-level arguments and fulfil their main function – the function

of proving the plaintiff's case. Such evidence substantiates the truth of judgements, which, in turn, convince the judge and jury. They become one of the methods of influencing the opponent. Surface-level arguments contribute to the creation of a positive image of the plaintiff and a negative image of the defendant, performing a secondary, auxiliary function. Together with other stratagems, the stratagem of appealing to logic forms an effective persuasive tactic that causes a change in the mental state of a person, which usually leads to changes in behaviour.

So, both in the past and nowadays prosecutors based their conclusions on inferences based on logical reasoning. Though, we would like to stress that 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.

Stratagem of appealing to ethos as recognition of a moral order in the world entails turning to the system of ideals, and values at the level of mental attitudes, life patterns, social habits, religions that dominate the culture and control the behaviour of its members. It implies an ethical attitude to life.

In the "Hauptmann (Lindbergh) Trial" (1935), the prosecutor refers to biblical statements to persuade and influence the judge and jury:

"Judge not, lest ye be judged", *my adversary says, but forgets the other biblical admonition,* ***"And he that killeth any man shall surely be killed", "Shall surely be put to death"*** *(Hauptmann (Lindbergh) Trial 1935).*

In the early twentieth century, representatives of the prosecution often involved appealing to religious values, but in the current circumstances of increasing diversity of universal values, such an appeal is becoming less and less effective. Religious values may be proclaimed, but for various reasons they do not have such a significant impact on society. They more like should be as a "must-have" attribute of social reality, as a traditional cognitive-social form, with which people find it more convenient, by inertia, to identify themselves.

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 appeal to universal values.

In the Oklahoma City Bombing Trial 1997, the prosecutor's speech in the case is exemplified by the following statement:

Everyone *in this* ***great nation*** *has* ***a right to think and believe, speak whatever they want…***

In his Opening Arguments in the George Floyd Murder (Chauvin) Trial (March 29, 2021) the prosecutor Jerry Falwell appeals to the ethics of police service:

But you're also going to learn that the ***officers take an oath when they become police officers****.* ***They take an oath*** *that I will enforce the law courteously and appropriately. And as you will learn as it applies to this case, never employing unnecessary force or violence. And not only that, I recognize* ***the badge of my office as a symbol of public faith,*** *and I accept it as* ***a public trust*** *to be held so long as I am true to* ***the ethics of police service…***

In terms of linguistic representation, the stratagems of appealing to ethos are implemented through the discursive activation of the following thematic areas: with a common seme of "religious values" especially in the past, "democratic values", "rule of law", and "universal values".

Stratagem of appealing to phronesis. The stratagem of appealing to emotions appears as an integral component of persuasive tactic. The prosecutor also seeks to influence the emotions and feelings of the judge and jury, although their methods of influence are different from those of the defense lawyers. In other words, an appeal to such emotions is an appeal to phronesis. Philosophers construe it as a type of wisdom or intelligence, so called masterly synthesis of knowledge and experience.

We can say that it is the ability to quickly recognise what is good and what is bad in a particular situation, the ability to combine intelligence, logic and emotion which in turn requires the recipients to have emotional intelligence.

Thus, the stratagem of appealing to phronesis plays an important role in structuring a persuasive tactic. Firstly, the prosecution representative creates a positive emotional background, which is an element of the general ritual of the court hearing. Secondly, the sender of the speech seeks to construct the necessary emotional state of the recipients: as in the closing statement delivered by the prosecutor Mr Bostwick at the Triangle Factory Fire 1911 Trial:

You are chosen because you are believed to be ***eminently fit*** *(The Triangle Factory Fire 1911).*

He emphasises, on the one hand, the importance of the jury`s decision, and, on the other hand – their common sense and prudence. The positive emotional background created in this example sets the stage for the so-called information focus, which is expressed in the fact that the honour and responsibility entrusted to the "most worthy members" of society to make a judgement on the guilt/innocence of the defendants obliges them not to be distracted by secondary details, by emotions but to focus on the key points of the case. The focus of attention of the judge and jury is on the fact that they are performing a noble duty.

Appealing to a sense of self-importance and chosenness, on the one hand, and a sense of duty, on the other, to create a positive background was and is an integral characteristic of the prosecution's discourse.

In more recent times, however, prosecutors have increasingly avoided a standardised approach to presenting information and influencing their audience. The stratagem of appeal to phronesis has also undergone changes. By appealing to phronesis, the prosecution representatives create an expanded scope of attention, draws the recipients` attention to specific rather than abstract images, and trigger a high-level interpretation meaning the desire to present the picture as a whole, to rise above the level of a particular situation. They are trying not only to plead his case, but to get to the essence of the matter. For example, in the case of M. Jackson's paedophilia:

the child had no father in his life*…because of the separation and divorce of the parents, and the fact that there was a court restraining order prohibiting the father from seeing the children. He* ***exploited this paternal relationship and created another relationship with the child*** *as a surrogate father… his admitted* ***practice and long-standing custom and habit of sharing his bedroom, and his bed, with young boys…*** *(Michael Jackson Sexual Abuse Allegations Trial).*

Whereas in the early 20th century, the prosecution appealed more often to phronesis as practical wisdom, in the modern context they more often appeal to phronesis as emotional intelligence.

Discourse of defense. 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 suggerend (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.

Stratagem of appealing to ethos/habitus. In discourse of defense this stratagem is of a dual nature. Of course, the defense lawyer refers to the objective moral order, the inviolate principle of the rule of law in American society, and biblical values as a real duty:

May it please your Honor, Mr. Attorney General, his staff, gentlemen of the defense, ladies and gentlemen of the jury… I wish to give you ***a text from St. Matthew*** *(Lindbergh Kidnapping Trial 1935).*

But today for the most part modern defense lawyers appeal to habitus. Since habitus is a conventional or conditional morality, a system of reproducible dispositions (attitudes, values, schemes of perception and action) that are structured by people externally (through power, socio-cultural situation, language, etc.), therefore every individual has a particular imprint, common to those members of the society to which they belong. And, at the same time acting as a basis on which grow specific features that distinguish an individual from other members of the community.

The realm of habitus allows for the free generation of an infinite variety of thoughts and actions of the individual. If ethos entails an ethical attitude to life, habitus entails rules of worldly behaviour and various formulations of "worldly wisdom". It may vary according to the situation. It is conditional. Worldly wisdom is not so strict and tolerates derogations. In his Opening Statement for the defense Eric Nelson (It is George Floyd Murder (Chauvin) Trial 2021) says about reason and common sense first, but not about the value of human life per se. And if there was so it would be no need for a trial at all:

Members of the jury. ***A reasonable doubt*** *is a doubt that is based upon* ***reason and common sense.*** *At the end of this case, we're going to spend a lot of time talking about* ***doubt****, but for purposes of my remarks this morning, I want to talk about* ***reason and common sense…***

Stratagem of appealing to interaction. It`s usually used as a tactical move at the beginning of a defense lawyer's speech.

The trial procedure envisages that the disputes between the parties are conducted in accordance with certain rules, which determine that the representative of the prosecution embodies the mechanisms for exercising of power. The defense party is the opponent, who does not have such powers. The success of the defense lawyer's activity directly depends on how he/she organises his/her communication with supporters and opponents. In other words, with all participants of the communicative process.

The defense lawyer resorts to expressive speech acts to achieve a consolidating effect and to involve the listener in the process of interaction. The background and resource for communicative actions is his life experience, his personal feelings. It is as if he motivates the participants of communication to jointly search for the truth by reaching an agreement between them:

*What **you and I want** is somebody that saw Hauptmann do something, something in connection with the murder. (Lindbergh kidnapping Trial 1935).*

It is interesting to read the accentuated use of the words "folks" and "meet" in the defense's opening statement in the Brendt Christensen Trial 2019:

***Folks, we meet** today during the most tragic and hostile of circumstances. Circumstances that are difficult to grasp and are incomprehensible in every respect.*

These examples allow us to assert that phatic communication occurs. It requires coordination in the working process and unanimity between the participants of the communication process. Yet, 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.

Having established contact and made the recipients feel at ease, the defense lawyer tries to evoke certain emotions (stratagem of appealing to emotions), which condition the perception process. It is an active process that involves decision making, sometimes unconscious decision making, by the perceiver. Into this decision-making process enter preconceptions, attitudes, motives, and environment. That is, perception based on emotions, in particular, becomes one of the factors influencing the decision-making process. Thus, appealing to emotions constitutes an important stratagem for the provocative discursive personality.

Stratagem of appealing to emotions. As emotional reaction is ahead of cognitive evaluation of the information, so the representative of the defense party first of all seeks to influence the emotions and feelings of the judge and jury. The suggestor actively uses emotions, which directs the recipients` attention to those events, facts, details of what is happening, which have personal significance for them, distracting their attention from the objective content of what is happening, which may be completely different. Such influence causes the effect of narrowing of consciousness, the purpose of which is to draw the recipient's attention to what is personally significant. It is basically the same sales funnel used in marketing. It can be slightly modified: from interest to awareness, decision, and action (Fig. 1).

In a high-profile trial investigating the murder of the girlfriend of the South African Paralympian Oscar Pistorius (2004), the defense lawyer also appeals to the emotions of the judge and jury through a suggestive presentation of the defendant's identity as experiencing awful physical suffering:

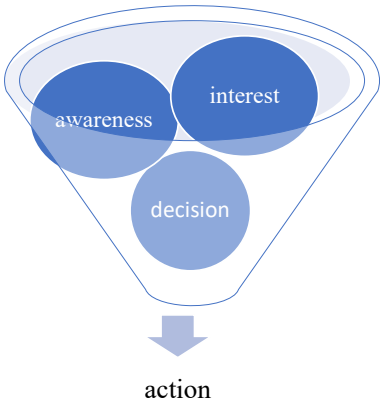

Fig. 1. The effect of narrowing of consciousness

*Pistorius told his doctor **he falls frequently**, at least once a week or two weeks; He sometimes **falls down when getting out of bed**; He will sometimes **go to the bathroom without prostheses**, but would **not go into the rest of the house without them**; He **gets back pain from using his artificial legs** and **cannot stand for more than an hour without finding them constricting**; He is **easily pushed over from front or back**; **the heel pad slips backwards when he puts weight on it, causing pain and instability**…*

As is well known, details of the private lives of famous people have always been of **interest** to the public. The listeners become interested already. Further, the recipients are **aware** that it is not possible for a person in this condition to go to the bathroom without prostheses. The defense lawyer reinforces the evoked emotions with repetitions, building a chain: *a young paralympic man with prosthetic limbs who is accused of a crime committed unintentionally and who sincerely repents for it.* As a result, on 11–12 September 2014, judge Thokozile Masipa delivered a verdict that Pistorius was not guilty of murder but guilty of the culpable homicide of Steenkamp and reckless endangerment with a firearm at a restaurant. On 21 October 2014, he was sentenced to a maximum of five years for culpable homicide with a concurrent three-year suspended prison sentence for reckless endangerment (**decision**). Finally, he was released on parole on 19 October 2015 after serving one sixth of his sentence (**action**).

It may be noted that this stratagem 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, but veiled.

Stratagem of appealing to the irrational. While rational thinking is oriented towards logic and reasoning, irrational thinking is oriented towards

feelings and emotions, where fact and fiction are intertwined. From a psychological perspective, irrational thinking is not based in evidence, operates mostly on assumptions, and is rooted in beliefs based on past experiences – positive or negative.

Provoking an emotional reaction and its anchoring are the basis for the emergence of certain feelings in the recipient. In fact, this is the goal of the advocate. If emotions have situational character, then feelings, unlike emotions, are characterised by relative stability and constancy, as they are determined by consciousness, are connected with certain knowledge, include memory, thinking processes and will.

In order for emotions to develop into feelings, they must not only be repeated, but also "experienced". Feelings are embedded in the scripts of many routine situations and can either facilitate or hinder an actor's playing of his or her social role. In seeking to manage feelings, the advocate achieves their deep internalisation at the level of cognitive beliefs, that is, the deep level of thinking that arises in the realm of the unconscious, by, as already noted, anchoring emotions, and placing them within a familiar context to "experience" them.

Irrational thinking allows making judgements that are unacceptable and unexplained from the point of view of facts, but their existence is justified by faith, intuition, sentiments. It unites the objective and subjective, the theoretical and the ordinary. The consequence of irrational thinking is often exaggeration, overgeneralisation, and parallel comparisons.

In the "Mississippi Burning" Trial 1967 the defense lawyer Mr. Watkins justified the defendants` actions only on the grounds that the witnesses could not lie:

Mrs. Carrie Benton, who testified for Frank Herndon. Frank Herndon was portrayed by the government in this case as ***a man who planned an audacious murder****... Members of the Jury, I never ask ladies what their age is, but Mrs. Benton came here and took the stand, and, in my judgment,* ***she is fifty-seven or sixty years of age.*** *Are you going to hold that* ***lady came up and held and held up her hand and swore a lie****?*

The emotions evoked by the defense generate feelings of compassion, leniency for the defendants, pity for them and finally – into guilt.

The 2011 Casey Anthony trial. This was one of the most high-profile trials. The defendant was accused of the deliberate murder of her two-year-old daughter. A whole team worked on the collection of evidence for the prosecution, and it included well-known, highly successful professionals who had won more than one case. The defense lawyer was not famous, he had no influential assistants, and yet he won the case. The defense lawyer's narrative from the opening to the closing speech was built on a feeling of pity for the defendant, which had a strong effect on the jury:

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 recipients compare this situation with their personal experience, i.e. the process of experiencing the emotion is triggered, the consequence of which may be exaggeration or generalisation. In the current context this stratagem is based on the phenomenon of transgression which means "going beyond the established, violation of norms" [10].

Thus, appealing to the irrational, the sender of the speech tries to engage faith, intuition, personal experience causing certain feelings. They are a natural reaction to what happens to us when we come into contact with the environment. This is what allows us to analyse and check reality and make decisions about further actions.

Stratagem of appealing to backward logic. Defining logic as the existence of causal relations between various objects of external and internal reality, scholars distinguish between direct and indirect logic or in other terminology backward logic. In the context of direct logic, the movement of thought is from reason to consequence (judgement): the reason is primary and causes the consequence. If the agent considers his actions as the cause of the consequence, he is responsible for the consequence; if his actions are considered as a consequence, then the cause of the consequence is attributed to someone else. Or it is determined by the situation. In such a case, the agent (in this paper, it is the defendant) is no longer guilty of his actions.

For an experienced defense lawyer, it is necessary just to swap reason and consequence or substitute a reason, because of which there is a violation of the laws of direct logic, resulting in a distortion of causation. When this happens, cognitive biases may intervene in the decision-making process to disrupt causal relationships.

In the early hours of February 4, 1999, an unarmed 23-year-old Guinean student named Amadou Diallo was fired upon with 41 rounds and shot a total of 19 times by four New York City Police Department plainclothes officers: Sean Carroll, Richard Murphy, Edward McMellon, and Kenneth Boss. The chief prosecutor, Eric Warner of the Bronx district attorney's office made the causal link between the officers` conscious decision and the murder that followed:

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

The prosecutor speaks about the consciousness of their decision, because the victim was, firstly, in the closed and small space of the lobby of the apartment block, from which he could not escape. The prosecutor further emphasizes that the police officers were not recognizable as police officers:

***These four defendants,** Boss, Carroll, McMellon and Murphy, **were in plainclothes and driving an unmarked car,** would pull up outside of his building. **They would not call out any commands, like, "Stop." "Police." "Don't move."** (Amadou Diallo Trial 1999).*

The prosecution discourse constructs a logical chain of *reason – consequence*: **a deliberate decision by the police officers – killing a person – a crime**.

Then, one of the defense lawyers, Steven Brounstein, who represents Officer Boss, substitutes the reason given by the prosecutor. He qualifies the police officers' actions not as deliberate actions but as actions justified by the law. Sadly, such actions resulted in the man`s death. However, it was a tragedy not a crime:

*Amadou Diallo died as a result of four **police officers' legally justified conduct** that occurred while patrolling **the dangerous streets of the Bronx… A mistake happened. A mistake caused by fear, fear of losing your life, fear that your colleagues had been shot, fear of having to make a decision in a split second…whether to shoot in defense of yourself and your colleagues or take the risk of being shot yourself. This is a tragedy, not a crime.** (Amadou Diallo Trial 1999).*

In the discourse of the defense, the substitution of the reason has distorted the cause-and-effect connections, resulting in a different logical chain: **legally justified actions – mistake – tragedy not crime**.

To do this the defense lawyer uses so-called priming, or new context creation. It is deemed as a psychological form of manipulation. Due to priming the recipients understand the police officers` actions as having occurred because of fear, a difficult criminal situation, etc., i.e. as a consequence of objective reasons beyond the defendants` control. That automatically implies their innocence: the defendants became victims of circumstances. The new context activates the thoughts and feelings that arose in connection with it: mentioning similar cases when police officers failed to react in time, which led to an unfortunate result because one policeman was left paralysed and another was killed:

*Members of the jury, you are going to hear about **robberies and rapes and drug dealing and a lot about illegal guns. You are going to hear about police officers shot and killed,** including **an officer named Kevin Gillespie,** a member of the Street Crime Unit **whose locker was kept as kind of a monument about three lockers away from Sean Carroll's, and an officer named Stephen McDonald, who is now a paraplegic.** (Amadou Diallo Trial 1999).*

The other defense lawyers reiterate what their colleague has said, escalating the situation further, using "an availability cascade" cognitive bias. It is often exploited, for example, by marketers, politicians and PR specialists. The effect of this cognitive bias is based on the fact that the recipient is already prepared for the perception of the next portion of allegedly confirmed arguments, which will be more difficult to resist.

Bennett M. Epstein, the lawyer for Officer Sean Carroll, who led the four in their attack on Mr. Diallo and fired 16 shots, skillfully applies the facts given by the lawyers who spoke before him:

*He went through every body motion and conveyed with every nonverbal cue that **he had a gun**. Why **didn't he talk** to them? Why **didn't he stop**? Why **did he reach into his pocket**? Why **did he turn his back to them**? When **that man turned around**, that was it. **You can't ask them to stand around** and **get blasted away.** (Amadou Diallo Trial 1999).*

Stephen Worth, defense attorney for McMellon:

*What the evidence shows is that all four of **these officers independently felt the need to shoot – both to protect themselves and to protect one another**. (Amadou Diallo Trial 1999).*

James Culleton, who represents Officer Murphy, said the officers thought Mr. Diallo was acting suspiciously when they happened to drive past his building:

*Why **he was acting that way** I have no idea. A **civilian witness will testify** that **he was acting suspicious, peeking in and out of that vestibule**. (Amadou Diallo Trial 1999).*

Availability cascades have certain criteria of accessibility: convincing, reasoned, supported by the opinions of authoritative sources. When presented in this way, not every person will be skeptical of such

information. The cascade of available information forms a confirmation bias: recipients` attention is shifted to information that confirms the judgements made. Information that casts doubt on them is ignored.

Thus, replacing an action as a reason with an action as a consequence, the defense lawyers categorise the defendants as innocent people who were predetermined to commit such actions. Having noted this as a proven fact, the lawyers carry out a further substitution: the victim becomes partially guilty for the actions of the accused. Under such circumstances nobody is guilty:

This is a case about five good men and one of them is Amadou Diallo. Mr. Diallo broke no laws, he did nothing wrong. This is a tragedy, not a crime. *(Amadou Diallo Trial 1999).*

In the next process, People of the State of New York vs Gregorio Giordano 1913, the lawyer uses backward logic too. The prosecutor assumes that the defendant is guilty because he killed his wife. The lawyer is sure that the defendant is innocent, but the circumstances are not in his favour. He substitutes a reason saying that it is not the defendant who killed his wife. Yet, instead of priming that is engaged in modern trials, he leverages framing. "Framing essentially involves selection and salience. To frame is to select some aspects…and make them more salient…in such a way as to promote a particular problem definition, casual interpretation, moral evaluation…" [4, p. 51–58].

As opposed to priming, through framing, the lawyer suggests a different perspective on the problem, putting forward new details, construing a different reality, a different form. And from the new interpreted form turns to new judgements. The defense party places a different emphasis and, by restoring the missing links in the chain of judgements, organises a new view of the situation in terms of circumstantial attribution. While personal or dispositional attribution identifies the actor`s actions as the cause, circumstantial or casual attribution identifies circumstances as the cause of the actor's actions:

Prosecutor`s reasoning: *...that* ***motive was to rid himself*** *of the woman who* ***he had been compelled to marry against his will****. (Gregorio Giordano Trial 1913).*

Defense Lawyer`s reasoning: *...there he was,* ***mentally depressed, fraught with fear, feeling****... that* ***he could not establish a home for this woman unless he had some means****; the moment he gets that money* ***he marries this woman*** *in the Church, on the 20th,* ***the very day set forth****. (Gregorio Giordano Trial 1913).*

What determines the degree of attribution, the depth of attribution? It depends on two factors: the conformity of actions to role expectations and cultural norms. Unfortunately, the defendant was an Italian. It was a period of mass migration of Italians. About 4 million Italian immigrants arrived in the United States between 1900 and 1914. They often faced serious problems. Unskilled immigrants found work mostly in low-paying and heavy manual jobs. And they were treated accordingly in society.

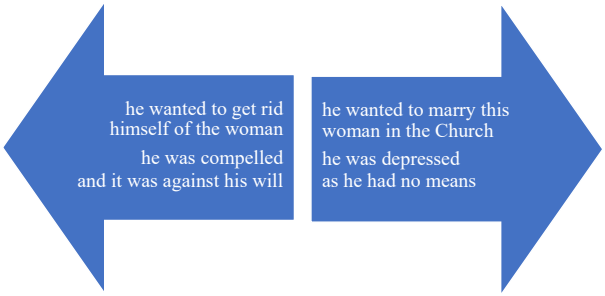

Fig. 2. Dispositional attribution vs circumstantial or casual attribution

Conclusions. We have suggested new format definitions of tactics and stratagems. 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. Accordingly, stratagems in the discourse of the prosecution (1) are of appealing to a logical component/reason, appealing to ethos, appealing to phronesis; in the discourse of defense (2) – of appealing to ethos/habitus, appealing to interaction, appealing to emotions, appealing to the irrational, and appealing to backward logic.

(1) Concerning the stratagem of appealing to a logical component/reason we can state that 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, using stratagem of appealing to ethos, 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. Stratagem of appealing to phronesis: in the early 20th century, the prosecution appealed more often to phronesis as practical wisdom, in the modern context they more often appeal to phronesis as emotional intelligence.

(2) Stratagem of appealing to ethos/habitus. This stratagem is of a dual nature. If ethos entails an ethical attitude to life, habitus entails rules of worldly behaviour and various formulations of "worldly wisdom".

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

The study shows promise as it would be intriguing to explore this issue from the perspective of the evolution of tactics and stratagems in judges` discourse.

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Зайцева М. О. НОВИЙ ФОРМАТ І ТРАНСФОРМАЦІЯ ТАКТИК І СТРАТАГЕМ У СУДОВОМУ ДИСКУРСІ

У статті проаналізовано поняття тактики і стратагеми та їхню роль в американському судовому дискурсі. З огляду на те, що використано новий формат, а також запропоновано нові погляди на раніше недосліджені сфери, можна говорити про новизну дослідження. Для досягнення мети поставлено кілька завдань: уточнити поняття тактики і стратагеми в контексті їх комунікативного впливу; визначити їх вербальне вираження в різних підтипах судового дискурсу; встановити тактики і стратагеми в різних підтипах судового дискурсу. Поставленої мети було досягнуто завдяки використанню різних методів: методу порівняння, класифікації (для виокремлення тактик і стратагем у різних підтипах судового дискурсу), узагальнення (для узагальнення інформації) та аргументації (для обґрунтування авторської позиції). Вибір підходів до аналізу зумовлений сучасними науковими парадигмами: когнітивною лінгвістикою, прагматичною лінгвістикою, комунікативістикою, а також методами лексико-семантичного аналізу. Елементи когнітивного аналізу допомогли виявити залежність судового дискурсу від соціальних умов.

Матеріалом дослідження слугували вступні та заключні промови прокурорів і адвокатів, виголошені на автентичних судових процесах у США, як у паперовій, так і в електронній формі, а також відеозаписи з YouTube.

За результатами дослідження було запропоновано новий формат розуміння тактик і стратагем. Тактика – це спосіб побудови своєї позиції/лінії поведінки для досягнення певної мети/цілей, а стратагема – це покроковий план дій. Доведено, що в дискурсі обвинувачення стратагемами є апеляція до логічної складової/розуму, апеляція до етосу, апеляція до фронезису; в дискурсі захисту – апеляція до етосу/габітусу, апеляція до інтеракції, апеляція до емоцій, апеляція до ірраціонального, апеляція до зворотної логіки.

Дослідження є перспективним, оскільки було б цікаво дослідити це питання з точки зору еволюції тактик і стратагем в суддівському дискурсі.

Ключові слова: *дискурс захисту, дискурс обвинувачення, тактики, стратагеми, трансформація.*