

1996

An examination of the influence of court interpreters upon attributions of defendant and plaintiff culpability

Grace Frances
Edith Cowan University

Follow this and additional works at: https://ro.ecu.edu.au/theses_hons



Part of the [Social Psychology Commons](#)

Recommended Citation

Frances, G. (1996). *An examination of the influence of court interpreters upon attributions of defendant and plaintiff culpability*. Edith Cowan University. https://ro.ecu.edu.au/theses_hons/725

This Thesis is posted at Research Online.
https://ro.ecu.edu.au/theses_hons/725

1996

An examination of the influence of court interpreters upon attributions of defendant and plaintiff culpability

Grace Frances

Edith Cowan University

Recommended Citation

Frances, G. (1996). *An examination of the influence of court interpreters upon attributions of defendant and plaintiff culpability*. Retrieved from http://ro.ecu.edu.au/theses_hons/725

This Thesis is posted at Research Online.
http://ro.ecu.edu.au/theses_hons/725

Edith Cowan University

Copyright Warning

You may print or download ONE copy of this document for the purpose of your own research or study.

The University does not authorize you to copy, communicate or otherwise make available electronically to any other person any copyright material contained on this site.

You are reminded of the following:

- Copyright owners are entitled to take legal action against persons who infringe their copyright.
- A reproduction of material that is protected by copyright may be a copyright infringement. Where the reproduction of such material is done without attribution of authorship, with false attribution of authorship or the authorship is treated in a derogatory manner, this may be a breach of the author's moral rights contained in Part IX of the Copyright Act 1968 (Cth).
- Courts have the power to impose a wide range of civil and criminal sanctions for infringement of copyright, infringement of moral rights and other offences under the Copyright Act 1968 (Cth). Higher penalties may apply, and higher damages may be awarded, for offences and infringements involving the conversion of material into digital or electronic form.

An examination of the influence of court interpreters upon attributions
of defendant and plaintiff culpability.

Grace Frances

Edith Cowan University

Supervisor: Professor Don Thomson

This theses is presented for the degree of Bachelor of Arts (Psychology) Honours

31st October 1996

**EDITH COWAN UNIVERSITY
LIBRARY**

USE OF THESIS

The Use of Thesis statement is not included in this version of the thesis.

Abstract

An expressed reluctance of the courts to employ interpreters has been challenged on the basis that a failure to provide such assistance to the Non-English Speaking (NES) witness contravenes the principles of natural justice. Further, NES defendants risk being misunderstood and incapacitated in their ability to effectively communicate the intended meaning of the evidence they are giving. In order to determine whether the presence of an interpreter exerts influence upon attributions of culpability given to a NES defendant, it was important to identify whether evaluations were based on the interpreter's presence or on the defendant's ethnicity. Therefore, three trial conditions were filmed and randomly administered to a total of 90 participants recruited mainly from the student population at Edith Cowan University. Each trial condition was viewed by thirty participants. The hypothetical trial concerned a civil litigation case in which the same Australian plaintiff in all trial conditions attempted to establish negligence for a car accident. Evidence given by both parties made it difficult to determine fault. In the control condition, an Australian defendant argued her case against having to make restitution for damages not caused by her. In the condition controlling for ethnicity, a defendant of Italian background argued the same case in accented English. In the Interpreted condition, the same Italian defendant gave the same evidence in Italian with the assistance of an interpreter. Using a ratio-percentage scale, participants rated the proportion of culpability attributed to the defendant. They were also asked to indicate how much their decision was influenced by key participants involved in the trial process. Comments were invited with regard to the

nature of this influence. The results of a one-way ANOVA returned means of 67.33, 63.33 and 59.00, $F(2, 87) = .81$, $p > .05$, for the Australian, Italian-Australian and the Italian-interpreted conditions, respectively. The findings demonstrated that respondents did not discriminate between defendants. Qualitative data relating to the defendant and the interpreter was analysed for references to impression-formation and evidential information. The results demonstrated that evidential information was used to inform respondents' decisions. A finding of no influence attributed to the interpreter suggests that the reluctance of courts to employ such assistance is unjustified.

Declaration

I certify that this thesis does not incorporate without acknowledgement any material previously submitted for a degree or diploma in any institution of higher education; and that to the best of my knowledge and belief it does not contain any material previously published or written by another person except where due reference is made in the text.

Signature

✓

Date

31st October 1996

Table of Contents

| | Page |
|---|-------------|
| Use of Thesis | i |
| Abstract | ii |
| Declaration | iv |
| List of Tables | viii |
| Acknowledgments | ix |
| Chapter | |
| I INTRODUCTION | 1 |
| Background | |
| Multicultural Policy | 1 |
| Access and Equity | 2 |
| Legal Interpreters | 2 |
| Access to Interpreters | 3 |
| Assessing Language Proficiency | 4 |
| Cultural Specificity | 5 |
| Recording the Communication of the NES Defendant | 5 |
| Forming Impressions of the NES Witness | 6 |
| Summary | 7 |
| Language Style | 8 |
| Interpreter-Facilitated Trials: Altering Pragmatic Elements of Witnesses Speech | 9 |
| Politeness Markers | 9 |
| Reluctance of the Courts to Employ Interpreters | 10 |
| Cross-Cultural Research | 11 |
| Speech and Personality Correlates | 12 |
| Speech and Culpability Correlates | 13 |
| Heuristics | 15 |
| Summary | 15 |
| Non-Verbal Cues | 16 |
| Impression Formation | 17 |
| The Fallibility of Evaluations Formed on the Basis of Impression-Related Information | 18 |
| Methodological Considerations | 19 |

| Chapter | Page |
|--|-------------|
| Parameters of the Current Thesis | 20 |
| Research Questions | 21 |
| Nature of the Trial | 21 |
| Ethnic Origin of the Defendant | 22 |
| Comparability | 22 |
| Evidential and Impression Elements | 22 |
| Measures and Analysis | 23 |
| II METHOD | 25 |
| Participants | 25 |
| Materials | 25 |
| Procedure | 27 |
| III RESULTS | 29 |
| Questions Addressed | 29 |
| Findings | 30 |
| Content Analysis | 30 |
| Australian condition | 31 |
| Italian- Australian condition | 32 |
| Italian-Interpreted condition | 33 |
| Interpreter's Influence | 34 |
| IV DISCUSSION | 36 |
| Strength of the Manipulation | 36 |
| Power | 37 |
| Sources of Influence: Evidential Information | 38 |
| Nature of Trial | 38 |
| Inconclusive Evidence | 39 |
| Uncorroborated Evidence | 40 |
| Sources of Influence: Cultural Background | 41 |
| Credibility | 41 |
| Accent | 42 |
| Presence of a Foreign Language | 42 |
| Sources of Influence: Interpreter's Presence | 44 |
| Perceptions of Length of Trial | 44 |
| Voice Characteristics | 45 |
| Access and Equity | 45 |
| Associations with the Defendant | 45 |
| Credibility and Speech Style | 46 |
| Credibility | 46 |
| Independence of Interpreter characteristics | 47 |
| Speech Style | 48 |

| Chapter | Page |
|---|------|
| Summary | 50 |
| Limitations of the Findings | 51 |
| Interpreter Impartiality | 52 |
| Implications of the Findings | 53 |
| Challenging the Reluctance to Employ Interpreters | 53 |
| Limitations of the Findings | 56 |
| Conclusions | 56 |
| References | 58 |
| Appendices | |
| Appendix A | |
| A (i) Court Transcript - English Only Version (Australian and Italian-Australian Defendants) | 62 |
| A (ii) Court Transcript - Interpreted Version (Italian-Speaking Defendant) | 77 |
| Appendix B | |
| B (i) Questionnaire - English Only Version (Australian and Italian-Australian Defendants) | 93 |
| B (ii) Questionnaire - Italian-Interpreted Version (Italian-Speaking Defendant) | 97 |

List of Tables

| | Page |
|--|-------------|
| Table 1 | 29 |
| Mean Ratings of Culpability Assigned to Defendants | |
| Table 2 | 31 |
| Summary of Rank-Order Analysis of Perceptions of the Australian Defendant as a Function of Impression and Evidential Information | |
| Table 3 | 32 |
| Summary of Rank-Order Analysis of Perceptions of the Italian-Australian Defendant as a Function of Impression and Evidential Information | |
| Table 4 | 33 |
| Summary of Rank-Order Analysis of Perceptions of the Italian-Speaking Defendant as a Function of Impression and Evidential Information | |
| Table 5 | 34 |
| Summary of Rank-Order Analysis of Perceptions of the Interpreter's Role as a Function of Impression and Evidential Information | |

Acknowledgments

It is with deep gratitude that I wish to thank my supervisor Professor Don Thomson. His enduring patience, support and sense of humour created an atmosphere of learning characterised by fairness, friendship and laughter.

I also wish to thank my daughter, Laura. Together we made it through a year of TEE exams and Honours; not something that can be accomplished without understanding, love, and a commitment to our mutual growth based on a belief that we are only limited by our imaginations.

For all the support and encouragement given without condition by my parents, I am truly grateful. Their belief in my ability to see this degree through to its conclusion never wavered serving to strengthen my own belief in myself.

A special mention needs to be made of Dr. Adele Hills. Apart from her own special brand of support, I thank her for providing much laughter and lightness to this year. Similarly, the acceptance and warmth shown by staff have made the department a welcoming place.

Finally, I wish to acknowledge the substantial support given without hesitation by many friends. Kati, Jeremy, Theresa, Franca, Glenys, Phyllis, Marie, David, Pam Davies and in particular, Peter Strain and my cousin Tony Silla, for their support and participation in the “trial”. Pam Sullivan, Elke and Bruce, deserve special thanks.

Chapter One

An examination of the influence of court interpreters upon attributions of defendant and plaintiff culpability.

Australia has been growing rapidly as a multicultural society with new immigrant populations characterising each decade since post-war mass migration in the 1950's (Smolicz, 1995). The implications of the 1950's immigration practices extended beyond strategic economic and defence goals envisioned by the Australian government (Bird, 1995). Throughout the 60's and 70's, the realities of managing a culturally and linguistically diverse nation, coupled with a growing international awareness for a set of standards preserving basic human rights, challenged the government's existing administrative practices (Bird, 1988; Smolicz, 1995).

Multicultural Policy

Politically democratic ideals such as access and equity for all Australians (Grassby, 1981; Bird, 1995; Smolicz, 1995) were not sustainable in a political and cultural climate which furthered the needs of the dominant Anglo-Australians to the exclusion of Aboriginal, European and Asian Australians (Grassby, 1981). In response to the obvious need for an integrative Australian identity, as well as recognition of the inequalities fostered by assimilationist policies which preserved a monocultural and monolingual value base (Grassby, 1981), the government adopted a policy of multiculturalism. The tenets of such a policy ... "presuppose the existence of an overarching framework of shared values...a framework which is flexible and responsive to the various cultures of the ethnic groups that compose the nation" (Smolicz, 1995, p3).

While the term was intended to be connotatively inclusive of all Australians, irrespective of their ethnic background, it could be argued that a lack of definitional clarity (Chipman, 1980), structural inequities inherent in existing social bastions (Smolicz, 1995), and political restrictions on funding (Bird, 1995), saw the ambit of the policy narrowly pragmatized.

Access and Equity

In Australia, approximately 15% of residents speak a language other than English at home, reflecting the presence of well over 100 ethnic communities (Laster & Taylor, 1994; Smolicz, 1995). In order to ensure that the principles inherent within a multicultural approach do not remain confined to the realms of a philosophical ideology, structural changes targeting those institutions which shape and reflect the prevailing cultural and social values are necessary (Hampel, 1989). One such institution is the legal system. It is argued that a number of obstacles exist in this system which hinder the practical application of those principles which ensure access and equity in a multicultural society.

Legal Interpreters

A primary challenge lies in actualising the fundamental tenet upon which the legal system rests, that all Australians have access to, and are equal before the law. This also includes the right to be heard (Bird, 1988). Providing the Non-English Speaking (NES) person with the services of an interpreter is one way, though limited, of ensuring that the rights of some two-million Australians are respected (Laster & Taylor, 1994; Laster, 1990).

Access to interpreters.

In a review of the use of interpreters in Australian courts and tribunals, Carroll (1995) concluded that the under-utilisation of interpreters in some legal forums was not a reflection of the minimal need for such services, but a result of the subjective criteria used by the courts when exercising their discretion under the principles of common law in allowing a NES person access to an interpreter. At the Commonwealth level, an amendment to the *Crimes Act 1914 (Cth)* has legislated the right to an interpreter during police investigations of a criminal nature (Bird, 1995). State legislation guaranteeing the right to an interpreter is similarly confined to criminal proceedings. However in civil trials no such guarantees exist (Laster & Taylor, 1994).

A discretionary bias to allow access to an interpreter is, according to Laster and Taylor (1994), based on the "...the nature of the legal proceedings and the role which an NESB[ackground] person plays in those proceedings" (Laster & Taylor, 1994, p78). In procedural fairness, accused persons must be able to understand the allegations brought against them and respond in their own defence. As such, courts tend to view the provision of an interpreter for a NES defendant as being more justified than providing an interpreter for a witness, or for a civil trial (Laster & Taylor, 1994).

In practice, a more flexible approach to accommodating the needs of NES people is observed in some State and Commonwealth tribunals. In process and outcome, tribunals must "...conform with the principles of natural justice" (Laster & Taylor, 1994 p64). With reference to the requirement that accused persons understand the nature of the allegations and that the courts respect their right of reply,

there is a suggestion that accessing an interpreter for the NES person, is a less contentious issue in administrative tribunals than it is in the courts.

Carroll's (1995) evidence, however, shows that while tribunals are more likely to employ the services of an interpreter for NES people, there is still a tendency to over-estimate the language proficiency of those people with a limited command of English. In doing so, adjudicators over-estimate their ability to fully comprehend the meaning intended by the non-fluent English speaker.

Assessing Language Proficiency

The implicit assumption in allowing judicial discretion in granting a defendant access to an interpreter, is the belief that a magistrate or judge is capable of assessing the English language proficiency of the speaker (Carroll, 1995). Linguists have consistently challenged this assumption and criticised the failure of the courts to employ an objective standard such as expert evidence or the Australian Second Language Proficiency Rating Scales (ASLPRS), in making such an assessment (Carroll, 1995; Jensen, 1995; Eades, 1995; Wu, 1994).

Criticisms of current practices are founded not only on important ideological considerations such as broadening the notion of "fairness" to include an holistic understanding of the socio-linguistic context beyond verbal symbolism (Wu, 1994), but also on empirical evidence. Documented case-studies of potentially unjust decisions usually concern a comparative analysis by a linguist of the Police Record of Interview (PRI) or the court transcript, and an objective assessment of the English language proficiency of the interviewee (Wu, 1994; Eades, 1995; Jensen, 1995; Gibbons, 1995).

Cultural Specificity

Lack of cultural or linguistic knowledge leads to frequent misinterpretation of the meaning intended by the non-native speaker. A failure to note the contextual and stylistic elements of spoken information can also serve to mislead the observer who is attuned to different cultural-linguistic nuances. In a case analysed by Wu (1994), the use of obscene language and kinship terms in Chinese culture assumed a sinister connotation when that evidence was read by the court. However when the recording of the spoken conversation was heard and analysed by Wu, the relationship between the conversants, one being the defendant in the case, and the conversational style, revealed a familiarity based on a long-term friendship. This information was imparted to the defence lawyer who requested the linguist's assistance. However, the court was not given an opportunity to assess the implications for the defendant of the subsequent interpretation. Wu (1994) makes the observation that incoming information is processed according to a culturally-specific cognitive framework. In the case just discussed, Wu concludes that an "English mind set" permeates the processing of information heard by an English-speaking court (Wu, 1994, p1351). As a consequence, the risks of being misunderstood at the most fundamental level, that is, in terms of the appropriate socio-cultural and sub-cultural expressions, are substantially increased for the NES defendant.

Recording the Communication of the NES Defendant

In a comparative analysis of evidence regarding one event recorded in three modes, Gibbons (1995) assesses the differences between the Police Record of Interview (the PRI), obtained without the assistance of an interpreter or electronic

recording; a transcript of a tape-recorded interview, a document also written without the assistance of an interpreter (the Transcript); and a sworn statement by the accused given through an interpreter (the Statement).

The case concerned drug charges made against a Lebanese man. The PRI was obtained without the assistance of an interpreter. While this statement is supposed to be a literal depiction of the spoken words, Gibbons (1995) and others (Eades, 1995; Jensen, 1995), have found that police attempts to render the broken-English communication into an intelligible written statement results in a record of interview which has been “conveniently transcribed into better English” (Gibbons, 1995, p179). On occasion, these “changes” have rendered the evidence inadmissible in court (Gibbons, 1995, Wu, 1994).

In comparison to the transcribed recorded interview conducted by Gibbons in English, as part of his brief to determine the veracity of the PRI, significant omissions were noted in the PRI with respect to linguistic features used by the witness. The use of repetition to add emphasis is a common strategy used by second language speakers; a strategy which Gibbons noted was consistently used by the accused but failed to appear in the PRI. Furthermore, the inclusion of certain linguistic features attributed to the speaker suggested that the speaker had mastered the use of complex syntactic structure in the English language which was not evidenced in the taped recording.

Forming impressions of the NES witness.

The third record analysed was a transcript of the witness’ statement of the same event given in his native tongue and translated into English by an interpreter. While the second record of interview unveiled some pertinent information that was

missed in the PRI, a clear understanding of the event was still not possible; a point which indicated that considerable license had been taken in constructing the PRI to form a coherent account of the events. Only through the interpreted statement did the process of events become clear. However, in addition to gaining a clear understanding of the event in question, an achievement which could not have been realised without the assistance of an interpreter, concern is raised by Gibbons (1995) about the impression that is formed of the witness, when either of the English translations are used. The interpreted statement portrays the witness as a mature adult speaker using highly sophisticated and dignified grammatical constructions. By contrast, the interviews conducted in English portray the speech style as “childlike and incorrect” (Gibbons, 1995, p183). While this is expected during the process of second language acquisition, the choice of transcript has implications for how the defendant is likely to be viewed by participants involved in the court process.

Summary

The above-mentioned studies direct attention to two important psycho-social influences involved in the processing of information related to person perception. The first concerns processing information in accordance with a framework which is consistent with the individual’s experience of their own culture (Wu, 1994). The second concerns the impact of language style upon the perceptions formed of a speaker (Gibbons, 1995). That cultural referents are used as the basis for forming these evaluations is seen in those studies which have assessed the impact of language style upon mock juror’s perceptions of witness credibility and personality characteristics attributed to the speaker.

Language Style

In a culture which values status and power, cues associated with the acquisition of these desired social rewards, are likely to be noticed. Language style was identified by Lakoff (1975) and Lind and O'Barr (1979), as a variable influencing the processing of information related to the social status of the speaker. They found that certain speech styles render the communication as being either 'powerful' or 'powerless'. A powerless language style is characterised by the frequent use of intensifiers, empty adjectives, hedges, gestures and over-politeness. In contrast, a powerful language style is characteristically devoid of such cues (Lakoff, 1975). The authors maintain that the cues inherent in these communications become associated with personality characteristics which are attributed to the speaker on the basis of a social evaluation derived from preconceived attitudes and beliefs. Based on these evaluations, a speaker's testimony is perceived as more or less credible.

Lind and O'Barr (1979) assessed the impact of testimony delivered in either a powerful or powerless language style. Mock-jurors evaluated the speaker on a number of psycho-social dimensions as well as assigning a credibility rating to the witnesses' testimony. The findings revealed that a powerful mode of delivery resulted in a higher acceptance of the witnesses' testimony by the mock-jurors. Furthermore, an impression of the witness as being competent, intelligent, likeable, trustworthy and dynamic was elicited when the witness used a powerful language style. The implications in a court setting are that the outcome of a trial can be affected by the language style of a crucial witness. Lind and O'Barr (1979), suggest that the manipulation of the witness' speech style exerted greater influence on mock-

jurors' perceptions of the witness' credibility than did the actual content of the testimony.

Interpreter-Facilitated Trials: Altering Pragmatic Elements of Witnesses Speech

Based on these research findings Berk-Seligson (1988;1990) investigated transcripts of interpreter-facilitated trials as well as recording the evidence being delivered in the Spanish language. She found that poor interpreting rendered the testimony as fragmented and often portrayed a powerless speech style; a finding which reveals the role of the interpreter as being less than neutral (Berk-Seligson, 1990; Laster, 1990). Of particular interest, was the observation that an Hispanic interpreter would adopt the cultural practice of addressing the witness by the polite address term even if the lawyer had not addressed the witness as such. Berk-Seligson observed that this practice initiated what she termed "a cycle of reciprocal polite address" between the interpreter and the witness, and the interpreter and the lawyer (Berk-Seligson, 1990, p150).

Politeness Markers.

Lind and O'Barr (1979) have identified the use of politeness markers as constituents of a powerless language style. An assessment of whether the use of politeness markers alone, contributed to a less favourable view of the defendant as typically measured along psycho-social dimensions was conducted by Berk-Seligson (1988). Two audio-recordings were made of the same evidence given by the same Spanish-speaking defendant whose testimony was translated into English by the same interpreter. In one condition the interpreter consistently included the polite address used by the witness. In the other condition the polite address was not interpreted.

The findings that the use of politeness markers contributed to a more favourable view of the defendant ran contrary to the findings of Lind and O'Barr (1979). These findings may be attributed, in part, to the research design. Lind and O'Barr (1979) sought evaluations based on spoken communication which included all the verbal nuances which comprise a powerless language style. Participants were also given detailed background information regarding the nature of the case before listening to a 20 minute recording. In contrast, Berk-Seligson (1988), assessed only one of the variables, provided minimal information about the case and required participants to listen to a four-minute recording. While methodological issues and questions regarding the generalisability of the findings are raised, the issue regarding the influence of the interpreter in shaping the impression formed of the witness, is a significant contribution.

Reluctance of the Courts to Employ Interpreters

For different but related reasons, courts are reluctant to employ the assistance of interpreters. One of the criticisms expressed by the judiciary is the belief that an interpreter will not give a literal interpretation of what is being said (Carroll, 1995; Bird, 1988; Laster, 1990). However, analyses of court transcripts such as those conducted by Berk-Seligson (1990), and Wu (1994), tend to suggest that the problem of inadequate interpreting is more of a concern to the NES witness. The impression of the witness that is being conveyed to the adjudicators can have detrimental effects upon that witness' fate, especially when the witness is also the defendant.

A further misconception regarding the delivery of testimony through an interpreter concerns the belief that a witness is attempting to gain an advantage in

terms of having more time to answer questions put to them by the courts as a result of answering through an interpreter (Carroll, 1995; Bird, 1988; Laster, 1990). This criticism further reflects the parochial concerns of a justice system seeking to assuage their suspicions regarding the defendant's motive. Unfortunately an inherent danger to NESB witnesses who risk being misunderstood and effectively incapacitated in their attempt to convey the full intentions behind their words, is only occasionally recognised by the court. Bird (1995), cites Justice Gobbo (1991), in his support of the argument that the NESB witness' perspective should be paramount in assessing the need for an interpreter:

“There is a popular mythology that the presence of an interpreter is in some ways an advantage to the litigant or witness who uses an interpreter...In my view, the fact that you have to give evidence through an interpreter is, by and large, a considerable disability” (Gobbo, J. 1991, cited in Bird, 1995, p12).

Certainly in some of the studies discussed so far, pragmatic elements of the witnesses' speech have been shown to have been altered when that testimony has been interpreted or translated. Other studies (Wu, 1994; Laster & Taylor, 1994; Laster, 1990), have shown that the use of interpreters has been instrumental in averting a potential miscarriage of justice.

Cross-Cultural Research

Cross-cultural research related to speech and personality correlates have identified further sources of bias which impact upon non-native speakers. In some circumstances the use of an interpreter is not justified on linguistic grounds as the speaker has command of the host culture's language. In these situations, persistent

biases appear to mediate the impression formed of a speaker. Empirical evidence has shown that even in cases where a command of the acquired second language has attained a high level of fluency, perceptions of the speaker still tend to be driven by preconceived attitudes unrelated to the content of the spoken communication. A cross-cultural investigation of issues related to person perception and speech style was conducted by Dornic, Nystedt, Laaksonen and Arnberg (1989). Two aspects of spoken language particularly relevant to their investigation were those speech cues which activated attitudinal factors and those cues which activated linguistic factors.

Speech and Personality Correlates

Evaluation of a speaker's personality when that person's speech is accented due to second language acquisition was one aspect investigated in this study. A review of previous studies conducted by Dornic et al. (1989), consistently demonstrated that speech cues indicative of immigrant status led judges, who are fluent and usually native speakers of the national language, to rate the immigrant speaker more negatively on personality traits and social status.

Extrapolating from the observation that ethnocentric attitudes foster a perception of superiority of one ethnic group (usually the host nationals) over another (immigrants to the host country), Dornic et al. hypothesised that socio-political factors such as the cultural, historical and economic background of the immigrant's country and its political importance, would impact upon the perception held by native speakers of ethnic minorities. These perceptions would lead to different evaluations of the immigrant depending on that person's country of origin. Therefore the primary

purpose of the study was to investigate whether ethnic-linguistic status impacted differentially on perceptions formed of speakers from two ethnic minority groups.

After listening to Americans and Greeks reading a short passage in Swedish, the speakers were rated firstly on personality variables and subsequently on Swedish-language proficiency by Swedish judges. The authors hypothesised that the higher status attributed to American immigrants in Sweden would result in a more favourable personality evaluation. Their findings revealed that American immigrants were perceived as more capable and more highly educated than Greeks in the language proficiency measures. However, associations between language proficiency and personality traits were not observed in the ratings assigned to the Americans. In contrast, Greek immigrants were perceived favourably on a number of affective traits, such as calm, pleasant and sincere, but were rated negatively on language proficiency measures. The authors drew attention to previous studies which found that a stronger accent attracted a lower language proficiency score; a perception which could explain their findings. While inconclusive, the authors tentatively venture the hypothesis that attitudinal factors were driving the perceptions of proficiency given that personality measures were rated initially. The pattern of findings obtained for the evaluation of the Greek immigrants, as well as the correlational nature of the study, were factors acknowledged by the authors as contributing to the inability to draw firm conclusions.

Speech and Culpability Correlates

In a study comparing culpability ratings assigned to Cape-Afrikaans suspects speaking in either English or Afrikaans by white English-speaking judges, Dixon, Tredoux, Durrheim and Foster (1994), found that higher culpability ratings were

assigned to suspects whose speech consistently diverged from the dominant English. When suspects accommodated their speech towards that of the English speaker, they were rated as less guilty. Further, attributions based upon social category were ventured as possible reasons for the finding that blue-collar crime attracted higher guilt ratings than did white-collar crime.

In an attempt to determine which aspects of the suspect's speech were associated with attributions of culpability, factors on the Speech Evaluation Instrument (SEI) were analysed. The SEI has a three factor structure comprising Dynamism, Attractiveness and Superiority (Dixon et al. 1994). Only the Superiority factor encompassing items relating to a speaker's fluency, literacy and organisation, emerged as a significant influence on guilt ratings. This finding suggested to the authors that factors relating to affective-based evaluations are less influential in a legal context than are those linguistic elements associated with a perception of the communicator as being "well-spoken" and articulate. A methodological problem evident in this study, concerns the fact that ratings were based on having heard a 60 second recording. Furthermore, given the socio-political climate of the country in which the study was conducted, it is presumably difficult to exclude affective influences as impacting on the ratings given by white English-speaking adjudicators; an awareness displayed by the authors when they suggested that the findings may have differed had the adjudicators been Cape-Afrikaans. However, this study as well as the previous one conducted by Dornic et al. (1989), appears to lend support to the observation offered by Wu (1994) that information is processed according to the culturally-dominant mind set.

Heuristics

That language is crucial in shaping the impressions formed of a speaker is highlighted by the above-mentioned studies. Attributions regarding fundamental aspects of the speaker's social identity, moral and intellectual integrity, as well as dispositional tendencies, are made on the basis of minimal information. Basically, these studies are concerned with heuristically-driven attributions (Kaneham, Slovic & Tversky, 1984). While these are inherent cognitive processing strategies that allow people to make sense of the social world, research has consistently demonstrated the fallibility of making such attributions on the basis of limited information. Further, these evaluations are made in remarkably short periods of time, suggesting that preconceived attitudes and beliefs are activated by certain speech cues.

Summary

So far, this review has demonstrated that cues ranging from the overt - such as differences in cross-language semantics (Wu, 1994), redundant terms (Gibbons, 1995), and cultural status (Dornic et al. 1989; Dixon et al. 1994) - to the subtle, such as paralinguistic features (Lind & O'Barr, 1979; Lakoff, 1975; Berk-Seligson, 1990), are equally potent in activating a view of a person as a complete identity. The universality of this phenomena is further demonstrated by cross-cultural studies such as those conducted by Dornic et al. (1989) and Dixon et al. (1994). That heuristically-driven attributions are relatively resistant to contextual elements is demonstrated by the consistency of the evaluations derived from judges. The use of certain cues elicits similar evaluations regardless of whether speakers are being rated on the basis of their reading a literary communication (Dornic et al. 1989), or on the basis of hearing a

speaker deliver trial evidence (Lind & O'Barr, 1979; Berk-Seligson, 1990; Dixon et al. 1994).

The studies discussed have been instrumental in broadening understanding by isolating the impact of language upon psycho-social evaluations of a speaker. However, they have all employed the same basic methodology, that is, judges rate speakers on the basis of hearing their voices recorded electronically. It is argued here that the generalisability of these findings would be enhanced by the inclusion of visual stimuli consistent with the auditory stimuli. The preceding studies have successfully demonstrated the influence exerted by speech characteristics upon person perception. Cues emitted through non-verbal communication are identified in a subsequent examination of the literature as a further source through which attributions regarding the character of the speaker are formed.

Non-Verbal Cues

To date, this study has considered two objections raised by the courts in defence of their reluctance to employ an interpreter, the first related to a concern regarding the literal interpretation of the foreign language communication. The second related to a suspicion that a NESB witness may be able to formulate his/her responses in more time when that witness is giving testimony through an interpreter. Another objection raised by the courts is the belief that a witness' credibility and the veracity of his/her testimony will be more difficult to assess with the interposition of an interpreter (Carroll, 1995). This belief underlies a pervasive reliance that people have in using visual cues to assess a speaker's credibility.

Impression Formation

Apart from inherent or acquired perceptual disability, both the auditory and visual channels are employed in forming an overall view of another. When observers are given the opportunity to express their behaviour towards another, empirical evidence suggests that behaviour will reflect the social evaluation formed of the other. Based on Asch's (1946) impression formation paradigm, Kelley (1950) gave his participants the opportunity to interact with a stimulus person and observe his behaviour. Expectations about the person were manipulated with one group of respondents in that they were informed that this person was "rather cold..., industrious, critical, practical and determined" (Kelley, 1950, p433). This group, in comparison to a control group who had not received the preinformation, consistently rated the stimulus person more negatively and interacted less with him. These findings are further related to the tendency that people have to use labels to describe others from different cultural backgrounds. Kelley (1950) cites Katz and Braly's (1947) observations about the use of ethnic labels...

"...labels such as "German" or "Negro" [give rise to] a number of [culturally determined] perceptions...and can transform the entire impression of the person, leading to attributions which are related to the label on a broad cultural basis or even, perhaps, [being viewed as originating from within the person]" (Kelley, 1950, p431).

Kelley's study demonstrated that any behavioural information gained about a person through actual observation is consistently interpreted in light of the original evaluation made about that person. While these cognitive strategies assist in the

processing of information relating to the social world, in a court of law, the derived conclusions may impact upon a defendant's fate when these behaviours are directly translated into verdict.

The Fallibility of Evaluations Formed on the Basis of Impression-Related Information

The reliance on visual cues in forming or confirming an impression of a witness as credible is reflected in the following statement by Justice Brereton (1968, cited in Laster & Taylor, 1994, p164);

“...evidence given through an interpreter loses much of its impact, and this is so in spite of the expert interpretation now readily available. The jury do not really hear the witness, nor are they fully able to appreciate, for instance, the degree of conviction or uncertainty with which his (sic) evidence is given; they cannot wholly follow the nuances, inflections, quickness or hesitancy of the witness; all they have is the dispassionate and inexpressive tone of the interpreter... These matters may operate unfairly either to the advantage or to the disadvantage of the witness involved”.

A number of studies conducted by Ekman and his colleagues (Ekman, 1989; Ekman & Friesen, 1987; Ekman & O'Sullivan, 1989) concluded that a type of “universal fallacy” exists about which behavioural cues are indicative of a person's credibility. Behavioural cues traditionally associated with deceit include gaze aversion; pauses; speech disfluencies; speech mannerisms; variations in voice intonation and the frequency with which illustrators are used. However, Ekman (1989) points out that anxiety creating situations can also evoke the same responses and misinterpretations are inevitable if the observer is seeking to confirm a

predetermined impression of the person as lacking in credibility. However, cultural norms also dictate the appropriate non-verbal responses and these may differ widely in the use of gestures (Henley & LaFrance, 1984), and speech mannerisms (Scherer, 1979). Seeking to confirm or interpret symbolic language through an ethnocentric perspective which is at variance with the speaker's ethnicity has been identified as a contributing cause of inter-cultural miscommunication (Dodd, 1975).

Methodological Considerations

When the litigant or defendant is of ethnic origin and unable to speak the language of the host culture concerns regarding adjudicators' abilities to process evidential information in an unbiased manner are warranted. While valid, arguments that strongly suggest that employing the assistance of an interpreter will serve to ameliorate some of the institutional bias existing in legal forums (Carroll, 1995; Laster & Taylor, 1994; Laster, 1990; Bird, 1988; 1995) fail to mention that the inclusion of an additional variable in courtroom dynamics may serve to compound existing attributional biases towards a NES witness.

The inclusion of an interpreter has been shown to impact upon the impression formed of a witness. However, the few studies conducted in this area have focused on analysing in a "post-hoc" manner the fairness or otherwise of providing an interpreter for a NESB witness and the consequences that such decisions may have on that witness' fate. Appeals based on the failure to provide an interpreter have also been instructive (Laster & Taylor 1994). Political issues regarding access and equity in a multicultural society are emphasised by Bird (1995), in an attempt to highlight incongruencies between current legal practices and political and humanistic ideology.

Inconsistencies between court transcripts of the interpreted evidence and the actual communication in the foreign language was analysed by Berk-Seligson (1990) in an attempt to demonstrate that the interpreter can and does alter pragmatic linguistic elements. However, an important consideration in this work is the failure to control for the proficiency level of the interpreter. Increasing the salience of trial evidence has also been suggested by Scherer (1979) as a possible factor attenuating the impact of the formed evaluation of a witness on the basis of speech characteristics.

It would appear that only one study has employed a research design which attempts to assess the impact of interpreted testimony by actively manipulating some variable. In this study, conducted by Berk-Seligson (1988), the variable was a linguistic element. Furthermore, the context in which the evidence is presented is usually of a criminal nature (Berk-Seligson 1988; Laster & Taylor 1994; Wu, 1994; Gibbons, 1995); this is likely to confound attributions of culpability formed on the basis of ethnic group membership (Dixon et al. 1994).

Parameters of the Current Thesis

Apart from issues of procedural equality, no research has yet determined whether or not the presence of an interpreter doing her job properly in a court of law exerts undue influence on perceptions formed of a witness by participants involved in the court process. Research has failed to separate whether the source of influence is due to ethnicity alone, or to the interpreted evidence, or to contextual elements relating to the nature of the trial. The issues raised by the related research direct attention to those factors which need to be controlled in order to avoid confounding

influences. These considerations have directed the nature and form of the present study which addresses three questions:

- i. does trial outcome differ as a function of a witness requiring an interpreter?
- ii. do impression or evidential variables impact differentially on perceptions formed of a defendant when that person is giving evidence through an interpreter, or when the same evidence is given by the same person in accented English? Further, do perceptions of the NESB defendant differ to those formed of a native English speaking defendant?
- iii. are impression or evidential variables instrumental in shaping a view of the interpreter's role in the courtroom?

Nature of the trial.

In order to control for contextual elements, the hypothetical case constructed to illustrate the issues raised by the research questions concerned a car accident at an intersection where both parties maintained that their signal was green. From the positioning of the vehicles and the witnesses' testimony it was not possible to determine who in fact was at fault. Therefore, this was a civil litigation case, recorded on video, where one party, the same Australian plaintiff in all conditions, was attempting to establish negligence and recover damages of \$10,000 sustained to her vehicle from the defendant. The nature of the case was suggested by the work of Wodak-Engel (1984), who maintained that a traffic accident is considered to be class and gender free.

Ethnic origin of the defendant.

The cultural background of the NES defendant chosen for this study was Italian. Given the exploratory nature of this study an attempt was made to avoid existing confounds which may arise due to recent immigrant status, as the focus of this research is concerned with the presence of an interpreter. Italians are well established in Australia and represent the largest immigrant group comprising 2% of the total population (ABS, 1991).

Comparability.

The ratings assigned to a NES Italian defendant are compared with ratings assigned to the same defendant when she is giving the same evidence in English, without the assistance of an interpreter. However, the English is necessarily accented. These findings are also evaluated against the same evidence given in English by an Australian defendant. Respondents were asked to give an indication of what proportion of the \$10,000 required to repair the damage sustained to the plaintiffs' vehicle should be paid for by each party.

Evidential and impression elements.

All evidential information presented in this case was balanced across both parties, so that it would be difficult on the basis of evidence to conclude in favour of either the plaintiff or the defendant. Therefore a finding attributing equal proportions of responsibility to both parties should emerge if evidential information is used to inform respondents' decisions regarding culpability. In contrast, if impression-related information is used, a finding attributing responsibility to the Italian defendant should emerge. This possibility exists for either or both of the conditions using an Italian

defendant. The literature suggests that the accented speaker will be evaluated negatively (Dornic et al. 1989; Dixon et al. 1994), but is silent with regard to the impressions formed of a speaker requiring an interpreter. The literature does imply, however, that the interpreter may attract some of the focus (Laster & Taylor, 1994; Laster, 1990; Bird, 1995).

Measures and analysis.

Attributions assigned to the defendant and the plaintiff were assessed using a ratio percentage scale ranging in value from 0% to 100% in ten-unit increments. Respondents were also asked to indicate on a scale ranging from “strong influence” to “negligible influence”, how much their decision was influenced by key participants involved in the trial process. The nature of this influence was sought by inviting participants to comment freely but briefly in an open format section. Only the qualitative data pertaining to the defendant and the interpreter was analysed to determine whether the influence related to impression-formation variables or to evidential information.

References to impression-formation variables relating to the three defendants and the interpreter were recorded against a definitional criteria derived from a review of the literature in this area. In this manner, four categories and their constituent elements were identified; non-verbal cues included facial expressions, eye contact, gestures, and ethnicity. Demeanour included confidence, assertiveness, aggressiveness, calm, gentle, polite, strong, weak and defensive. Disposition included sincerity, competence, and credibility. The degree of the defendant’s conviction included convincingness, and how convinced the defendant appeared to be of her

version of events. References to speech-style were recorded against a definitional criteria inherent in the work of Lind and O'Barr (1979), Scherer (1979) and Lakoff, (1975). This category included tone, pitch, volume, rate, clarity, hesitancy and accent. References to evidential variables were informed by the contextual elements of the constructed transcript used in the present study. These were identified as follows; inconclusive evidence, references to specific witnesses' evidence, and doubt cast on the witnesses evidence by the lawyers. With one exception, the same criteria was used to analyse qualitative comments pertaining to the interpreter. Evidential references were not included, however, any associations made between the interpreter and the defendant were recorded. Similarly, any additional references relating to perceptions of the trial as a result of including the interpreter were also recorded. Given the lack of research in this area, the fundamental nature of the present study is exploratory.

Chapter Two

Method

Participants

Ninety participants (55 women, 25 men), with a mean age of 32 years, volunteered for this study (demographic data was missing for ten cases). Participants were recruited mainly from the undergraduate student population at Edith Cowan University but also from the general population. Several small groups were subjected to the experimental conditions at various times. The conditions were randomly administered and a total of thirty participants were involved in each of the three conditions.

Materials

A transcript which followed court-room procedure was developed of a hypothetical civil litigation case (see Appendix A). The case concerned a car accident at an intersection controlled by traffic signals. In this case, the plaintiff was attempting to establish negligence on the part of the defendant and recover damages of \$10,000 sustained to her vehicle. Both parties maintained that their signal was green. The description of damage sustained to both vehicles made it difficult to decide in favour of one or the other driver. Similarly, the extent of the damage sustained by both vehicles was equal. The make and model of both vehicles were matched for market value. Neither party had invested insurance interests as both were comprehensively insured and both had the “no claim bonus protection” on their policies.

The transcript was enacted by a number of people known to the researcher after attempts at recruiting professional actors were unsuccessful. The Italian interpreter used in the study, is accredited at Level 4 by the National Accreditation Authority for Translators and Interpreters (NAATI), and has had extensive experience in court interpreting. In order to standardise conditions, an attempt was made to match key witnesses for gender and age. These were women and aged in their mid-sixties. Across all conditions, the same Australian woman was depicted as the plaintiff; the same man as the insurance assessor providing the court with an official quote for repairs to the plaintiff's vehicle; and the same male witness (a petrol station owner), who appeared on behalf of the plaintiff with an untenable account maintaining that the signal confronting the plaintiff must have been in her favour. In all conditions the plaintiff was represented by the same male lawyer aged 40 years. Thereafter, the defendant who represents one of the three conditions of interest was depicted. The control condition against which the foreign language and ethnicity conditions were to be evaluated depicted an Australian defendant. This condition is referred to as the Australian-Australian condition. The control condition for ethnicity depicted an English-speaking Italian defendant arguing the same case. This condition is referred to as the Italian-Australian condition. It will be evaluated against the foreign language and the Australian condition in order to determine whether any differences in judgment that may emerge are attributable to the interpreted testimony or to ethnicity. The Italian condition depicts the same Italian defendant giving her testimony in the Italian language with the assistance of an interpreter rendering that testimony into English for the Court. Similarly, the interpreter renders the lawyers' questions into

Italian for the defendant. In all conditions the defendant was represented by the same female lawyer aged 40 years. Therefore, in each condition all factors were held constant except for the nationality of the defendant and the presence of the interpreter in the Italian condition.

In each condition the defendant argued her case against having to make restitution for damages not caused by her and maintained that she went through the intersection on the green signal and that therefore it must have been the plaintiff who disregarded the red signal. All conditions were enacted in an actual courtroom in the Joondalup Magistrate's Court. A professional camera operator recorded all conditions on VHS using two cameras "locked-in" position in the courtroom so that one film captured the lawyers while the other film focused on the witnesses. The camera positions were held constant across conditions. A professional film editor later edited both films into one consecutive account of each condition. The entire first half of the film which included all the plaintiff's evidence; the petrol station owner's evidence (the witness for the plaintiff); and the lawyer's performances, were directly copied onto all conditions. Thereafter the only difference in the video recordings was the depiction of the defendant. Within limits, efforts were made to keep the "points of edit" standard across conditions also. The English-only conditions were 20 minutes in viewing length, while the foreign language condition was 27 minutes in viewing length.

Procedure

Prior to viewing one of the video recorded conditions, participants were informed of the voluntary nature of the study and the time commitment involved.

Interest in the way participants involved in the court process arrive at decisions regarding attributions of negligence was offered as a description of the purpose of the study. Participants were further informed about the content of the video through the information and consent form which was read and signed prior to participation. After viewing one of three conditions on video, respondents were given a brief questionnaire which initially reiterated the nature of the case and the role played by the plaintiff, defendant and both their lawyers. Respondents were then asked to give an indication of what proportion, if any, of the \$10,000 required to repair the damage sustained to the plaintiffs' vehicle should be paid for by each party. How respondents would apportion responsibility to both, the plaintiff and the defendant was measured by a ratio percentage scale. For example, if the respondent decides that the defendant is responsible for 60% of the damage bill, then the plaintiff must be responsible for 40% of the damage. An indication of those factors which exerted influence upon the respondent's decision was also sought. Respondents were also asked to indicate on a scale ranging from "strong influence" to "negligible influence", how much their decision was influenced by key participants involved in the trial process. An opportunity for respondents to freely comment upon the manner in which they were influenced by each of the trial participants was provided. Six personnel were included in the English-only conditions, while the foreign-language condition included the interpreter as the additional variable (see Appendix B). There was no specific order used in position arrangement of the personnel list.

Chapter Three

Results

The present study addressed three questions:

- i. does trial outcome differ as a function of a witness requiring an interpreter?
- ii. do impression or evidential variables impact differentially on perceptions formed of a defendant when that person is giving evidence through an interpreter, or when the same evidence is given by the same person in accented English? Further, do perceptions of the NESB defendant differ to those formed of a native English speaking defendant?
- iii. are impression or evidential variables instrumental in shaping a view of the interpreter’s role in the courtroom?

The mean rating of culpability assigned to the defendants in the three experimental conditions is contained in Table 1.

Table 1
Mean Ratings of Culpability Assigned to Defendants

| Defendant | <u>n</u> | <u>M</u> | <u>SD</u> |
|---------------------|----------|----------|-----------|
| Australian | 30 | 67.33 | 24.63 |
| Italian-Australian | 30 | 63.33 | 29.75 |
| Italian-Interpreted | 30 | 59.00 | 21.07 |

A one-way analysis of variance (ANOVA), was conducted using SPSS for Windows after satisfying the ANOVA test assumptions. The defendant’s rating constituted the Dependant variable and the defendant’s race / ethnicity constituted the

Independent variable comprising three levels; Australian, Italian-Australian (Italian defendant speaking English), and Italian-interpreted condition (the same Italian defendant speaking in Italian, mediated through an interpreter). There was no difference in the mean culpability rating assigned to the Australian, Italian-Australian and Italian-speaking defendant as shown in the respective means of 67.33, 63.33 and 59.00, $F(2, 87) = .81, p > .05$.

A regression analysis indicated that the weight given to the ethnicity of the defendant was of little importance in distinguishing between culpability ratings assigned to the defendants. This explained a negligible 2% of the variance in predicting the defendants rating; ($R = .135, R^2 = .018$); $F(1,88) = 1.633, p > .05$.

In order to determine whether impression or evidential variables as outlined in the second research question, impact differentially on perceptions formed of the defendant across the three trial conditions, a content analysis of the qualitative data relating to the defendant was conducted. The qualitative data was analysed for references to variables which reflected characteristics associated with speech style, non-verbal behaviour or attributes, demeanour, disposition, the degree of conviction portrayed and evidential information. Proportions reported reflect the frequency with which a variable was identified by each respondent within each condition. Therefore, categories and their constituents are not independent as reflected in the observed proportions. To clarify, a respondent can state that a defendant was perceived to be honest (disposition), calm (demeanour) but was hesitant in her delivery of evidence (speech style). Each of these variables would earn a frequency rating. The five highest ranking variables identified by respondents as influencing their view of the

Australian, Italian-Australian and Italian defendant are shown in Tables 2, 3 & 4 respectively. The inter-rater reliability scores obtained for each condition were 89%, 100% and 85% respectively.

Table 2

Summary of Rank-Order Analysis of Perceptions of the Australian Defendant as a Function of Impression & Evidential Information (N = 28*)

| Variable | Frequency | Category | Proportion | Rank Order |
|-------------------------|-----------|----------------------|------------|------------|
| uncorroborated evidence | 11 | evidence | 39% | 1 |
| not convincing | 6 | degree of conviction | 21% | 2 |
| credible | 6 | disposition | 21% | 2 |
| inconclusive evidence | 5 | evidence | 18% | 3 |
| lack of confidence | 5 | demeanour | 18% | 3 |
| sincere | 4 | disposition | 14% | 4 |
| hesitancy | 3 | speech style | 11% | 5 |

Note. * Qualitative data was missing for two cases.

The results identify a lack of evidence corroborating the defendant's testimony as the most frequent response. This variable relates to the weight given by respondents to the evidence being corroborated by a witness for the plaintiff even though the evidence provided by the petrol station owner was untenable and discredited. The next most important influence relates to perceptions formed of the

witness as being credible yet unconvincing. Credibility refers to a view of the defendant as honestly reporting the facts of the event as she perceived them. Convincingness refers to the manner in which those facts were presented.

Table 3

Summary of Rank-Order Analysis of Perceptions of the Italian-Australian Defendant as a Function of Impression & Evidential Information (N = 29*)

| Variable | Frequency | Category | Proportion | Rank Order |
|-------------------------|-----------|--------------|------------|------------|
| inconclusive evidence | 9 | evidence | 31% | 1 |
| uncorroborated evidence | 6 | evidence | 21% | 2 |
| credible | 5 | disposition | 17% | 3 |
| favourable attributes | 4 | demeanour | 14% | 4 |
| clarity/accent | 3 | speech style | 10% | 5 |

Note. * Qualitative data was missing for one case.

The results identify the two most important sources of influence being attributed to evidential variables. The nature of the evidence being inconclusive as well as a failure to corroborate the defendant’s testimony are rated by respondents as important contributors influencing their decisions regarding defendant culpability. Inconclusive evidence relates to an inability to draw any firm conclusions on the basis of the evidence presented by either the plaintiff or the defendant or their lawyers.

Table 4

Summary of Rank-Order Analysis of Perceptions of the Italian-Speaking Defendant as a Function of Impression & Evidential Information (N = 30)

| Variable | Frequency | Category | Proportion | Rank Order* |
|-------------------------|-----------|--------------|------------|-------------|
| inconclusive evidence | 15 | evidence | 50% | 1 |
| uncorroborated evidence | 9 | evidence | 30% | 2 |
| lacking in clarity | 3 | speech style | 10% | 3 |
| facial expressions | 3 | non-verbal | 10% | 3 |
| competent | 3 | disposition | 10% | 3 |
| credible | 3 | disposition | 10% | 3 |
| lacking confidence | 2 | demeanour | 7% | 4 |
| voice tone/pitch | 2 | speech style | 7% | 4 |

Note. * Only four of the highest ranking variables are shown due to the remaining proportions being of negligible influence.

The results identify the two most important sources of influence being attributed to evidential variables. The nature of the evidence being inconclusive as well as a failure to corroborate the defendant’s testimony are once again rated by respondents as important contributors influencing their decisions regarding defendant culpability.

In order to answer the third research question, “are impression or evidential variables instrumental in shaping a view of the interpreter’s role in the courtroom”, a content analysis of the qualitative data relating to the interpreter was conducted. This data was analysed for references to variables which reflected characteristics associated with speech style, non-verbal behaviour or attributes, demeanour, disposition, references to associations with the defendant and references to procedural matters. Once again, proportions reported reflect the frequency with which a variable was identified by each respondent who viewed this condition. The five highest ranking variables associated with the interpreter’s role in the courtroom are shown in Table 5. An inter-rater reliability score of 100% was obtained.

Table 5

Summary of Rank-Order Analysis of Perceptions of the Interpreter’s Role as a Function of Impression & Evidential Information (N = 30)

| Variable | Frequency | Category | Proportion | Rank Order |
|---------------------------------|-----------|--------------|------------|------------|
| no influence | 12 | N/A | 40% | 1 |
| competent | 7 | disposition | 23% | 2 |
| case longer / distracting | 6 | procedural | 20% | 3 |
| tone, volume, rate & clarity | 5 | speech style | 17% | 4 |
| fair procedure | 2 | procedural | 7% | 5 |
| associated impression | 2 | evidence | 7% | 5 |

The results demonstrate that a primary view of the interpreter's role in the courtroom is one which exerts no influence on trial proceedings. A second but related view concerns a perception of the interpreter as conducting her duties in a competent manner. Competence relates to a view of the interpreter as performing her duties in the manner expected of a person in that capacity.

Chapter Four

Discussion

The present study explored the influence of court interpreters upon attributions of defendant and plaintiff responsibility. In answer to the first research question posed “does trial outcome differ as a function of a witness requiring an interpreter”, an analysis of the proportion of responsibility attributed to the defendant was conducted using a one way ANOVA with three levels. Whether the defendant is an Australian giving evidence in English, or an Italian giving evidence in accented English, or the same Italian defendant giving evidence in Italian through an interpreter, makes no difference to trial outcome as demonstrated by the results obtained in this study. Further, the ethnicity of the defendant only accounts for 2% of the variance in predicting the defendant’s rating.

Strength of the Manipulation

A number of explanations for this finding of no difference between trial conditions need to be considered. In order to control for any confounding influences which may have arisen due to the recent immigrant status of the defendant an Italian nationality was chosen for manipulation of the ethnicity variable. Portraying the same Italian defendant in both conditions provided the necessary control for ethnicity. Therefore a finding of equality across groups suggests that the nationality of the defendant did not influence culpability ratings. It is acknowledged however, that a different result may be returned if a less assimilated nationality is represented. A design goal of this study was to avoid confounding ethnicity with recent immigrant

status as well as the presence of an interpreter. It is submitted that the findings indicate that this was successful.

The second manipulation was the presence of the interpreter in the Italian-speaking condition. Controlling the proficiency level of the interpreter is forwarded as another justification for the inherent reliability of the present findings. Based on a review of the literature it is apparent that the majority of problems arising from poor interpreting can be attributed to the practice of seconding less qualified or non-professionals as interpreters (Berk-Seligson, 1988; 1990, Wu, 1994). Arguments advocating the use of interpreters in the legal system emphasise the importance of a high level of training and professionalism in order to avoid misinterpretation and misrepresentation of the evidence communicated by the witness in a foreign language (Gibbons, 1995; Bird, 1988; Laster & Taylor, 1994). The finding of no difference between trial conditions implies that the interpreter was successful in conveying the meaning intended by the defendant. In doing so, respondents were able to assess the facts of the case on the basis of evidential information while avoiding being distracted by the interpreter.

Power

A sample size of thirty participants in each trial condition should provide adequate power to detect any real differences if they were present. Therefore the only remaining conclusion to be drawn from the obtained result is that employing an interpreter to mediate on behalf of a NES defendant does not adversely impact upon observers' view of that defendant. Equally, the NES defendant does not gain any advantage over the English-speaking plaintiff.

Sources of Influence: Evidential Information

The contextual elements of the case were constructed in a manner which ensured that the factual evidence presented made it difficult to conclude in favour of either the plaintiff or the defendant. Therefore, a finding attributing equal proportions of responsibility to both parties should emerge if evidential information is used to inform respondents' decisions regarding culpability. The results of this study suggest that in a civil trial concerning a traffic accident where a decision regarding fault cannot be made from the evidence presented, then that evidence will outweigh any effects arising from extra-evidential factors such as being unable to speak English.

Nature of trial.

A limitation acknowledged in this study concerns the nature of the trial. It is possible that a criminal trial may return different findings. Dixon et al. (1994) found that higher culpability ratings were assigned to suspects who committed blue-collar crime than to suspects who committed white-collar crime. Associations between the speaker's accent and the type of crime were observed. However, it is difficult to identify the source of influence on culpability ratings given that it could be due to either ethnicity or to the nature of the crime. The present study purposely avoided any confounding influences which may arise as a result of predetermined associations with a particular type of crime. Therefore, the case constructed was rather innocuous and the evidence was inconclusive in order to determine whether the source of influence was due to characteristics attributed to the witnesses or to evidential information.

That evidential information has outweighed the effects of extra-evidential influences is substantiated by the results of subsequent analyses conducted on the data. In answer to the second research question, “do impression or evidential variables impact differentially on perceptions formed of the defendant across the three trial conditions”, a content analysis of the qualitative data relating to the defendant revealed some consistency in responses across the groups.

Inconclusive evidence.

The impact of evidential information as shown in the rank order analyses (Tables 2, 3 & 4) confirms the previous finding of no difference between the group means obtained in the analysis of variance (Table 1). In both conditions portraying an Italian defendant the source of this finding is attributed to the nature of the evidence as being inconclusive. In the Australian condition the impact of this variable is ameliorated somewhat by a view of the defendant as being credible but not convincing. It can be seen that this view is attributed in part to a delivery of testimony which lacks assurity, evidenced in a hesitant speech style. However, the sincerity of the defendant is not doubted.

The remaining descriptors, while negligible in influence, tended to reinforce the primary evaluations made of the Australian defendant. References to specific aspects of the arguments used by the plaintiff’s lawyer to discredit the defendant appeared to have some impact (7%), but were generally cancelled out by arguments raised by the defendant’s lawyer (7%). Such a pattern indicates that attempts at balancing the evidence across both parties was achieved. A similar effect is noted with regard to the defendant’s demeanour. While some respondents perceived this

witness as “calm and confident”(4%), an equal number perceived her as “weak and defensive”. An unfavourable association with the defendant’s lawyer (4%), as well as the fact that the plaintiff brought the action against the defendant (4%), tended to attenuate the influence exerted by the defendant’s strength of conviction in her argument (7%).

Uncorroborated evidence.

Across all conditions, a significant influence impacting upon respondents’ decisions was a failure to corroborate the defendant’s testimony. The plaintiff’s evidence was corroborated by the petrol station owner who claimed he noticed the green light favouring the plaintiff only after he had attended to a customer. Given that this variable exerted substantial influence, the finding of equality across groups suggests that the defence lawyer was successful in casting the doubt intended regarding the petrol station owner’s evidence. However, an analysis of respondents’ comments reveal that the relative importance assigned to corroborated evidence results from a view of this witness as being an independent observer to the event and therefore credible. This finding reveals that the inclusion of an eyewitness served to unintentionally confound the present study. It further demonstrates the resilient nature of eyewitness testimony on adjudicators’ assessment of defendant culpability. Irrespective of the feasibility of the testimony, it would appear that having a witness support the evidence in a competent and convincing manner introduces a substantial element of doubt in the opposition’s evidence.

Sources of Influence: Cultural Background

Across the three trial conditions evidential information constituted the primary source of influence upon respondents decisions regarding defendant culpability. The influence exerted by extra-evidential information assists in the identification of those variables which are selected for attention in forming a view of the defendant when that defendant is from a NES background.

Credibility.

An analysis of those variables which impact upon a view of a defendant giving testimony in accented English (Table 3), tends to suggest that this witness was also seen as credible. This category relates to respondents viewing the defendant as honestly reporting the facts of the event as she perceived them. That respondents viewed all three defendants as credible suggests that a tendency to discriminate between the defendants is not evident. This conclusion is also supported by the initial analysis of the group means. The influence exerted by evidential information, particularly when that evidence is inconclusive, has been identified as a primary contribution to this finding. The implicit suggestion in such a result is that respondents do not evaluate the veracity of the defendant's testimony on the basis of ethnic group membership. While this appears to be the case, a closer inspection of the influential categorical variables as identified in the content analysis suggests that it is not ethnic group membership, but cues indicative of ethnicity, which may serve to activate different categories of information depending on the presence of a foreign language.

Accent.

In the Italian-Australian condition, a view of the defendant giving testimony in accented English is strongly focused on favourable attributes associated with her demeanour. A style of delivery characterised by non-defensiveness and a calm and gentle manner is viewed by respondents as portraying strength of character. A negative effect is observed in relation to the speech being accented. Specifically, the lack of clarity leading to difficulties in comprehending the communication appeared to frustrate respondents. As in the Australian condition, the remaining descriptors tended to cancel out the influence exerted by contradictory views. The exception being those references to the fact that it was the plaintiff and not the defendant who brought the case to court. However, the influence exerted by this variable failed to rank highly (6th).

Presence of a foreign language.

In contrast, perceptions formed of the Italian-speaking defendant (Table 4), appear to be mediated by different categories of information. While this defendant is also viewed as credible and competent, respondents' comments indicated that they were forced to rely on evaluating the witness on the basis of her facial expressions (10%). Some confusion was noted in respondent's comments regarding references to a lack of clarity in the defendant's portrayal of the event. Two possibilities present themselves as tentative explanations for this observation. The first suggests that respondents were having difficulty in processing the facts of the case due to those facts being mediated through an interpreter. The second and equally feasible suggestion is offered by respondents' comments indicating that they experienced

difficulty in “matching” the defendant’s facial expressions with the tone and pitch of her voice. The latter emerging as one of the variables assigned an influential ranking (4th). This observation suggests that when confronted with a foreign language, attempts to assess the veracity of the speaker’s communication are only partly based on the English translation. Further, a reference to the defendant’s demeanour as lacking in confidence is contrary to the favourable attributes afforded the same witness when she spoke in accented English. Such a finding may be a further expression of the difficulties encountered by respondents in their attempt to evaluate the witness on the basis of either one or both sources of information, that is, the interpreted testimony and the non-verbal communication.

In this respect alone, some support for the explanations given by the judiciary as justifying their reluctance to employ an interpreter is observed. It would appear that difficulties in following the “nuances, inflections, quickness or hesitancy of the witness” are similarly experienced by some of the participants in this study as they were by Justice Brereton (Brereton, J. 1968, cited in Laster & Taylor, 1994, p164). However, the reference to experiencing difficulty in matching the facial expressions with the tone of voice suggests that attempts to assess the veracity of the witness’s testimony on the basis of such information would lead to erroneous conclusions. These comments lend support to the observations of Ekman and his colleagues by illustrating the reliance placed by observers on these behavioural cues (Ekman, 1989; Ekman & Friesen, 1987; Ekman & O’Sullivan, 1989). A disturbing lack of understanding of intercultural differences in the use of certain behaviours such as speech mannerisms is also evident (Scherer, 1979). An implicit assumption concerns

the belief that on the basis of these cues observers can assess the credibility of a witness from a different cultural background to their own. Such an assumption has been identified in the literature as a contributing cause of inter-cultural miscommunication (Dodd, 1975).

Sources of Influence: Interpreter's Presence

In order to determine whether impression or evidential variables are instrumental in shaping a view of the interpreter's role in the courtroom, a content analysis of the qualitative data relating to the interpreter was analysed (Table 5). The results demonstrated that the majority of respondents viewed the interpreter's role as one which exerts no influence on trial proceedings. A second but related view of the interpreter as conducting her duties in a competent manner suggests that both impressions of the role performed by an interpreter are rightly perceived by respondents as being based on a view of the interpreter as a professional affiliated with the court process and as such, she was "just doing what she was being paid to do".

Perceptions of length of trial.

While not directly related to the role requirement, the remaining variables identified by respondents as being associated with the interpreter are informative in terms of the sources of influence that are operational when evidence is mediated through an interpreter. An interesting perception regarding the time involved in hearing evidence delivered through an interpreter is observed in the third highest ranking variable. In reality, the interpretation process only added seven minutes to the hearing. However, respondents consistently commented that the repetition involved

was distracting. For the majority of respondents an awareness of this effect forced them to concentrate deeper on the defendant's evidence (13%). The remaining 7% of comments indicated that the repetition was frustrating but respondents failed to qualify how this impacted on the processing of the information offered by the defendant.

Voice characteristics.

The delivery of interpreted evidence in a softly spoken and pleasant tone of voice was appreciated by respondents (10%). However, this appreciation was attenuated for those who experienced some difficulty in understanding the interpreter (3.3%), and those who preferred a slower speech rate (3.3%). However, the small number of observations associated with these aspects indicate that for the majority of people they failed to emerge as an issue.

Access and equity.

While relatively low, 7% of the comments referred to the practice of providing an interpreter as one which allows the NES defendant access to the proceedings. Mention was also made of the inherent fairness of such a practice, reflecting principles of equity and allowing the defendant to be heard.

Associations with the defendant.

An equally low number of comments (7%), suggested that the interpreter's manner appeared to express concern for the defendant and as such, served to lessen the impact of the defendant's culpability. An interesting circularity is evident in this argument, namely that an awareness of the existence of such bias should serve to sensitise respondents when attributing a degree of culpability to the defendant.

However, it is possible that this awareness was activated only after the ratings had been assigned given that qualitative data was completed subsequently. If the interpreter did serve to ameliorate some of the attributional bias towards the Italian-speaking defendant, then an unfavourable view of that same defendant should emerge when the interpreter is not present. As discussed, an analysis of the data relating to the Italian-Australian condition does not support this view. However, it does not rule out the possibility that speaking solely in a foreign language contributes, in part, to a negative view of the defendant.

Credibility and Speech Style

Having determined that respondents have relied on evidential information to assess the degree of culpability attributed to the defendant, the preceding analysis of the remaining influential variables have further identified elements associated with credibility and speech style as the only extra-evidential variables which are consistent sources of influence across the three conditions.

Credibility

Respondents clearly distinguished between credibility as relating to a view of the defendant as honestly reporting the facts of the event as she perceived them, the degree of conviction in reporting those facts (related to how convinced the defendant was of her story as perceived by respondents), and how convincingly the defendant reported those facts (related to the style of delivery). That these three aspects are perceived to be independent by respondents is substantiated by the patterns of influence observed across the three trial conditions.

This is particularly evident in the Australian and the Italian-interpreted condition where respondents view the defendants as lacking in confidence; a variable which could be assumed to be related to convincingness but is clearly qualified by the comments. While a lack of confidence was also attributed to the Italian-Australian defendant it failed to emerge as a highly ranking influence. Similarly, a high degree of conviction displayed by all defendants was not disputed by respondents but failed to impact as an obvious influence. The convincingness of the delivery style only emerged as an influential variable in the Australian condition. For the Italian-Australian defendant, this variable cancelled itself out with the frequency of references to convincingness and lack of convincingness being equal but not influential. The Italian defendant was also rated as being unconvincing but this variable failed to impact.

Independence of interpreter characteristics.

Inherent within this last observation is the most convincing argument supporting the independence of the aforementioned variables as perceived by respondents. The only evidence understood by the majority of participants viewing the Italian interpreted condition was the evidence communicated in English by the interpreter. Therefore, the manner in which that evidence is presented should have bearing on how respondents viewed the interpreter's role and whether any subtle influences were operational. Only the mention of the interpreter's soft tone and volume were observed. Comments relating to a confident delivery style were not mentioned in either the ranked data or as a variable which failed to exert influence on respondents' perceptions of the interpreter. This observation implies that participants

were successful in basing their evaluations of credibility, the degree of conviction and the convincingness of the defendant on the honesty, sincerity and delivery style of the defendant and not on the basis of evaluations associated with the interpreter.

Respondents' categorisation of the three variables as independent affords an influential status to the trait of honesty. It would appear that in a civil trial where clear attributions of culpability cannot be made, the perceived credibility of the defendant exerts noticeable influence on perceptions formed of that defendant. Delivering evidence with confidence, while an important consideration in evaluating the defendant, does not appear to be as influential. However, these comments must be qualified in view of the finding that the ranking assigned to the credibility of the Australian defendant was as influential as an unconvincing delivery style.

Speech Style

This observation directs attention to the only other extra-evidential variable to emerge as a consistent source of influence across the three conditions - speech style. As noted, a view of the Australian defendant as being unconvincing was influential enough to displace the prominence assigned to the evidence being inconclusive as observed across the other two conditions. While the sincerity and credibility of the defendant was not doubted, an unfavourable influence exerted by a speech style characterised by hesitancy appeared to compound a view of the defendant as lacking in confidence. Hesitancy was identified by Lakoff (1975) and Lind and O'Barr, (1979) as a constituent of a powerless language style. Interestingly, this variable did not detract from a view of the defendant as credible and further, it did not impact adversely on a personality evaluation of the defendant as sincere. This finding runs

contrary to the consistency observed in results obtained in studies conducted by Lind and O'Barr (1979). A compelling argument in defence of this finding is suggested by Scherer (1979). There is a strong possibility that constructing a balanced trial served to increase the salience of the evidence thereby attenuating the impact of the formed evaluation on the basis of speech characteristics. Alternatively, this finding may be equated with the outcome obtained by Berk-Seligson (1988; 1990). The manipulation of only one linguistic element in her research led her to suggest that certain constituents of a powerless language style may fail to exert as much impact when a single element is observed in isolation. Lind and O'Barr (1979) sought evaluations based on spoken communication which included all the constituents of a powerless language style. It is possible that a hesitant speech style unaccompanied by other features indicative of powerlessness is insufficient in influencing observers to attribute an overall negative evaluation to the speaker.

A similar effect was noticed with regard to the Italian-Australian defendant. Respondents evaluated this defendant as portraying favourable attributes but were negatively influenced by her accented speech. However, this finding is similar to that obtained by Dornic et al. (1989), where the finding that Swedish nationals attributed a favourable personality evaluation to Greek immigrants as well as a low language proficiency score, ran contrary to their hypothesis. Complicating their findings further was the absence of any association with language proficiency measures and personality evaluations in the ratings assigned to the higher status-bearing American immigrants. Dornic et al. suggested a primacy effect to explain their findings due to the fact that personality measures were rated initially. However, the similarities

observed in the findings between the Greek immigrants in Dornic's study and the Italian-Australian defendant in the present study, directs attention to the negative influence of a speech style lacking in clarity as a function of the accent and not the ethnic background of the speaker. Further, in the present study variables influencing perceptions of non-native speakers were sought subsequently to attribution ratings. While the studies are not directly comparable in terms of contextual elements there is a suggestion that the likelihood of a primacy effect as forwarded by Dornic et al. is improbable. Admittedly, both studies are challenged in venturing a possible explanation for the findings attributing an absence of personality ratings to the American immigrants.

Summary

A danger inherent in discussing influential variables in isolation, risks presenting over-simplified and possibly misleading interpretations. However, such a discussion has served to separate the sources of influence arising from attitudinal, linguistic and evidential elements. In the studies reviewed and in the present thesis, disparities as well as instances of agreement are observed. These observations direct attention to a complex inter-relationship amongst the many behavioural cues that are selected for attention when observers are attempting to evaluate the integrity of another.

Cues associated with credibility and speech style have been identified in this study as influential variables in forming an overall impression of each of the defendants. The suggestion being, that in a civil trial, the perceived honesty of the defendant may attenuate the negative impact exerted by a language style that is

perceived to be defective in some way. The importance of this finding is in the observation that participants did not discriminate between defendants on the basis of accent or an inability to speak English.

Limitations of the Findings

An important limitation regarding the generalisability of this finding concerns the fact that the majority of participants were university students. It is possible that different results would be obtained with a sample from the general population. However, given the relevance of this study to issues relating to impression formation, it is submitted that students do not differ from the general population in this regard. Although, the implications of basing evaluations on behavioural cues extend beyond the social environment. When the person being evaluated is a defendant in a trial, the sources of influence impacting upon adjudicators requires that the findings observed are robust. Given that jurors are recruited from the general population, an important subsequent step in this research is to assess the reliability of the present findings with that population.

Overall, the findings obtained in this thesis suggest that extra-evidential information may exert influence upon respondents during the processing stages of listening to and viewing trial evidence. In the final outcome however, evidential information outweighs this influence resulting in a finding of no difference between the three groups.

The robust nature of this result is substantiated by the finding that a significant source of influence weighing the case against the defendant was attributed to a lack of corroborated evidence. That this finding did not alter the balance in any of the trial

conditions serves to strengthen the argument that respondents were able to remain focused on the most pertinent aspects of the trial.

The variables manipulated in this study were those of ethnicity and the presence of an interpreter mediating evidence given in a foreign language. The discussion relating to the first of these variables has considered the implications of giving evidence in accented English and has extended the implications of the findings to considerations of recent and established immigrant status.

Certain features of the hypothetical trial used in this study, such as the salience of balanced evidence, the nature of the trial being a civil litigation case and the high level of assimilation of the Italian population in Australia, may have been instrumental in lessening the impact of subtle forms of bias. The findings also suggest that participants may have been discouraged from processing the information by heuristically-driven mechanisms (Kaneham et al. 1984). While firm conclusions regarding the nature of information processing cannot be drawn, respondents delivered a fair and appropriate verdict of equal responsibility to both parties.

Interpreter Impartiality

While complex factors exist which serve to undermine the processing of information in a fair and unbiased manner, attempts to identify and control the sources of influence may enhance the probability that adjudicators will reach a fair and just decision in a court of law. While the cultural background, ethnicity or the accent of a defendant cannot be controlled, providing the NES witness with the assistance of an interpreter is a decision which can be, and is, controlled by the courts. Providing the witness with such assistance serves, at a minimum, to ameliorate the

impact of some sources of institutional bias existing in legal forums (Carroll, 1995; Laster & Taylor, 1994; Laster, 1990; Bird, 1988; 1995).

The discussion relating to the findings emerging as a result of manipulating the presence of the interpreter have identified that respondents are not influenced in any substantial way by a competent interpreter. Further, attributional influences assigned to the Italian-speaking defendant did not enter into respondents' evaluation of the influence exerted by the interpreter. The importance of this observation cannot be underestimated as it demonstrates the perceived impartiality of the interpreter and enhances the reliability of the findings of "no influence" assigned by the majority of respondents.

Implications of the Findings

Challenging the Reluctance to Employ Interpreters

The practical significance of this result has implications for the criticisms forwarded by members of the judiciary as justifying their reluctance to employ the assistance of interpreters. The first of such criticisms is the belief that the interpreter will not give a literal translation of what is being said (Carroll, 1995; Bird, 1988; Laster, 1990). Fortunately, this suspicion was only observed in 3% of the comments which related to respondent's perceptions of the influence exerted by the interpreter on trial proceedings. Unfortunately, this suspicion not only reflects a lack of inter-cultural and ethnic-linguistic knowledge (Wu, 1994), but it also demonstrates disrespect for the rights of NES people to access justice equally. By ensuring that the proficiency level of the interpreter is of a high professional standard, many problems associated with poor interpreting are alleviated (Berk-Seligson, 1990). Unfortunately,

legal forums cannot become familiar with quality interpretative procedures unless they employ professionals.

The second criticism relates to a view of NES defendants gaining an advantage due to having extended time to answer questions put to them by the court (Carroll, 1995; Bird, 1988; Laster, 1990). While the trial used in this study was scripted, the actual viewing time was only seven minutes longer than the English-only conditions. However, a perception of the trial as being significantly lengthened due to the interpretation process was observed. This variable was ranked third highest by respondents, reflecting 20% of the total comments. It is possible that a similar distortion operates in interpreter-facilitated trials with the judiciary perceiving the actual time involved as exaggerated. While the fact that repetition can be tedious is not doubted, the suggestion of gaining more time appears to lack basis. This criticism is mainly concerned with those witnesses who have some command of the English language. If there were some basis to this criticism, then the research foundations upon which Dornic et al. (1989) and Dixon et al. (1994) have based their studies, have adequately demonstrated that any advantage that might be gained would soon be lost to negative attributional evaluations. In addition, the finding of equality across groups in the present study demonstrates that the NES defendant has neither been advantaged or disadvantaged by giving evidence through an interpreter.

The final criticism discussed in this study, and one raised by the courts, is the belief that a witness' credibility and the veracity of their testimony will be more difficult to assess with the interposition of an interpreter (Carroll, 1995). Some discussion has already highlighted those studies which draw attention to the enhanced

probability of misinterpretation when evaluations of a speaker are based on minimal information such as facial or voice cues (Ekman, 1989; Ekman & Friesen, 1987; Ekman & O'Sullivan, 1989; Scherer, 1979). Mention was also made of those studies which emphasise the increased risk associated with cross-cultural evaluations formed on similar bases (Henley & LaFrance, 1984; Scherer, 1979; Dodd, 1987). Collectively, these studies suggest that concerns of this nature raised by the courts are based on a fundamental misconception about their ability to interpret non-verbal behaviours.

The present study found that respondents ranked the credibility of the defendants similarly. Both Italian conditions attributed an assigned ranking of third highest importance, while the Australian condition was ranked slightly higher at second. All were perceived as being credible. Of particular relevance are those observations cited in the findings which give weight to the perceived impartiality of the interpreter. A convincing argument is especially evident in the finding that respondents were able to assess the convincingness of the manner in which evidence was presented by the Italian-speaking defendant. They were also able to differentiate the speech style characteristics of the defendant and the interpreter. A caveat is ventured given that some confusion was mentioned by respondents in terms of experiencing difficulty in matching facial expressions with the voice cues of the defendant, but this could feasibly be due to a contradiction in cultural expression (Wu, 1994).

A further limitation of the applicability of the findings attributing negligible influence to the interpreter, is once again, related to the sample of participants

recruited for this study. It is possible that some differences may be observed in the general population, particularly with regard to access and equity issues. However, the expressed reluctance to employ interpreters by a highly educated judiciary does not inspire a sense of optimism.

In light of the results obtained in this study, there is a suggestion that the suspicions and criticisms based on the subjective intuitions of the judiciary are unfounded when a competent interpreter is employed. Further, there is an additional suggestion that the courts may underestimate the competence of jurors to adequately process relevant information and arrive at a just decision. This study has demonstrated that even when an additional mediator is present, people are able to process the evidence and arrive at a fair conclusion.

Limitations of the Findings

Given that the nature of this study was exploratory, issues pertaining to generalisability are necessarily limited by the confines addressed in this thesis. Obviously, assessing the reliability of these findings across different types of trials would enhance the applicability of the current research. Similarly, attention is drawn to the need to control for confounding influences exerted by eyewitness testimony. In order to strengthen the reliability of the present findings it would be necessary to either exclude eyewitness testimony or include an additional witness for the defence.

Conclusion

While exploratory, the findings were able to demonstrate that neither ethnicity or the presence of an interpreter impact adversely on the defendant when that defendant is of Italian background. Previous studies have not addressed the sources

of influence without confounding attributions made on the basis of ethnicity. The implications for future research are directed by the issues raised in the present study. Specifically, attempts to assess those influences impacting upon perceptions formed of immigrants from other cultural backgrounds would be warranted in a multicultural society. Continued attempts to separate institutional from attributional sources of bias are viewed as essential in order to identify the appropriate strategies necessary to instigate structural changes in existing social institutions, or educational strategies aimed at the Australian community.

The identification of those structural and procedural obstacles that can be removed in social institutions such as the legal system, may serve to enhance the actualisation of the fundamental principles upon which the legal system is based. Ensuring that all Australians, irrespective of their ethnic background, have access to, and are equal before the law, requires that practices are established which guarantee that these rights are not violated for the NES witness. Further, these principles include respect for the rights of accused persons to be able to understand the nature of the allegations made against them, and that the courts respect their right of reply. This can only be realised if that defendant is able to communicate fully and be clearly understood. For the NES defendant, this cannot be achieved without professional assistance. In denying such assistance the courts effectively incapacitate and silence that person.

References

- Asch, S.E. (1946). Forming impressions of personality. *Journal of Abnormal & Social Psychology*, 41, 258-290.
- Berk-Seligson, S. (1988). The impact of politeness in witness testimony: the influence of the court interpreter. *Multilingua*, 7 (4), 411-439.
- Berk-Seligson, S. (1990). *The bilingual courtroom: court interpreters in the judicial process*. Chicago: University of Chicago Press.
- Bird, G. (1988). *The process of law in Australia: Intercultural perspectives*. Australia: Butterworths.
- Bird, G. (1995). International law, natural justice and language rights in Australia. In D. Eades (Ed.). *Language in evidence: issues confronting Aboriginal and multicultural Australia* (pp. 3-27). Australia: University of New South Wales Press Ltd.
- Carroll, J. (1995). The use of interpreters in court. *Forensic Linguistics*, 2 (1), 65-73.
- Chipman, L. (1980). The menace of multiculturalism. *Quadrant*, (Oct), 3-6
- Dixon, J.A., Tredoux, C.G., Durrheim, K., & Foster, D.H. (1994). The role of speech accommodation and crime type in attribution of guilt. *The Journal of Social Psychology*, 134, 465-473.
- Dodd, C.H. (1987). *Dynamics of intercultural communication* (2nd Ed.). Iowa: Wm. C. Brown Publishers.

- Dornic, S., Nystedt, L., Laaksonen, T., & Arnberg, L. (1989). Evaluational reactions to speech: the role of ethnic-linguistic status. *Perceptual and Motor skills*, 69, 307-317.
- Eades, D. (1995). Aboriginal English on trial: the case Stuart and Condren. In D. Eades (Ed.). *Language in evidence: issues confronting Aboriginal and multicultural Australia* (pp. 147-174). Australia: University of New South Wales Press Ltd.
- Ekman, P. & Friesen, W.V., O'Sullivan, M., Diacoyanni-Tarlatzis, I., Krause, R., Pitcairn, T., Scherer, K., Chan, A., Heider, K., LeCompte, W.A., Ricci-Bitti, P., & Tomita, M. (1987). Universals and cultural differences in the judgments of facial expression and emotion. *Journal of Personality and social Psychology*, 53, 712-717.
- Ekman, P. & O'Sullivan, M. (1989). Hazards in detecting deceit. In D.C. Raskin (Ed.). *Psychological methods in criminal investigation and evidence* (pp. 297-332). New York: Springer Publishing Co.
- Ekman, P. (1989). Why lies fail and what behaviors betray a lie. In J.C. Yuille (Ed.). *Credibility assessment* (pp. 71-81). The Netherlands: Kluwer Academic Publishers.
- Gibbons, J. (1995). What got lost? The place of electronic recording and interpreters in police interviews. In D. Eades (Ed.). *Language in evidence: issues confronting Aboriginal and multicultural Australia* (pp. 175-186). Australia: University of New South Wales Press Ltd.
- Grassby, A.J. (1981). Australian ethnic affairs policy for the 80's. *Journal of Intercultural Studies*, 2 (2), 55-65.

- Hampel, B. (1989). Social analysis or ideology? Themes, tensions and contradictions in a selection of major government statements on multiculturalism. *Journal of Intercultural Studies*, 10 (1), 1-12.
- Henley, N., & LaFrance, M. (1984). Gender as culture: difference and dominance in nonverbal behavior. In A. Wolfgang (Ed.). *Nonverbal behavior: perspectives, applications, intercultural insights* (pp.351-372). New York: C.J. Hogrete, Inc.
- Jensen, M. (1995). Linguistic evidence accepted in the case of a non-native speaker of English. In D. Eades (Ed.). *Language in evidence: issues confronting Aboriginal and multicultural Australia* (pp. 127-146). Australia: University of New South Wales Press Ltd.
- Kanham, D., Slovic, P., & Tversky, A. (1984). *Judgment under uncertainty: heuristics and biases*. Cambridge: Cambridge University Press.
- Kelley, H.H. (1950). The warm-cold variable in first impressions of persons. *Journal of Personality*, 18, 431-439.
- Lakoff, R. (1975). Language and society. In H. Giles & R. St. Clair (Eds.). *Language and social psychology* (pp. 45-79). Oxford: Basil Blackwell.
- Laster, K. (1990). Legal interpreters: conduits to social justice? *Journal of Intercultural Studies*, 11 (2), 15-32.
- Laster, K., & Taylor, V. (1994). *Interpreters and legal system*. Australia: The Federation Press.
- Lind, E., & O'Barr, W. (1979). The social significance of speech in the courtroom. In H. Giles & R. St. Clair (Eds.). *Language and social psychology* (pp. 66-87). Oxford: Basil Blackwell.

- Scherer, K.R. (1979). Voice and speech correlates of perceived social influence in simulated juries. In H. Giles & R. St. Clair (Eds.). *Language and social psychology* (pp. 88-120). Oxford: Basil Blackwell.
- Smolicz, J.J. (1995). The emergence of Australia as a multicultural nation: an international perspective. *Journal of Intercultural Studies*, 16 (1&2), 3-23.
- Wodak-Engel, R. (1984). Determination of guilt: discourse in the courtroom. In C. Kramarea, M. Schulz & W.M. O'Barr (Eds.). *Language and power* (pp. 89-100) CA: Sage Publications.
- Wu, W. (1994). Chinese evidence versus the institutionalized power of English. *Forensic Linguistics*, 2 (2), 154-167.

Appendix A not included in this version of the thesis

Appendix B (i)

Questionnaire - English Only Version

(Australian and Italian-Australian Defendants)

The plaintiff, Mrs. Thomas (represented by her lawyer, Mr. Strain), brought the case to court in an attempt to claim compensation from the defendant, for the damages sustained to her vehicle. The defendant, (Mrs. Watson / Capo) (represented by her lawyer, Ms. Davies), maintains that she is not liable for the damages sustained to Mrs. Thomas' vehicle.

In such a case, the amount of damage awarded must be proportional to the contribution made by each party to the accident.

Q.1 Using the scale below, please indicate what proportion of the \$10,000 required to repair the damage sustained to the **plaintiffs' vehicle** should be paid by the defendant.

Please put a line through the box which represents your decision; for example:

| |
|---------------|
| 0% |
| 0% |

The defendant (Mrs. Watson / Capo) should pay:-
therefore the plaintiff, (Mrs. Thomas), should pay:-

| | | | | | | | | | | |
|------|-----|-----|-----|-----|-----|-----|-----|-----|-----|------|
| 0% | 10% | 20% | 30% | 40% | 50% | 60% | 70% | 80% | 90% | 100% |
| 100% | 90% | 80% | 70% | 60% | 50% | 40% | 30% | 20% | 10% | 0% |

DO YOU THINK YOUR OPINION / DECISION WAS INFLUENCE BY ANY OF THE FOLLOWING?

2. The plaintiff's lawyer (Mr. Strain)? **(Please tick the appropriate line)**

| | | | |
|------------------|--------------------|----------------|----------------------|
| | | | |
| Strong Influence | Moderate Influence | Mild Influence | Negligible Influence |

Please describe briefly in what way you were influenced?

.....
.....

3. The defendant's lawyer (Ms. Davies)? **(Please tick the appropriate line)**

| | | | |
|------------------|--------------------|----------------|----------------------|
| | | | |
| Strong Influence | Moderate Influence | Mild Influence | Negligible Influence |

Please describe briefly in what way you were influenced?

.....
.....

4. The Magistrate? **(Please tick the appropriate line)**

| | | | |
|------------------|--------------------|----------------|----------------------|
| | | | |
| Strong Influence | Moderate Influence | Mild Influence | Negligible Influence |

Please describe briefly in what way you were influenced?

.....
.....

5. The petrol station owner? (Mr. Evans). **(Please tick the appropriate line)**

.....
Strong Influence

.....
Moderate Influence

.....
Mild Influence

.....
Negligible Influence

Please describe briefly in what way you were influenced?

.....
.....

6. The plaintiff? (Mrs. Thomas, who brought the case to court). **(Please tick the appropriate line)**

.....
Strong Influence

.....
Moderate Influence

.....
Mild Influence

.....
Negligible Influence

Please describe briefly in what way you were influenced?

.....
.....

7. The defendant? (Mrs. Watson / Capo). **(Please tick the appropriate line)**

.....
Strong Influence

.....
Moderate Influence

.....
Mild Influence

.....
Negligible Influence

Please describe briefly in what way you were influenced?

.....
.....

8. Are there any other comments you would like to make?

.....
.....

About yourself:

Age:

Male ☐ Female ☐

Country of birth:

Years in Australia

Parents birthplace:

Years in Australia

THANKYOU FOR YOUR COOPERATION

Appendix B (ii)

Questionnaire - Italian-Interpreted Version

(Italian-Speaking Defendant)

The plaintiff, Mrs. Thomas (represented by her lawyer, Mr. Strain), brought the case to court in an attempt to claim compensation from the defendant, for the damages sustained to her vehicle. The defendant, Mrs. Capo (represented by her lawyer, Ms. Davies), maintains that she is not liable for the damages sustained to Mrs. Thomas' vehicle.

In such a case, the amount of damage awarded must be proportional to the contribution made by each party to the accident.

Q.1 Using the scale below, please indicate what proportion of the \$10,000 required to repair the damage sustained to the **plaintiffs' vehicle** should be paid by the defendant.

Please put a line through the box which represents your decision; for example:

| |
|---------------|
| 0% |
| 0% |

The defendant (Mrs. Capo) should pay:-

therefore the plaintiff, (Mrs. Thomas), should pay:-

| | | | | | | | | | | |
|------|-----|-----|-----|-----|-----|-----|-----|-----|-----|------|
| 0% | 10% | 20% | 30% | 40% | 50% | 60% | 70% | 80% | 90% | 100% |
| 100% | 90% | 80% | 70% | 60% | 50% | 40% | 30% | 20% | 10% | 0% |

DO YOU THINK YOUR OPINION / DECISION WAS INFLUENCE BY ANY OF THE FOLLOWING?

2. The plaintiff's lawyer (Mr. Strain)? **(Please tick the appropriate line)**

.....
Strong Influence

.....
Moderate Influence

.....
Mild Influence

.....
Negligible Influence

Please describe briefly in what way you were influenced?

.....
.....

3. The defendant's lawyer (Ms. Davies)? **(Please tick the appropriate line)**

.....
Strong Influence

.....
Moderate Influence

.....
Mild Influence

.....
Negligible Influence

Please describe briefly in what way you were influenced?

.....
.....

4. The Magistrate? **(Please tick the appropriate line)**

.....
Strong Influence

.....
Moderate Influence

.....
Mild Influence

.....
Negligible Influence

Please describe briefly in what way you were influenced?

.....
.....

5. The petrol station owner? (Mr. Evans). **(Please tick the appropriate line)**

.....
Strong Influence

.....
Moderate Influence

.....
Mild Influence

.....
Negligible Influence

Please describe briefly in what way you were influenced?

.....
.....

6. The plaintiff? (Mrs. Thomas, who brought the case to court). **(Please tick the appropriate line)**

.....
Strong Influence

.....
Moderate Influence

.....
Mild Influence

.....
Negligible Influence

Please describe briefly in what way you were influenced?

.....
.....

7. The defendant? (Mrs. Capo). **(Please tick the appropriate line)**

.....
Strong Influence

.....
Moderate Influence

.....
Mild Influence

.....
Negligible Influence

Please describe briefly in what way you were influenced?

.....
.....

8. The Interpreter? (Please tick the appropriate line)

.....
Strong Influence

.....
Moderate Influence

.....
Mild Influence

.....
Negligible Influence

Please describe briefly in what way you were influenced?

.....
.....

9. Are there any other comments you would like to make?

.....
.....

About yourself:

Age:

Male ☐ Female ☐

Country of birth:

Years in Australia

Parents birthplace:

Years in Australia

THANKYOU FOR YOUR COOPERATION