COGNITIVE BIAS AS A SUGGESTIVE DEVICE IN ENGLISH COURT DISCOURSE

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Purpose. This article aims to establish the specifics of the use of cognitive biases in terms of their impact on the recipients in the advocate court discourse. To achieve this aim, the following **objectives** are to be solved:
  1) to clarify the terminological apparatus of the article;
  2) to define language means expressing cognitive bias in advocate discourse;
  3) to characterise these language means from the point of their suggestive influence on recipients.

Methods. At the stage of terminological grounding the main method is comparison, that is comparing the views of different scholars, directions of problem analysis, etc. Whereas at the second and third stages the following methods as classification (identifying linguistic means), generalisation (summarising information), argumentation (in support of its position) were used.

In our choice of approaches to the analysis we were guided by the contemporary scientific paradigms: cognitive linguistics, pragmatic linguistics, speech communication theory, lexico-semantic analysis methods. Elements of cognitive analysis helped to identify the dependence of court discourse on social conditions.

To carry out our research, we selected and described the authentic language material (вказати який саме матеріал).

Results. Based on the analysis of the linguistic material, it was established that in the absence of direct and irrefutable evidence, the advocate uses suggestive tactics and appropriate suggestive language means by which he first tries to influence the jurors' emotions, and then their consciousness. The linguistic means used to express cognitive biases are highlighted. The following cognitive biases have been identified: the authority bias effect, the confirmation bias, Dr. Fox effect, the anchor effect and the Ellsberg paradox effect. Certain semantic groups expressing these cognitive biases are identified.

Conclusions. It is concluded that the use of the highlighted cognitive biases, expressed through certain linguistic means, helped the defense lawyer, who argued that he had no direct and convincing arguments, to question the arguments given by the prosecutor and to postpone the jury's verdict. Thus, the above cognitive biases serve as suggestive means in the advocate discourse.

The piece of research is prospective, as the cognitive biases found may be supplemented by cognitive biases inherent to the prosecutorial discourse.

Key words: advocate court discourse, cognitive biases, suggestive means, semantic groups.

КОГНІТИВНІ ВИКРИВЛЕННЯ ЯК ЗАСІБ СУГЕСТІЇ В АНГЛІЙСЬКОМУ СУДОВОМУ ДИСКУРСІ

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Мета. Мета статті – встановити особливості використання когнітивних викривлень з точки зору їх впливу на реципієнтів в адвокатському судовому дискурсі. Висунуті завдання щодо уточнення термінологічного апарату, встановлення мовних засобів, які вербалізують когнітивні викривлення, їхній вплив на реципієнтів, сприяють досягненню окресленої мети дослідження.

Методи дослідження. На етапі термінологічного обґрунтування основним методом став метод порівняння, тобто огляд досліджень вчених, які займаються цією проблемою; напрямків аналізу проблеми і т.д. На другому і третьому етапах використовувалися наступні методи: класифікація (виокремлення лінгвістичних засобів), узагальнення (узагальнення інформації), аргументація (для обґрунтування своєї позиції). Вибір підходів до аналізу був обумовлений сучасними науковими парадигмами: когнітивною лінгвістикою, прагматичною лінгвістикою, комунікативістикою, методами лексико-семантичного аналізу. Елементи когнітивного аналізу допомогли виявити залежність судового дискурсу від соціальних умов.

Для проведення дослідження був обраний певний автентичний мовний матеріал.

Результати. На основі аналізу лінгвістичного матеріалу встановлено, що за відсутності прямих і незаперечних доказів адвокат застосовує сугестивну тактику і використовує відповідні сугестивні мовні засоби, за допомогою яких він намагається спочатку вплинути на емоції присяжних, а вже потім на їх свідомість. Виокремлені мовні засоби слугують для того, щоб виразити когнітивні викривлення. Когнітивні викривлення в адвокатському дискурсі спрямовані, по-перше, на створення позитивного ставлення присяжних до сприйняття підсудного і, по-друге, на створення негативного ставлення присяжних до сприйняття аргументів сторони звинувачення. Визначено такі когнітивні викривлення, як ефект авторитетної думки, зміщення підтвердження, ефект доктора Фокса, ефект якоря, ефект парадокса Елсберга. Встановлено певні семантичні групи, які виражають ці когнітивні викривлення.

Висновки. Зроблено висновок, що використання виокремлених когнітивних викривлень, виражених за допомогою певних мовних засобів, допомагає адвокату, який стверджував, що у нього немає прямих і переконливих аргументів, поставити під

сумнів аргументи, наведені прокурором, та відкласти прийняття рішення присяжними. Таким чином, зазначені когнітивні викривлення стали сугестивними засобами в адвокатському судовому дискурсі. Практична значущість дослідження полягає в можливості використання отриманих результатів в курсі практики перекладу, юридичного письма, ораторського мистецтва.

Зроблено припущення, що дослідження є перспективним, оскільки виявлені когнітивні викривлення можуть бути допов-нені з огляду на когнітивні викривлення в судовому дискурсі звинувачення.

Ключові слова: адвокатський судовий дискурс, когнітивні викривлення, сугестивні засоби, семантичні групи.

1. Introduction

In the middle of the twentieth century, due to the scientific paradigm shift towards anthropocentrism, interest in the role of cognitive processes in the regulation of human interaction began to emerge in various branches of scientific knowledge. The second half of the twentieth century is intrinsically connected with such phenomena as, firstly, information overload (the so-called shock content, content redundancy, information noise), when a certain amount of information is constantly "thrown" into society without regard to its reliability, shocking and putting the recipient in a state of stupor, with the aim of creating "information noise".

Secondly, conflict is becoming an inherent feature of modern society. It affects all processes taking place in society, all types and forms of human activities, including communication, which is one of the most important. Thirdly, the information field is increasingly used to manipulate public consciousness, i.e. modern technologies make it possible not only to promptly deliver the necessary information to the consumer, but also to form a certain opinion regarding this information. All this is reflected in the text, which is seen not as an abstract philological phenomenon, but as a social phenomenon. Therefore, it is quite natural that interest in the text is increasing not only in linguistics, but also in other scientific disciplines: psychology, political science, conflictology, rhetoric, argumentation theory, etc.

In view of the above, this research has been carried out at the intersection of several scientific and linguistic paradigms: communicative, cognitive, pragmatic, linguocultural and linguistic. The logic of the development of these directions, in our opinion, determined the **relevance** of this research.

2. Recent Researches Analysis

Such an understanding of discourse as a form of specific symbolic behaviour includes, inter alia, exploring the impact of discourse on people's behaviour, the extent to which they can be manipulated (Yakovleva, 2015).

In that regard, let us briefly dwell on the concept of "cognitive bias": cognitive bias is a systematic error inherent in our cognitive processes that cause us to draw the wrong conclusions, evaluate situations as well as other people incorrectly, and make wrong decisions (Neveev, 2016). D. Kahneman points out that in the 1970s it was generally accepted that human thinking was rational. Deviations from rationality are due to different emotions such as fear, affection or hatred (Kahneman, 2014). Based on the experimental findings, Daniel Kahneman and Amos Tversky published an article "Judgment under Uncertainty: Heuristics and Biases" (Kahneman, Tversky, 1974), where they questioned both the rationality of human thought and the fact that abnormalities occur because of an individual's emotional state (Kahneman, 2014). Psychological experiments have shown that systematic thinking errors in ordinary people are due to the thinking mechanism per se rather than by disturbances in the thinking process influenced by emotions, i.e. the mind itself is imperfect and emotions can only layer on top of imperfections in the mind. It has become significant that cognitive distortions can be seen not only and not so much in cognitive processes such as sensation and perception, but above all in thinking, memory, and social perception (Neveev, 2016). Although, as D. Kahneman rightly writes, their observations turned out to be useful for many scientific fields, including medical diagnostics, law, data analysis, philosophy, finance, statistics and military strategy, political science, etc.

In our view, cognitive bias theory attracts a lot of attention because of its practical focus. So, political scientists have noticed that it explains why some questions are at the forefront of the public, whereas others remain in the shadows (Kahneman, 2014). In medicine, cognitive errors of their own are highlighted based on this theory, such as the so-called impulse diagnosis, where once a patient has been diagnosed by another doctor, it is very difficult to remove this 'label' and interpret the symptoms with fresh eyes or the 'fallback effect of a rare diagnosis' just because it is rare. This is often because the doctor does not want to have the reputation of being a doctor who wastes diagnostic resources (Popov, 2020). In the field of communication, experts use cognitive biases as a way of circumventing censorship: when information is amplified by emotional means, the message will penetrate more easily through embedded consciousness filters and remain in the memory of the information user for longer; and as a way to influence mass consciousness.

The causes of cognitive distortions differ in the works of researchers. Let us pay attention to such an interesting point: while in Ukrainian and Russian sources they are translated as causes of cognitive distortions, even in the translated version, in English-language ones – as problems that cognitive distortions help to solve. So, let us compare, for example, three sources:

"1. The influence of society. 2. Moral and emotional factors. 3. The limited capacity of the human brain to process information. 4. Disturbances in information processing. 5. Uncontrolled flow of all sorts of thoughts in the mind (mental noise)" (Kognitivnyie iskazheniya, 2016); "Four problems that cause cognitive biases:

1. Too much information.
2. Not enough meaning (multiple meanings).
3. The need to act quickly.

Filtering of information to remember: The brain always prefers to remember a simpler and clearer concept rather than a complex and ambiguous one. Even if the second concept is more correct and objective" (Alizar, 2019).

And the original English research: "Four problems that biases help us address: Information overload, lack of meaning, the need to act fast, and how to know what needs to be remembered for later" (Benson, 2016).

There are currently more than 180 cognitive biases in psychology. It just depends on the relative youth of the concept, and the lack of development of theoretical positions can explain this fact.

Different principles are used to classify cognitive biases:

1) according to the level of manifestation, they are divided into those that occur at the individual level or in a social group;

2) according to their influence on decision-making when there is a priority of choice;

3) according to their influence on the properties of human memory;

4) according to their influence on motivation;

5) according to their influence on individual brain characteristics in terms of perception, recall and ability to draw conclusions (Kognitivnyie iskazheniya, 2016).

There is also a view that there is currently no single universally accepted classification (Neveev, 2016).

Having been given a limited scope of this article, we will not analyse the full list of cognitive biases developed by psychologists, but will focus on their function in influencing recipients in court discourse of defense, which is the **aim** of this paper. In order to achieve this aim, the following **objectives** are to be solved:

1) to clarify the terminological apparatus involved in the article;

2) to define language means expressing cognitive bias in texts of English court discourse;

3) to characterise these language means from the point of their suggestive influence on recipients.

3. Research Methods and Techniques

The aim, objectives and specificity of the material determined the choice of **methods of analysis**.

At the stage of terminological grounding the main method is comparison, that is comparing the views of different scholars, directions of problem analysis, etc. Whereas at the second and third stages the following methods as classification (identifying linguistic means), generalisation (summarising information), argumentation (in support of its position) were used.

In our choice of approaches to the analysis we were guided by the contemporary scientific paradigms: cognitive linguistics, pragmatic linguistics, speech communication theory, lexico-semantic analysis methods. Elements of cognitive analysis helped to identify the dependence of court discourse on social conditions.

To carry out our research, we selected and described the authentic language material that was used in the speech delivered by the defense lawyer. The speech is an opening statement presented by his attorney Joseph McGee during McStay Family Murder Trial (2019).

4. Results and Discussion

4. 1. Suggestiveness vs. Persuasiveness

Convincing the judge and the jury is the most important task for both prosecutors and attorneys. They tend to be persuasive and influencing at the same time. But sometimes there is no enough accurate and reliable evidence to prove the defendant's innocence or guilt beyond any reasonable doubt. As in the case when the defense attorney Joseph McGee said, "We do not have any witnesses or evidence to present as part of our mitigation presentation" (Atley, 2019). In such a case a defense team starts using not persuasive tactic but rather suggestive. In this case the defense team uses its opening statement and closing argument to address *lingering* doubt with the jury, not reasonable but lingering in order to cast doubt because they have no great rebuttal for them. "Persuasive discourse is essentially based on a logical argumentation that is strong enough to change the audience's opinion to agree with the speaker's conclusion" (Zaitseva, 2018: 84). However, unlike persuasive discourse, suggestive discourse is based on emotions and feelings. Therefore, with the help of language means the defense lawyer tries first to affect the jurors' emotions and then their minds. As the analysis of the linguistic representation has shown, such influence is exerted through cognitive biases.

4.2. Types of Cognitive Biases and Their Influence in English Court Discourse

Here are some examples of cognitive biases in terms of their use in court discourse. Confirmation bias, where everything is directed towards finding information in favour of what has already been stated and the logic of an argument is evaluated according to the conviction of the falsity or truth of what is said. Consistency effect, of which lawyers are well aware, because depending on the sequence of evidence presented, for example, a particular reaction of the jury will follow (so often the judge will reject or, conversely, support, for example, a demonstration of some evidence). Dr Fox's effect, which is that oratorical ability can have a much greater impact on the recipient than reasoned but inexpressive information (Nogales, 2014). Negative bias, where a person perceives negative information more strongly than positive information. The picture superiority effect, which is also used in jurisprudence.

Cognitive biases influence the attitude of the recipients as they perceive the defendant. It is well known in psychology, that there are three types of attitude as we perceive another person: positive, negative, and adequate. With a positive attitude we overestimate the positive qualities of the interlocutor, with a negative attitude we tend to exaggerate the shortcomings of the individual (Ksheminskiy, 2018). Cognitive biases in the defense discourse aim at creating a positive attitude for the jury to perceive the defendant and at creating a negative attitude for the jury to perceive the arguments of the prosecution.

It seems to us worthy of attention to characterize the cognitive biases used by lawyers in the case in question from the perspective of their linguistic representation, as the bias caused in particular by them can influence the decision-making in trial.

4.3. Language Means Expressing Cognitive Bias

The lawyer starts his speech by using the following cognitive bias as Authority Bias Effect. It lies in the fact that a positive image, such as that of an expert supporting the accused, begins to be associated with the accused himself. People tend to believe something if it is supported by recognised experts in that field. For example, the lawyer lists in detail the experts, their experience, their achievements in their field, in order to demonstrate that such professionals cannot be wrong. Thus, he brings the following experts to the attention of the jury and the judge:

*Harry Robertson who has worked for **20 years as a homicide detective** and who **investigated over 500 homicides**;*
*Susan Blake who has been working for **27 years as a private investigator**. She is **involved in at least 24 death penalty cases**;*
*Randolph Beasley who spent **30 years as a crime-scene specialist**;*
*DNA expert Susanna Brian who **has a 20-year experience as DNA analyst** and **Master in Forensic Science**;*
*...we have Vlad Jonovic who is our cell tower expert. He has a **Bachelor's of Science, Masters of Science and PhD in Electrical Engineering and spent 35 years** in **working in communication networks**;*
*We contacted Denis Sjogren who is a **forensic accountant… for 20 years**. He likes to see where money goes…how it is spent… (McStay Family Murder Trial).*

In this way the lawyer casts doubt, a suggestive tactic we discussed above, by making the jury think about the credibility of the prosecutor's arguments. The technique is not to convince, as there are no irrefutable arguments, but to force doubt. The linguistic means can be grouped into sematic groups: "work experience", "competence", and "high level of education".

The next suggestive technique is the use of so called confirmation bias. As a rule, this cognitive bias is aimed at interpreting information in such a way as to confirm pre-existing concepts. In this cognitive distortion, the defense counsel accuses the prosecution, even though he himself actively uses it:

*The theme you're gonna hear throughout this trial is confirmation bias. Confirmation bias is when you decided what **conclusion you want** and **look for the facts that support** it;*
*Let's twist our next to **gymnastics with logic** and figure out how do we build a case against him?*
*Let's **put our blinders on** and say this is the **answer that we want**…;*
*They **predetermined** he is **the guy** and they did **not look at anything else**;*
*They did **not question witnesses** that could have given them **the information that pointed other people**.*

The lawyer makes a slight digression and stresses that he does not think this is all done deliberately, although with a caveat:

*I do **not think they did it intentionally**…but their reports were **incorrect**…the **facts were misrepresentations** to make it look worse*

Then he revisits his thought on confirmation bias, explaining his reasons:

*Multiple injuries to their skulls…with that three-pound sledgehammer…would create **a lot of blood**…;*
*…**blood would be everywhere**…*
*…blood will **spatter**…*
*…blood will be **all over the person that did**…*
*…it will be **all over the house**…**pools of blood…over his clothes, hands, shoes**…*

Here we can observe the so-called anchoring effect. The constant repetition of the phrase *blood would be everywhere* suggests that the defendant must have stained himself, and that there must have been traces of blood in the house too. However, the lawyer focuses the jury's attention on the fact that no blood was found in the house:

*…**no blood was found** in the residence…**not a drop, not a trace, not a speck**…*

The first argument the lawyer makes as justification for the prosecution's prejudicial position is that there is no blood, i.e. the prosecutor ignores the evidence: *…ignore evidence…ignore the logic… ignore information…*

The lawyer goes on to speak directly about the prosecution's lack of evidence: *…zero evidence…*

Moreover, he builds the following logical chain: there must be traces of blood – they are completely absent – the prosecutor has no evidence.

The second argument that supports the prosecution's bias is the lack of screams from the victims: *…nobody heard screaming…*

The third one is the lack of signs of struggle in the house: *…no signs of violence…*

Thus, counsel concludes that the crime was not committed in the house, as the prosecutor claimed and on which his statement was based: *… the **murders did not happen in that house**…that day **did not happen**…*

The language means that create this cognitive bias are united by the seme "absence": no blood, no screams, no signs of a struggle.

The lawyer, without direct and incontrovertible evidence, uses a cognitive bias such as the ambiguity effect, which consists of showing that the prosecutor's decision or conclusions suffer from a lack of information or from ignoring available information. This cognitive bias is also called the Ellsberg paradox, where the decision, and in this case, the decision concerning the life or death of the defendant, was made under conditions of uncertainty or, more specifically, prejudice.

5. Conclusions

In our article, we have justified the terminological apparatus needed for the study. The above said methods of linguistic observation and analysis, cognitive method, method of critical discourse analysis, method of pragmatic analysis helped to identify the language means expressing cognitive biases in English court discourse of defense.

The use of these cognitive biases helped a lawyer, who claimed to have no direct and conclusive arguments, to cast doubt on the jury and delay a decision sine die. Thus, the specified cognitive biases have become suggestive tools in the defense court discourse.

What we pointed out above, regarding the notion of cognitive bias as well as language means that express it in English court discourse, is only part of a much larger perspective research. To be sure, it is interesting to analyse in details the notion of cognitive bias, if cognitive bias is used, for example in the court discourse of prosecution.

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