

One Bias Particular to Asylum Courts: The Native-Speaker Bias

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Abstract: Among the biases that affect the perceived credibility of plaintiffs, defendants and (expert) witnesses, there is one that plagues asylum courts in particular, as they are the ones where LAAP (Language Analysis for Asylum Procedures) is the most likely to come up: the native-speaker bias. This concerns native speakers of the asylum claimant's language who contribute to forensic linguistic analyses of the claimant's dialect aimed to determine whether a connection can be established between the claimant's language use and their claimed place of origin. Their insights are prone to be dismissed by courts in favour of those of people with prestigious academic qualifications. In no way seeking to deny the value and contribution of the latter, this article sets out to show that they cannot replace the former, as certain linguistic abilities are unlikely to attain the same level of proficiency when acquired non-natively – that is, after the critical period, which ends around puberty. While the input provided by native-speaker analysts does not determine the conclusion of the language analysis by itself, it is they who provide the raw data that is subsequently processed by qualified linguists according to forensic methodology and the information available in the specialised literature. Thus, a linguist's analysis is bound to be compromised if the primary observations that it relies on are not adequate and adequate data can most aptly be provided by native speakers. Understanding this would enable a more correct assessment of the credibility of native speakers employed in LAAP and help stamp out one of the biases that threaten the fairness of asylum court proceedings and outcomes.

Keywords: Asylum Court, Native Speaker, Language Analysis, Bias, Credibility, Forensic Linguistics, LADO, Expert Witness

1. Introduction

The issue of bias in relation to the perceived credibility of plaintiffs, defendants and (expert) witnesses has received increasing attention, to the extent that institutions such as the UK Ministry of Justice and the UK Parliament have made a point of looking into the matter [17] and seeking strategies to mitigate the phenomenon [13]. Some of the most common biases being researched are gender, race and ethnicity biases, as well as cognitive biases. However, the present article brings attention to a related bias, which is at play in asylum cases in particular and concerns the unique abilities of native speakers to process their own language. These abilities, which are employed in Language Analysis for Asylum Procedures (LAAP), are sometimes dismissed by courts in favour of

prestigious academic qualifications. In no way seeking to deny the value and contribution of the latter, this article aims to show that they cannot replace the former and it is therefore more judicious to employ and consider them in complementarity rather than in competition.

2. Credibility-Threatening Biases

The credibility of witnesses is a crucial factor that affects the fairness of court procedures and judgments. But perhaps more so is the perception of that credibility, as 'Assumptions, stereotypes and contextual information can influence judgement unintentionally and result in suboptimal reasoning' [13]. An already classic example of bias proven to influence the credibility granted, for instance, by jurors to expert witnesses is the gender bias. As one study on actual court trials published by

Behavioral Sciences and the Law concluded: ‘Gender was found to affect perceived trustworthiness ratings, in which male witnesses were seen as more trustworthy than female witnesses.’ [10]. Another study, dated 2006 and supported by the Swedish Research Council looking at eyewitness credibility as perceived by Swedish fact finders revealed another factor that is subject to bias: ‘witness ethnicity affected judgments differentially depending on presentation mode for fact finders high in prejudice toward immigrants’ [8].

However, it is not merely broad factors such as gender, race and ethnicity that have been found to affect credibility, but subtler ones as well, such as speech style [15], emotional behaviour [18] and even linguistic factors, such as accent, as shown by a study published by the *Journal of Experimental Social Psychology*: ‘Non-native speech is harder to understand than native speech. We demonstrate that this “processing difficulty” [in the listener] causes non-native speakers to sound less credible.’ [7].

Since asylum courts, by definition, deal with foreigners, the credibility of asylum claimants is particularly vulnerable to a wide variety of biases. Thus, in a study conducted by Catriona Jarvis, Senior Immigration Judge in the UK, ‘as one IJ bluntly put it in responding to Jarvis’s study, British asylum appeals are “a lottery” in which the decision depends above all on which IJ happens to hear the appeal.’ [4].

3. The Native-Speaker Bias in the Context of Language Analysis for Asylum Procedures

Aside from the above-mentioned biases, there is one particularly at play in asylum cases, a bias related to ear witnesses and speech sounds. More exactly, it concerns native speakers of the asylum claimant’s language who contribute to forensic linguistic analyses of the claimant’s dialect aimed to determine whether a connection can be established between the claimant’s language use and their claimed place of origin (aka LAAP – Language Analysis for Asylum Procedures).

The International Association of Forensic Phonetics and Acoustics (IAFPA) has acknowledged two alternative methods of conducting LAAP: 1. the method whereby a linguist carries out the analysis using all available tools, including observations made by a native speaker and 2. the method whereby the linguist who is a speaker of the language makes the observations and carries out the analysis (thus, in a way, acting as one’s own informant) [14]. Thus, the value and viability of native speakers’ input, with or without formal training, is acknowledged by the scientific community. And not without grounds: for example, an empirical study conducted by Paul Foulkes and Kim Wilson [3] shows that *untrained* native speakers perform better than non-native phonetics students, phoneticians, and LADO (Language Analysis for the Determination of Origin) professionals in terms of accuracy and have a higher degree of confidence if given the task to identify a linguistic variety in several different samples (in this case Ghanaian English).

3.1. The Unique Abilities of Native Speakers

But what is a native speaker and what makes their skills unique? According to the *Routledge Dictionary of Language and Linguistics*, a native speaker is ‘a person who learned a language as a child’ [1]. James R. Hurford, member of the Centre for Language Evolution at the University of Edinburgh, indicates what the term ‘child’ is considered to mean in this context: ‘the evolutionary model (...) implemented on a computer and simulations of populations evolving under various plausible, if idealized, conditions result in clear critical period effects, which end around puberty’ [6]. Hence, for biolinguistic reasons, after puberty, certain language skills are likely unable to be acquired at the same level as before this threshold. In other words, the later the age of exposure to a language is, the steeper the decline in average proficiency [11].

However, language proficiency comprises a series of skills (listening, speaking, writing, comprehension, production, interaction), so it is necessary to zoom in on the specific one that is of interest when employing native speakers in LAAP, namely listening comprehension. Is there a difference between the performance of native and non-native speakers when it comes to this particular skill? Odette Scharenborg of the Delft University of Technology and Marjolein van Os of Saarland University sought an answer to this question in their study bearing the self-explanatory title *Why Listening in Background Noise is Harder in a Non-native Language than in a Native Language: a Review*. They concluded that:

‘The picture that arises is that although spoken-word recognition in the presence of background noise is harder in a non-native language than in one’s native language, this difference is not due to a differential effect of background noise on native and non-native listening. Rather, it can be explained by differences in language exposure, which influences the uptake and use of phonetic and contextual information in the speech signal for spoken-word recognition.’ [16].

This suggests that the quality of being a native speaker of a language enables one to perform better than a non-native in at least certain language comprehension tasks, which is the main kind of task that native speakers are required to perform in LAAP. More exactly, it is they who extract relevant examples of language use from the speech sample.

This leads to the conclusion that knowledge of a language acquired after the critical period, even in the form of a university degree, does not equate the abilities of a native ear when it comes to speech perception. Just as ornithologists, in spite of possessing abundant theoretical knowledge about birds, cannot themselves fly, yet birds can, in spite of no theoretical knowledge of flight at all.

3.2. The Due Credit to and Adequate Use of Native Speakers

Thus, the inflated trust in witnesses possessing university degrees attesting to their theoretical knowledge of a certain language to the detriment of native speakers of the same language stands in stark contrast to the view of the professional organization IAFPA, which has explicitly banned taking on case work without native language competence, as

stated by article 3.9 of its Code of Practice: ‘When carrying out forensic phonetic analysis of speech in a language in which the analyst does not have native-level competence, members should seek assistance from a trained native-level speaker of the language in question.’ [2].

However, as Patrick [12] remarks, ‘Native competence in a language is respected by linguists as a legitimate type of knowledge, but on its own it is naïve and inexplicit knowledge [...]’. Thus, as per the IAFPA methodology, the input provided by native-speaker analysts does not determine the conclusion of the language analysis by itself, but merely constitutes the raw material processed by qualified linguists according to forensic methodology and the data available in the specialised literature. Nevertheless, a linguist’s analysis is bound to be compromised if the primary observations that it relies on are not adequate and, as stated by the IAFPA Code of Practice, it is native-level speakers who are the most qualified to provide that adequate data.

Furthermore, research directly relevant to LAAP has concluded that the ability, whether innate or acquired, to identify dialects is inherent in the individual [9]. Therefore, in the selection of prospective dialect identifiers, appropriate testing is of more vital importance than formal criteria.

4. Conclusion

Thus, a proper understanding of the skills and abilities of native speakers enables not only their appropriate and efficient use in LAAP – Hoskin [5] points out that ‘Patrick (2012, 544), too, though once adamantly opposed to the involvement of NSNLs [native speaker non-linguist], has recently come to conceive the question in more open terms: “...not whether, but how NENS [non-expert native speakers] knowledge should be used in LADO [Language Analysis for the Determination of Origin]” –, but also a more correct assessment of their credibility in court proceedings.

To rid the legal systems worldwide of prejudices regarding gender, race and ethnicity is a tall order requiring constant vigilance. However, one can hope that trials where speech and dialects are at the core can contribute to this endeavour by identifying and combatting bias, starting with one that is reasonably detectable and perhaps easier to stamp out than others.

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