Multimodal Conduct in the Law

The study of language and law has seen explosive growth in the past twenty-five years. Research on police interrogations, trial examination, jury deliberation, plea bargains, and same-sex marriage, to name a few, has shown the central role of written and oral forms of language in the construction of legal meaning. However, there is another side of language that has rarely been analyzed in legal settings: the role of gesture and how it integrates with language in the law. This is the first book-length investigation of language and multimodal conduct in the legal context. Using videotapes from a famous rape trial, Matoesian and Gilbert examine legal identity and impression management in the sociocultural performance of precedent, expert testimony, closing argument, exhibits, reported speech, and trial examination. Drawing on insights from Jakobson and Silverstein, the authors show how the poetic function inheres not only in language but in multimodal conduct generally. Their analysis opens up new empirical territory for both forensic linguistics and gesture studies.

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Multimodal Conduct in the Law

Language, Gesture, and Materiality in Legal Interaction

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After the battle of Borodino, the enemy occupation of Moscow and the burning of the city, the most important episode of the war of 1812, according to historians, was the movement of the Russian army across from the Ryazan to the Kaluga road and on to the camp at Tarutino, the so-called flanking manoeuvre beyond the river Krasnaya Pakhra. Historians credit a number of different people with this stroke of genius . . . [but] students of history seem determined to ignore the possibility that this march cannot be attributed to any one individual; no one ever predicted it . . . the ploy was, in fact, never fully worked out in advance by anybody. It came about step by step, incident by incident, moment by moment, emerging from an infinitely varied set of unimaginable circumstances.

Leo Tolstoy, *War and Peace*
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Preface

In his historical overview of gesture studies, Adam Kendon (2017) notes how scholars studied gesture as a feature of persuasive oratory prior to the eighteenth century, in contrast to the modern era’s emphasis on gesture as a psychological or cognitive phenomenon. In the spirit of the Tolstoy quote in the epigraph, we view the law in the former sense, as an interactive and improvisational performance. We view the integration of speech, gesture, and materiality – multimodal conduct – as a persuasive oratory unfolding moment by moment in the concrete details of situated action. As we demonstrate in vivid detail, multimodal conduct furnishes the communicative infrastructure of the legal order.

Ironically, while massively present in the performance of law, the study of gesture (as it integrates other modal forms) is conspicuously absent in language and law research. By the same token, the study of legal interaction is largely absent in the field of gesture studies. If law is such a fateful force in social life, especially (as Max Weber reminds us) for the historical evolution of Occidental modernity, then its multimodal infrastructure deserves more analytic consideration than it has been given thus far.
Acknowledgments

A number of friends and colleagues have helped over the years in various ways. Thanks to Michael Silverstein, Adam Kendon, Beth Mertz, Pam Hobbs, Susan Ehrlich, Robert Moore, Adam Jaworski, Jim Wilce, Matthew Lippman, Susan Gal, Michelle Aldridge, June Luchjenboers, Alison Johnson, Susan Goldin-Meadow, Stephanie Dressler, and Ronjon Paul. Lindsey Elizares and Caitlin Bosch worked their magic on the photos. Thank you Troy Elizares for the jacket design. David McNeill and Susan Duncan allowed the first author to hang out at their gesture workshops at the University of Chicago, so many thanks to them for the exciting sessions. We are deeply indebted to Jurgen Streeck for all his help and encouragement. We owe a special debt to Paul Drew, Helen Barton, and Sapphire Duveau at Cambridge University Press. Catherine Rae’s superb copyediting greatly improved the finished manuscript. We would like to thank the following publishers for permission to use parts of previous articles and chapters: Sage, Oxford University Press, Routledge, John Benjamins, John Wiley, and Walter de Gruyter.
## Transcription Conventions

<table>
<thead>
<tr>
<th>Symbol</th>
<th>Meaning</th>
</tr>
</thead>
<tbody>
<tr>
<td>(.)</td>
<td>short untimed pause</td>
</tr>
<tr>
<td>(1.5)</td>
<td>time pause in seconds and tenths of seconds</td>
</tr>
<tr>
<td>((head nod))</td>
<td>double parentheses for descriptions of events</td>
</tr>
<tr>
<td>[([gesture))]</td>
<td>left bracket double parentheses for embodied action</td>
</tr>
<tr>
<td>word</td>
<td>italicizing for stress</td>
</tr>
<tr>
<td>lo:::ng</td>
<td>colon(s) for vowel extension</td>
</tr>
<tr>
<td>bold</td>
<td>bolding for louder than surrounding talk</td>
</tr>
<tr>
<td>=</td>
<td>equal sign for latched utterances with no pause</td>
</tr>
<tr>
<td>&gt; &lt;</td>
<td>more than / less than refers to sped up portions of speech</td>
</tr>
<tr>
<td>look-</td>
<td>dash for cutoff utterances</td>
</tr>
<tr>
<td>]</td>
<td>above and below brackets for overlapping speech/gesture</td>
</tr>
</tbody>
</table>

(beat gesture symbols in Chapters 8, 9, and 10)

- vc: parallel vertical chop gesture
- ig: interdigital gesture (tip of right index finger lands on and ascends up the fingers of the left hand)
- ^ig: intradigital gesture (right hand index finger latched onto little finger of the left hand where rhythm is beat out with latching motion)
- fh: horizontal fist hitting gesture where the right hand fist hits the left hand grasping palm
- rh: residual hitting gesture where the form of the last hitting beat is maintained to form two up-down vertical gestures in the hitting beat position
- mmg: material mediated gesture with photo where there is up and down and/or forward movement of the photo; material mediated gesture with both hands holding the transcript and moving up and down.
- dg: deictic gesture with left hand pointing to the top of the transcript held in the right hand