A Student Mock Trial in Forensic Linguistics

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Abstract. *We review our preparation and production of a mock trial designed to give students experience as expert witnesses in forensic linguistics. As part of a senior seminar in Spanish linguistics, students made all pre-trial preparations and presented testimony for a real-world case related to the meaning of the Spanish-language nickname negrito. The trial took place in the Model Courtroom of The National Judicial College on the campus of the University of Nevada, Reno. The courtroom setting included judge, counsel for the plaintiff and defense, bailiff, a court-certified Spanish-English interpreter, eight student expert-witnesses, and numerous student and faculty observers. This paper is structured to present four aspects of the trial: the instant case; pretrial preparation of all linguistic issues; testimony presented; and student perspectives on the experience of testifying and subsequently presenting this project at a linguistics conference.*

Keywords: Forensic linguistics, Spanish-language apodos, intercultural pragmatics.

Resumo. *Este artigo apresenta uma revisão da preparação e da produção de um simulacro de julgamento com o objetivo de fornecer aos estudantes experiência como peritos em linguística forense. Intregado num seminário avançado em linguística espanhola, os estudantes prepararam-se para o julgamento e testemunharam num caso real relacionado com o significado da alcunha em espanhol negrito. O julgamento teve lugar no Model Courtroom do The National Judicial College no campus da Universidade de Nevada, Reno. O contexto da sala de audiências incluía juiz, advogado de acusão e advogado de defesa, oficial de justiça, um intérprete juramentado Espanhol-Inglês, oito peritos estudantes e diversos estudantes e docentes como público. Este artigo encontra-se estruturado de modo a apresentar quatro partes do julgamento: o caso imediato, a preparação pré-julgamento de todas as questões linguísticas, os testemunhos apresentados e as perspetivas dos estudantes sobre a experiência de testemunhar e, depois, a apresentação deste projeto num congresso de linguística.*

Palavras-chave: Linguística forense, apelidos em espanhol, pragmática intercultural.

Introduction

The Mock Trial

The mock trial is an experiential learning tool commonly used to prepare attorneys and judges for the process of litigation. In this case, the mock trial format was used to provide students of forensic linguistics the opportunity to prepare and present expert testimony in a courtroom setting.

The preparation for this study was completed as part of the course requirements for a Fall 2018 senior-seminar in Spanish linguistics. In conjunction with members of the judiciary, professor and students produced a mock trial in the Model Courtroom of *The National Judicial College*, on the campus of the University of Nevada, Reno (UNR). The objective was to provide students a highly contextualized opportunity to act as expert witnesses in an American courtroom. The participants included eight students, judge, counsel for the plaintiff, counsel for defense, bailiff, an English-to-Spanish interpreter, as well as various student and faculty observers.

Here we review our case in detail: the issue to be litigated; pretrial preparation, including study of applicable law and relevant linguistic issues; order and content of testimony at trial; and student comments on their experience of testifying and presenting the project at a conference.

Goals of the Mock Trial Activity

A first general goal of the mock trial activity is to provide an *active learning* opportunity for linguistics students in a senior-seminar course purposefully designed to be less structured than other upper-division undergraduate courses. As defined by Felder and Brent (2009), *active learning* is "anything course-related that all students in a class session are called upon to do other than simply watching, listening and taking notes." This pedagogical approach has long been used in linguistics, especially in courses related to the study of linguistic variation, and the emphasis on *active learning* in linguistics continues to gain momentum. See, for example, ways in which Bakos (2019) proposes teaching linguistics by emphasizing the application of data-driven sociolinguistic methods for examining online corpora and speech communities of practice.

A second broad goal is to respond to the current impetus to identify non-academic professions for linguists. UNR is not alone in its effort to interest linguistics students in the professions. In 2015 the Linguistic Society of America established the *Linguistics Beyond Academia Special Interest Group*, which promotes increasing student awareness of non-academic career paths across all professional fields (Linguistic Society of America, 2015). And publications like *The Chronicle of Higher Education* frequently ask in varied ways how courses in the arts and humanities can help students acquire specific workplace skills, as well as how the intellectual underpinnings of the liberal-arts and humanities can be inserted into professional courses (Blumenstyk, 2018).

Objectives for this Mock Trial

The motivation for producing this mock trial was to interest students of forensic linguistics to get involved in real casework. Roger Shuy (2000; 2006) frequently refers to the division of activity in forensic linguistics as "…work that is done without becoming involved in specific litigation, which I call *outsider work*, and work that is carried out within individual law cases, which I refer to as *insider work*." The purpose of this mock

trial, then, was to encourage students to appreciate and know that they can do insider work, which (as Shuy remarks) may not be as "comfortable" as the outsider work of the typical academic linguist.

Specific learning objectives for this mock trial included the following:

1. Provide a class activity in which students take part as *expert witnesses* in a simulated court proceeding related to a Spanish-language matter in dispute.
2. Incorporate elements of linguistic theory into a real case: morphology, lexical semantics, intercultural negotiation of pragmatic meaning, and accommodation theory.
3. Demonstrate the role of the expert forensic linguist in the judicial context: preparation of expert testimony; understanding courtroom conventions; presenting testimony in direct examination; and responding to cross-examination.
4. Learn the value of the collaborative process in science by doing the day-to-day work needed to make the research group increasingly more cohesive and productive, even when difficult or inconvenient.

The case of 'negrito'

The case proposed for the mock trial is a previously litigated civil matter that settled confidentially before adjudication. The plaintiff, an employee of a large food-preparation company, is from Africa and is black. He alleges that his five Mexican American co-workers addressed him and referred to him using the derogatory, Spanish-language nickname, *negrito*, thereby creating a discriminatory and racially hostile work environment. The defendants, the Plaintiff's employer and co-workers, deny the alleged discrimination and harassment. His co-workers contend that their use of *negrito* was not derogatory because they used nicknames, or *apodos*, to create an informal and friendly environment for all workers in the group, and that the intent of using *negrito* was to make the Plaintiff feel accepted and included in a work-group that was predominantly Mexican-American.

Known information from previous testimony

1. There is no direct observation in the form of audio- or video-recordings of employees' spoken-discourse that would assist the linguists or the Court in resolving the question.
2. Plaintiff testified as to his allegation of discrimination. The other five employees testified that their references to the plaintiff as *negrito* were made to be friendly and inclusive.
3. All employees admit using the nickname *negrito* to refer to the Plaintiff, as well as other nicknames for every other member of the work-group. All testified that the Plaintiff himself used *negrito* as a form of self-reference.
4. Plaintiff also admits that he used nicknames for the other five employees, and that he himself had at times used *negrito* as a form of self-reference.
5. Plaintiff is from Africa, but his country of origin is not known.

Pretrial preparation

The law

In this matter, students needed to start with an understanding of applicable federal and state law. Since the issue was one of workplace discrimination and harassment, students reviewed the *U.S. EEOC: Title VII of the Civil Rights Act of 1964* (EEOC, 2006), wherein the following definitions are stated:

> **Discrimination:** Employment discrimination is anything that obstructs a person's opportunity to seek, obtain, and hold employment. This includes actions that discriminate, by motivation or impact, against persons because of race.
> **Harassment:** Workplace harassment is a form of discrimination. It is conduct which is unwanted and offensive, and which creates an intimidating or hostile work environment, including verbal conduct such as slurs, name-calling, ridicule, and insults.
> **Workplace networks:** Informal workplace networks can be just as important to an organization as official job titles and reporting relationships. Thus, an employee's success may depend not only on his or her job duties, but also on his or her integration into important workplace networks. Employers cannot allow racial bias to affect an employee's ability to become part of these networks.

The language

After studying the legal definitions of *discrimination*, *harassment* and *workplace networks*, students researched various linguistic studies to build the theoretical framework for what would become their linguistic findings (and expert opinions) in the matter. Most emphasis (and class time) for this project was dedicated to first understanding these theoretical underpinnings for argument at trial. Subsequent to that, trial preparation was focused on how to apply that theory to the case at hand and communicate it to the Court.

We start with basic definitions of language, linguistics, applied linguistics (e.g., forensic applications), and form vs. function in language. We then focus on the study of meaning, particularly the pragmatic analysis of meaning. Classroom discussion centers around Grice's (1975) position that conversation has to be **cooperative** to succeed, and there is typically a good match between speaker intent and listener understanding.

What this case adds to our understanding of intercultural pragmatics is the degree to which cultural influences affect meaning, specifically in the case of (mis)understanding of the use and significance of nicknames. It is a striking example of *pragmatic failure* (Thomas, 1983), which occurs here when the singular intention of multiple speakers was interpreted by a single listener in a way that did not match what the speakers claim to have meant.

Another theoretical approach used in courtroom argument was that of *accommodation theory* (Giles *et al.*, 1991), which proposes that speakers adjust their language to the speech style of other participants in the conversation. Witnesses argued that speakers in a workplace-network should adapt their communication style to that of their partners, and also expect listeners to sense that their partners have adapted to them. This argument was interestingly used by both sides, each maintaining that it was the responsibility of the other party to accommodate.

We also prepared and examined for the Court the morphology of Spanish diminutives like *negrito*, its literal vs. figurative meanings, and its use as a nickname (*apodo*) among Spanish speakers. We did extensive research on the origin, meaning, sociocultural context of *apodos* in general, as well as on *negrito* in particular. *Apodos* are created and maintained among friends, family and other groups (Quint, 2007), they demonstrate relationships within a group of people (Vergara Mendoza *et al.*, 2016), and they possess either a positive or negative meaning, depending on the context of use, the meaning that the speaker wants to express, and the in-group meaning of the name (Ruiz Pérez, 2012; Real Academia Española, 2018; El Colegio de México, 2019).

Witness preparation

After the class collaborated to create a paradigm for analysis, students self-selected into three groups: expert for the Court, those who would act as expert witnesses for the plaintiff, and those who would testify for the defense. Students worked in separate teams to determine their opinions based on their research. Each team collaborated to develop its respective opinions for the court, then divided up their testimony in support of those opinions so that each witness would testify to a unique topic or set of issues. The linguistic testimony as prepared in this fashion may be found in **Appendix 1** and studied for content. Sources cited in **Appendix 1** are referenced below in the 'References' section.

Exhibit preparation

Exhibits were prepared in the form of PowerPoint slides of prepared testimony. These were shown concurrent to the testimony of each witness on all video monitors in the courtroom. However, so much attention was given to the person testifying that the visuals quickly became redundant and, therefore, not helpful. With fewer constraints on time, exhibits would best be designed to better integrate with testimony and thereby be more successful in supporting the oral testimony of each witness.

Logistical planning

This mock trial took approximately four months to plan. The courtroom was secured, all participants committed, and a date set well in advance to insure everyone's availability. Also crucial was the institutional support needed for such a complex university project. (See Section 'Acknowledgments' below.)

Student preparation was, of course, all important. In this case, the trial took place at the end of the university semester, which gave the class nearly all semester to prepare. This was important because the students had other classes, as well as other responsibilities for this same class.

The linguistic case was developed in class, and all students shared 'discovery' of all testimony to the extent that any student would be prepared to present any one modular piece of expert testimony as developed by and for each and every student. This also served the very practical purpose of insuring that the trial would proceed as planned in the event that any one student was prevented from participating for any reason.

All expert testimony was sequenced and placed in duplicate binders for each student. In addition, copies of this same binder were shared well before the trial date with all participants: judge, interpreter, and counsel for plaintiff and defendant. The contents of this binder make up the essential content here of **Appendix 1**.

Testimony at trial

The trial took place exactly as a trial would in a typical courtroom, complete with judge, interpreter, bailiff, and counsel for the plaintiff and defense. Each student was sworn in and questioned for roughly ten minutes of testimony.

For expert testimony, two unconventional arrangements were made in the interest of time. The first witness (Carolina Juárez) presented as the Court's expert. The Court itself took charge of her direct examination, wherein she presented key linguistic concepts that would be come up in all later testimony on the matter. This made it possible for subsequent witnesses to testify without repeatedly defining terms. In addition, the

last witness for each side (Ashley Keaton for The plaintiff, Jared Mora for Defense) was responsible for all cross examination, which made it possible for counsel to effect only direct examination of the other five witnesses.

Upon conclusion of the trial, the plaintiff and defense counsel presented closing arguments. After a brief recess, Judge Peña stated and briefly explained his decision. He ruled on the basis of an unmet legal threshold, deciding for the defendant because the plaintiff had not met the legal burden of proof necessary to demonstrate that discrimination had taken place.

The 'burden of proof' criterion appears to mean that, in the absence of direct evidence of discrimination, such as eyewitness testimony or audio/video recordings, the Court was looking for sufficient circumstantial evidence to establish discrimination. The Court's finding against the Plaintiff appears to be based on limitations unrelated to the linguistic evidence, such as these: the circumstances of the plaintiff's treatment were not severe enough to suggest discrimination; or that other African or African American employees were not identified as experiencing similar treatment; or that the employer violated established company policy in some fashion, etc.

Here is the sequence and content of testimony as presented to the Court:

STUDENT-EXPERT FOR THE COURT
1. Carolina Juárez: Direct exam by the Court: relevant linguistic concepts

STUDENT-EXPERTS FOR PLAINTIFF (Employee)
2. Josué Nieves: Direct exam by Atty. López: 'intent' vs. 'impact'; opinions
3. Annette Tan: Direct exam by Atty. López: pragmatic failure; accommodation
4. Ashley Keaton: Cross exam by Atty. Romero: all just-presented testimony

STUDENT EXPERTS FOR DEFENDANT (Employer)
5. Harry Clements: Direct exam by Atty. Romero: opinions
6. Jacob Mohundro: Direct exam by Atty. Romero: history/ culture/ language/ literature/ music
7. Joshua Breen: Direct exam by Atty. Romero: Pragmatic failure, 'intent', *apodos*
8. Jared Mora: Cross exam by Atty. López: all just-presented testimony

Please refer again to **Appendix 1** for all linguistic testimony as presented, witness by witness.

Student Perspectives

The mock trial took place in Fall 2018. Subsequently, in Spring 2019 students were given the opportunity to present the content and experience of the trial at the *Georgetown University Round Table on Languages and Linguistics (GURT)*. After that meeting, each student prepared a short reflection to include both experiences: the mock trial and the conference presentation in Washington, DC. Student perspectives may be seen here in **Appendix 2**, which contains the individual remarks of the six students who presented at GURT: Joshua Breen, Ashley Keaton, Carolina Juárez, Jared Mora, Josué Nieves, Annette Tan.

In their remarks, students expressed a variety of attitudes and conclusions about their experiences. One student described how she had felt quite confident leading up to the trial, but once she entered the courtroom and saw that she would be sworn in by a

uniformed bailiff, she suddenly felt quite nervous. Two other students related that they were taken aback by the conversational tone of attorneys as they were questioned, and they stated that, because of this, they found it difficult to establish a rapport and effectively deliver their opinions. The two students who were cross-examined were surprised by the intensity of the cross and by how the attorneys would frequently interrupt before the witness had finished their answers.

Overall, students described their attitudes toward the mock trial and conference presentation as very positive, and they felt they had gained significant insights into the judicial system and the world of academic interaction through their participation in the mock trial and the GURT conference. As a result of both experiences, every student felt more comfortable with being in a courtroom, the process of testifying and orally defending the linguistic theory behind their testimony, and finally the need to present their activity and findings to their academic peers.

Conclusions

Based on outcomes as expressed by students, other participants, and observers, the mock trial functioned as an effective tool to bring students into the "insider" world of forensic linguistics (Shuy, 2000). Considering that mock trials are not currently a routine part of forensic linguistic education, this exercise presents the opportunity to examine the use of the mock trial as a key part of university coursework in forensic linguistics.

Since students reported that the mock trial increased their confidence with both linguistic research and analysis, as well as its forensic application to courtroom testimony, a mock trial experience will likely enhance any applied-linguistics program that has a forensic component.

Most students in this class did not have an initial intent to study forensic linguistics, yet all found the mock trial to be a useful and engaging exercise in active learning. Their complete immersion in pre-trial preparation and the urgency brought on by the unexpected in the trial itself were very different than the usual in-class lecture and testing that students are familiar with. The trial experience forced students to plan, learn and think creatively about a broad range of possibilities for linguistic analysis and presentation of results.

The mock trial may come to be pedagogical technique that provides constructive student exposure to forensic linguistics by inviting them to think critically in ways that the classroom environment cannot, and to confidently and professionally present what they know about language in the sometimes rough-and-tumble, adversarial environment of the courtroom.

Acknowledgements

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Trial videos

Video of Mock Trial:
https://youtu.be/G8h9HLldl_E

Video edited to include short clips of each student's testimony for GURT 2019:
https://youtu.be/dNqhx5bXPrw

Appendix 1

Student Testimony for Mock Trial:
https://tinyurl.com/vf3wtze

Appendix 2

Student Reflections on Mock Trial and Reports on Georgetown University Roundtable 2019:
https://tinyurl.com/ryvfza8