

Do interpreters make a difference
to juror evaluations of witnesses?

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Abstract

Research into courtroom discourse has suggested a strong correlation between the way witnesses speak and the way they are evaluated by juries or the bench (Giles & Sasoon, 1983; O'Barr, 1982). Some of the factors that have been found to negatively impact evaluations include witnesses' hesitant speech, upward intonation and non-standard or foreign accents (Wodak-Engels, 1984; Frumkin, 2007). When witnesses give evidence through an interpreter, an extra layer of potential bias can be added. Experimental studies have shown that interpreters' changes to the style of the original, such as the addition or omission of hesitations or fillers and hedges, can have a significant impact on the jurors' evaluation of the credibility of the witness (Berk-Seligson, 1990; Stephan and Stephan, 1986; Mendoza, Hosch, Ponder, & Carrillo, 2000; Hale, 1997, 2002, 2004), but no research has been done to determine whether the source language or the accent of the interpreter have any impact. This paper will present an overview of research into the influence of interpreters on the perceptions created by jurors. It will then present the results of a recent study that aimed to discover whether mock jurors were influenced by two factors: 1. the original language of the witness (Arabic, Chinese or Spanish), and 2. the accent of the interpreter when interpreting into English. The study found that there was no difference according to language, and that participants found the defendant more honest, credible, trustworthy, and persuasive when the interpreter had a slight foreign accent. Importantly, they were less likely to find the witness guilty if they were presented with his testimony through an accented versus a non-accented interpreter. The paper will speculate on the reasons behind these counter-intuitive results.

1. Introduction

"I unfortunately can't escape the fact that I just formed an unfavourable impression of the manner in which Mr P. and in particular, more particularly his wife, gave their evidence. I regard it as, just unconvincing." (Magistrate, interpreted case 11, in Hale, 2004)

The quote above was taken from a NSW Local Court hearing where the defendant and his wife gave evidence using the services of a Spanish interpreter. The quote is significant, in that it clearly indicates that in making a decision about the case, the magistrate was influenced by more than just the content of the testimonies. He was simply not convinced with the accounts given by the witnesses, particularly because of the manner in which they gave evidence. What is even more interesting about this quote, is that these testimonies were presented through the medium of an interpreter.

The following questions are generated by the above quote:

What makes a testimony convincing or unconvincing?

How are favourable or unfavourable impressions formed?

How much is influenced by the content and how much by the manner?

And

Was this magistrate influenced by the interpreter's rendition in forming this unfavourable impression?

This paper will address these questions in light of the research that has been done both on monolingual and bilingual courtroom testimony.

2. The oral nature of the Common Law System

This paper is set in the context of the Common Law System, which operates in most English speaking countries. Under Common Law, the criminal jurisdiction operates in an adversarial system, where cases are predominantly decided on the basis of oral evidence, rather than written evidence. As the name implies, the system consists of two opposing parties, where each party has the opportunity to present their case in a positive light, by calling witnesses to support their case, and to challenge the other side by cross-examining opposing witnesses. Language is used strategically to achieve these specific aims. Evidence is presented piecemeal in the form of question and answer sequences which are governed by strict rules of evidence. The type of questions asked and the way these questions are asked impact on the answers proffered. Although witnesses come to court mostly unaware of the impact of their testimony style on the outcome of the case, much research has shown that the manner in which a testimony is presented impacts greatly on the way it is perceived by those deciding on a verdict – either the jury or the bench (Loftus, 1979; O'Barr, 1982; Conley & O'Barr, 1990; Berk-Seligson, 1990. Mendoza et al, 2000).

3. Studies into courtroom discourse

3.1 Testimony style in native speaker witnesses

Research into the discourse of monolingual court cases has produced a series of interesting results. Research in the late 70s and 80s showed that when defendants speak in complete sentences and use politeness markers in their testimony they receive higher rates of acquittal (Parkinson, 1979, Danet, 1980). The work of O'Barr and colleagues, in particular, has shown

that the overuse of hesitations, fillers and hedges, which they named ‘powerless speech’, consistently elicits more negative assessments of credibility, trustworthiness and competence from jurors. These results have been corroborated by other researchers as well (O’Barr, 1982; Conley & O’Bar, 1990; Berk-Seligson, 1990; Mendoza et al, 2000; Hale, 2004). Similarly, it was found that hesitant speech in lawyers also makes them less persuasive, affecting the credibility of that side’s case (Mendoza et al, 2000). It has also been found that defendants from middle class backgrounds, with high levels of education present their testimonies in more relevant and coherent ways, leading to better outcomes (Conley & O’Barr, 1990)

3.2 Testimony style in non-native speaker witnesses

There has been some research conducted which suggests that non-native English speakers may have difficulty creating a good impression in court due to their inability to manage the appropriate style (Bresnahan, 1979; Naylor, 1979; Ryan & Giles, 1982). This may be due both to poor linguistic competence and/or to foreign or non-standard accent.

A U.S study of witnesses with Lebanese (Arabic), Mexican (Spanish) and German accents found that the accented Lebanese witness was rated less favourably than the Mexican and German accented eyewitnesses, but found no difference between the evaluations of the German and Mexican accented witnesses (Frumkin, 2007). This latter result was counter-intuitive. Due to the different levels of prestige of the three languages, the researchers expected the witnesses to be ranked in the following order: German, Spanish and Arabic. Although Arabic produced the least favourable evaluations as expected, German was not rated higher than Mexican Spanish. A possible explanation for these results is that familiarity with a particular accent tends to rate more highly, as found by research conducted by Ryan & Giles (1982).

4. Implications for court interpreters

The above results relate to witnesses who give evidence without the help of an interpreter, hence they are being judged purely on what they say and on the way they say it. When an interpreter is added to the equation, they can potentially affect the evaluations of the witnesses for whom they are interpreting. This leads to a number of questions about the potential impact of interpreters, such as:

Are witnesses judged less favourably because they need the services of an interpreter?

Is the language of the witness a potential source of prejudice?

Is the accent of the interpreter a potential source of prejudice?

Does the manner in which the interpreter interprets make a difference to the way the witnesses are perceived?

Some of these questions have been explored through research, but many more are yet to be explored.

4.1 Results of interpreted discourse research

Studies into interpreted discourse have found that interpreters who are not trained as specialist legal interpreters make numerous mistakes that mostly go undetected (Stephan and Stephan, 1986; Berk-Seligson, 1989, 1990; Mendoza et al, 2000; Hale, 1997, 2002, 2004). One important finding has been that interpreters' changes to style impact on the evaluations of the witnesses. Experimental research found that when interpreters added powerless speech features, the evaluations of credibility, trustworthiness and competence significantly dropped; when they omitted the powerless features that were present in the original, the evaluations significantly improved; but when the interpreted renditions were very similar to the original in content and style, they did not significantly differ from the evaluations of the originals (Hale, 2004). The following is an example of a change from powerless to powerful style:

Example

Answer: *Yo solamente eh... le vi la hojita, que, o sea como, como brillante, no más, y eso.*

(I only uh...saw the little blade, that, I mean, like, like it was shiny, that's all, and that)

Interpreter: I just saw the shiny blade of the knife

(Hale, 2004)

Interpreters can be trained to maintain accuracy of both content and manner in order to minimise their impact on the outcome of a case. However, there are factors that are beyond the interpreter's control and cannot be changed through training, such as the language combination in question, and the interpreter's foreign accent. Issues of prejudice can come into play if the ethnic background and language spoken or the accent of the interpreter impact on the evaluation of the witness' credibility. Although language competence can be improved, when speakers learn a second language after the age of puberty, a foreign accent will be very difficult to eliminate. Most interpreters in Australia are native speakers of the language other than English and therefore carry different degrees of a foreign accent.

5. Study on jury perceptions according to language combination and accent (By Hale, Bond & Sutton, 2009)

In order to ascertain whether accent and language impact on the evaluations of witnesses who give evidence through an interpreter, a group of researchers at the University of Western Sydney conducted an experimental study, the results of which I will report in this paper.

5.1 The study

The University of Western Sydney has been offering interpreting and translation degrees for over twenty years. It has a high population of staff and students who speak languages other than English. The study was conducted in the context of this population. Staff and students were invited to participate in the study which required them to evaluate the credibility, honesty, trustworthiness and persuasiveness of Arabic, Chinese and Spanish speaking witnesses giving evidence through interpreters. They were also asked to state whether they found the defendant guilty or not guilty. Interpreting and Translation students were excluded from the study. Most respondents were Psychology students who did not speak the language of the witness they were evaluating.

Six groups of approximately 20 mock jurors each, listened to one of the following testimonies which were identical in content:

Male Chinese witness giving evidence in Chinese through a Female interpreter with a slight Chinese accent

Male Chinese witness giving evidence in Chinese through a Female interpreter with a native English (Australian) accent

Male Arabic witness giving evidence in Arabic through a Female interpreter with a slight Arabic accent

Male Arabic witness giving evidence in Arabic through a Female interpreter with a native English (Australian) accent

Male Spanish witness giving evidence in Spanish through a Female interpreter with a slight Spanish accent

Male Spanish witness giving evidence in Spanish through a Female interpreter with a native English (Australian) accent

Male defendants were chosen to match the higher rate of male defendants in the courts. Similarly, the great majority of interpreters are female, and so female interpreters were chosen for the study.

5.2 Results

5.2.1 Differences according to language combination

The results found no significant difference based on language on the verdicts of guilty or not guilty. Similarly, language did not have any effect on the evaluations of credibility, honesty, trustworthiness and persuasiveness. This result is encouraging, as it clearly demonstrates that there is no prejudice against any of these languages or ethnic backgrounds. Unlike the US study, which found Arabic to be perceived less favourably, this study did not show any negative result against Arabic.

5.2.2 Differences according to accent

A significant difference was found in the evaluations of credibility, honesty, trustworthiness and persuasiveness based on accent. The results, however, were again counter-intuitive. All the accented versions were rated as more credible, more honest, more trustworthy and more persuasive than the non accented versions. Similarly, jurors were less likely to convict the defendant when the interpreter had a slight foreign accent.

These are encouraging results as most court interpreters in Australia have a foreign accent that cannot be changed. They are also encouraging in that they seem to indicate that there is no prejudice based on language or nationality. As per the US study quoted above, this may relate to the familiarity of the sample population with speakers of these three languages. Note that the mock jurors did not speak the same language of the witness they were evaluating. However, as these languages are the main languages offered in the interpreting and translation courses, these mock jurors would be surrounded by speakers of these languages in their everyday student lives, which may have eliminated any potential bias. Further research is needed to ascertain whether the same results will be achieved using different populations. Our research team is planning to replicate the same study with a population of mostly monolingual jurors from a less multicultural area of Sydney. The study will also be replicated in Spain, where the witnesses will speak English, Chinese and Arabic.

Conclusion

The results of the research cited above have clear implications for court interpreters and interpreted proceedings. It is crucial for issues of equity that witnesses who testify in a language other than the language of the court are not negatively impacted by the intervention of an interpreter. As much as it is possible, interpreters should remove the language barrier and place the witness in the same position as a witness who does not require the services of an interpreter. In order to ensure that such is the

case, research needs to be conducted on the potential influence of interpreters, as well as on which factors can be addressed and which cannot. Research into the impact of style has shown that interpreters' changes to the style of the testimony can significantly impact the outcome. With this result in mind, specialist education can go a long way towards training interpreters to be aware of subtle discursal features and attempt as much as possible to maintain faithfulness of content and manner. Other aspects of interpreted situations, however, cannot be rectified with training. These include issues such as gender, accent and language combination. If research finds that they impact on the evaluation of witnesses, then awareness needs to be raised about this potential source of bias among the judiciary. The results of the current study reported in this paper indicate that non native accent in the interpreter's renditions does not seem to negatively prejudice the jurors when evaluating the witnesses' credibility, honesty, trustworthiness and persuasiveness. The study also found that there seems to be no prejudice against Arabic, Chinese or Spanish speaking witnesses. Further research is needed to make these findings conclusive.

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