



Mitigating Functions of Hedging and Boosting in Courtroom Discourse

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Abstract : Aside from its pragmatic-discourse context that is mainly directed to face work, mitigation in legal context is open either to a direct relatedness to the "reduction of vulnerability" or else to the amplification of accusation. The present paper aims at explicating how prosecution and defense attorneys employ the aggravation and minimization processes of mitigation to increase or decrease their clients' or others' vulnerability. To this end, hedging and boosting expressions in the defense and prosecution's opening statements in Casey Anthony trial for her daughter's homicide are investigated for their creation of mitigation effect. The obtained results show that the prosecution attorneys quite frequently aggravate the accusation of the defendants. However, the defense attorneys tend to minimize the guilt or accusation of the defendants. It is also noticed that some hedging expressions implicitly help aggravate rather than attenuate certain acts.

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1. INTRODUCTION

Although there have been several researches on hedging and boosting in a wide range of professional discourses (Meyer and Pawlack 2010, Caffi 2007), little has been done in the area of courtroom discourse. Furthermore, the majority of research on hedging and boosting compares the same genre across fields and treats the two phenomena from either a textual or pragmatic standpoint. Such research is always concerned with highlighting the lack of total commitment in the case of hedging and conveying assurance in the case of boosting.

The present paper aims at highlighting the tools or devices that prosecution and defense attorneys use to help them produce a mitigation effect in the courtroom setting. The study tries to give a focal prominence to the two processes of mitigation (aggravation and minimization) in courtroom discourse. It is assumed that prosecutors are more likely to use the aggravation process in their try to maximize the accusation, allegation, guilt or the seriousness of the defendant's act. It is also assumed that defense attorneys are more likely to use the minimization process of mitigation to reduce the accusation, allegation, guilt or the

seriousness of their clients' act. It is believed that hedging and boosting devices are used for the purpose of creating mitigation effects.

MITIGATION: PRAGMATIC VERSUS LEGAL SENSES

It has been established in the works of several scholars that pragmatic- discourse mitigation is distinguished from mitigation in legal contexts such as the courtroom context . In its pragmatic- discursal sense, mitigation is solely linked to face work (Fraser, 1980; Leech, 1983; Holmes, 1984 Brown and Levinson, 1987; Caffi, 1999), whereas in the legal juridical sense, mitigation is primarily linked to self or other defense, reinforcing credibility, and decreasing guilt related issues (Martinovski, 2000).

MITIGATION: PRAGMATIC SENSE

Mitigation in the pragmatic-discourse meaning is significantly more common than mitigation in the legal sense. This is the case because informal, everyday encounters between people are more common and valued than formal, institution-oriented ones. Thus, many academics have paid close attention to this phenomenon for the pragmatic-discourse role it plays. According to Fraser (1980), mitigation does not create a new speech act but rather modifies an existing speech act in order to lessen the negative effect it has on the hearer. The three key distinctions made by Fraser about mitigation are as follows: (i) it only happens when the speaker is being courteous, (ii) it is not a speech act but modifies a speech act, and (iii) it is not hedging but hedging words can serve to generate a mitigating effect.

Adding to Fraser's above mentioned three categorizations, the following characteristics can be linked to mitigation. First, mitigation softens the impact of an offensive statement. It is common practice to use the term "mitigate" to describe actions taken to lessen the impact of something negative (such as an order, bad news, criticism, etc.). Second, mitigation adjusts unfavorable outcomes for the listener. It's possible for us to lessen the impact of a rebuke, threat, disagreement, or prohibition. Third, politeness should not be confused with mitigation. Politeness depends on how well the speaker has behaved in that particular situation, while mitigation is lessening the undesirable effect of what has been done. It's possible to break out the differences between politeness and mitigation, even if the two are commonly used interchangeably. Take into account the following case, which involves the moderator of a business meeting and another attendee. He can soften the blow of his request while still being polite by saying, "I'd appreciate it if you would sit down." If he tells the other attendee to "sit down and shut up", he has done neither. If he says, "Please, sit down," he is making a direct yet polite request. Fourth, hedging

and mitigation are not synonymous in the sense that each has been utilized in the academic lexicon. According to Lakoff (1973), terms like (sort of, kind of, pretty much, somewhat....etc) can be classified as "hedges." He characterizes them as having some connection to fuzziness, or as working to either increase or decrease it. Hedge words, as described by Lakoff (1973), have nothing in common with the mitigating understanding of softening. While phrases like "sort of" or "kind of" can help bring about a moderating impact, they are not examples of mitigation in and of themselves.

In a nutshell, the works of some scholars like (Fraser, 1980 and Holmes, 1984) makes it clear that it is more common for pragmatic mitigation to involve lowering the force with which the illocutionary force of certain speech act is delivered than it is for it to include boosting that force. The purpose of the protection afforded by mitigation may be either self-directed or altruistic, meaning that it may be oriented at the listener. Self-directed mitigation indicates the speaker's attempt to avoid blame, to look polite, modest, conciliatory, or open to dispute, whereas altruistic mitigation represents the speaker's goal to acknowledge the addressee's face demands. That his desires are regarded as desirable, and that his freedom of action and attention are unrestricted.

MITIGATION: LEGAL SENSE

The phenomenon of mitigation arises in legal situations due to vulnerability, which can be both intrinsic to a person or thing and also linked to a particular action or set of circumstances. Mitigation is always part of defensive conduct in legal settings, and it is described as a discursive process whose primary goal is the decrease the defendant's vulnerability (Martinovski, 2000).

Martinovski (2000) asserts that in the legal context, mitigation refers to acts of self-protection or defense to an accusation or an attack. It refers to the techniques and strategies used by attorneys and other courtroom participants as a form of defense to minimize or amplify the alleged blames and allegations or to downplay the severity of their own or other parties' acts. Thus, it should be acknowledged that defense and mitigation are two distinct phenomena that are not interchangeable but may occur together. Somebody's response to an accusation or an attack is defense, whether it occurs in court or out of it. Defense can include mitigation; nevertheless, one can mitigate without safeguarding oneself or others (Martinovski, 2000).

Communication in the courtroom is an example of the form of activity- based communication where the particularity of the activity enhances the pragmatic conditions of meaning and engagement. Thus, legal discourse is distinct from daily discourse, but both are included in pragmatic analysis. Due to the fact that the trial activity entails an increased level and sensation of vulnerability of private face in a public arena, it is reasonably anticipated that both kinds of participants will, at various times, make use of mitigation strategies (Danet, 1980).

When it comes to interactions in the courtroom, "mitigation" can be viewed and interpreted somewhat differently depending on who is doing the construing and interpreting: the defendant, the plaintiff, the defense counsel, or the witnesses. For the defendant and plaintiff, mitigation has a more self-centered nature, however we can anticipate that for the examiners, the concept of mitigation that most fits is that it refers to measures intended "to ease anticipation of undesired effect." Other witnesses, such as eyewitnesses, may more frequently employ mitigation to defend their own credibility than to defend their moral convictions or behavior (Adelswärd et. al., 1988).

In many cases, examiners may intentionally craft their words in a way that makes their clients feel more at ease. Both the examinee and the examiner should proceed with care. Mitigation might be largely other-or self-oriented depending on the speaker's position in the activity. As a result, the nature of the activity itself influences and shapes the way in which discourse mitigation occurs (Martinovski, 2000).

HEDGING

The term "hedging" has been defined in a variety of ways by various researchers. For (Crystal, 2008), it's a way of using a word or an expression in its broadest sense, which means "to be non-committal or elusive," to describe a variety of things. Allott (2010) classifies hedging as a term used in the fields of pragmatics and discourse analysis that refers to the practice of using words or phrases to signal a lack of firm belief or opinion. In Fraser's (2010, p.23) terms, "hedging is a rhetorical strategy, by which a speaker, using a linguistic device, can signal a lack of commitment to either the full semantic membership of an expression or the full commitment to the force of the speech act being conveyed."

According to (Hyland, 2019) words like "possibly," "may," and "perhaps" are examples of hedges, which show that the writer is open to other points of view but not ready to fully commit to one. Hedges highlight the subjective nature of a stance by permitting facts to be presented as an opinion rather than a fact, making the position more amenable to compromise. Hedges consequently suggest that an author's proposition stems from his reasonable reasoning rather than absolute truth. They also show how much confident or sincere the writer is.

Bruce Fraser (2010) provided a series of examples of English hedges and their related linguistic analysis. He drew these examples from a range of sources. The nineteen examples and their associated linguistic expressions are summarized in the table (1) below:

Table 1. English Hedges and Their Associated Linguistic Expressions

English Hedges	Associated Linguistic Expressions
Adverbs/Adjectives	approximately, roughly, about, often, occasionally, generally, ...
Impersonal pronouns	one, it, ...
Concessive conjunctions	although, though, while, whereas, even though, even if, ...

Hedged performative	use of modal to hedge performative verb
Indirect Speech Acts	Utterances that convey meaning without being overtly declarative.
Introductory phrases	I believe, to our knowledge, it is our view that, we feel that, . . .
Modal adverbs	perhaps, possibly, probably, practically, presumably, apparently, . . .
Modal adjectives	possible, probable, un/likely, . . .
Modal noun	assumption, claim, possibility, estimate, suggestion, . . .
Modal verbs	might, can, would, could, . . .
Epistemic verbs	to seem, to appear, to believe, to assume, to suggest, ..
Negative question	Negative yes/no question with positive orientation
Reversal tag	Tag-questions
Agentless Passive	Passive constructions without the by-phrase
Conditional subordinators	as long as, so long as, assuming that, given that
Progressive form	Utterances in the progressive aspect
Tentative Inference	Modal verbs (should, could, might)
Conditional clause	Conditional sentences with (if) and (unless)
Metalinguistic comment	strictly speaking, so to say, exactly, almost, just about

HEDGING WITH A MITIGATION EFFECT

Though there are various forms of hedging that might result in various discourse outcomes like vagueness, evasion, equivocation, and politeness, our major concern here is the mitigating effect of hedging.

Holmes (1984) maintains that the use of hedging lexical elements serves not just to lessen the intensity of a negative affective speech act but also to lessen the intensity of a positive affective speech act. When used to soften the blow of criticism for example, as in "You are a bit of a fool," they assist soften the blow, but when used to soften the blow of praise for example, as in "You are kind of pretty in a way," they attenuate or diminish the speaker's complete sincerity of the praise.

Accordingly, it is opined here in this paper that the mitigating effect created by hedging words and expressions varies functionally according to the setting/context in which they are used. Those that occur in everyday non-institutionalized settings are generally directed to saving the social face or self-image of the addressee, while those that occur in official institutionalized settings such as the courtroom are more likely directed to reduce vulnerability. Thus, they downwardly mitigate the alleged accusations.

BOOSTING

Words like "clearly," "obviously," and "demonstrate" are called "boosters" because they help authors shut down debate and show that they are confident in their arguments. Arguments in favor of the author's stance imply that they are aware of the possibility of several viewpoints and have chosen to focus on a smaller subset of those possibilities rather than expanding the discussion. By eliminating debate and competing viewpoints, advocates can increase their audience's sense of certainty and strengthen their bonds with the subject matter and each other (Hyland,1999).

BOOSTING WITH A MITIGATION EFFECT

According to Holmes (1984), boosters amplify the effectiveness of the message provided in a specific speech act. Holmes further believes that boosters serve not only to boost or enhance a negatively affective speech act such as criticism, as in "My god you are such an idiot", but they also help to boost or increase a favorably affective speech act such as compliment as in "Really you are unbelievably gorgeous".

It is believed that, in the legal setting of the courtroom, the amplification of both negatively and positively affective speech acts qualify to create an aggravated mitigation effect. However, the execution of both

amplified acts can never be attributed to one party rather than the other. The negatively affective speech act is mostly increased in force by prosecution attorneys, whereas the positively affective speech act is most likely amplified by defense attorneys.

2. METHODS AND DATA ANALYSIS

The transcripts of both prosecution and defense attorneys' opening statements (henceforth OSs) in Casey Anthony trial for her daughter's (Caylee Marie Anthony, aged 2 years) homicide are used as the data for this paper. Hedging and boosting expressions are traced in the two (OSs) at hand. The analysis is carried out at the sentence level paying attention to the linguistic context in which hedges and boosters occur. Our analysis is solely limited to expressions that qualify to create a mitigated effect, minimized or aggravated.

ANALYSIS OF HEDGES IN CASEY ANTHONY TRIAL

The constructed mitigating effect employed by both prosecution and defense attorneys in Casey Anthony trial is covered in this subsection. The analysis of both attorneys' (OSs) revealed that hedging lexical items (appear, think, could, indicate, may/maybe, might, possible, seem, suggest, would, almost, certain, doubt, likely, often, probably, relatively, and usually) create mitigation effect occurred 42 times in the prosecution's opening statement (henceforth POS) and 110 times in the defense's opening statement (henceforth DOS). Table (2) below summarizes the frequency of occurrence for each of these hedging lexical items in both POS and DOS in the Casey Anthony trial.

Table 2. Hedging Lexical Items in POS and DOS in Casey Anthony Trial

Hedging item	POS	DOS	Examples
appear	5	0	Caylee Anthony appeared to have an idyllic life.
think	2	8	I think that's very important.
could	5	22	Caylee could get out of the house very easily and did so on that day,.....
indicate	1	0	you will hear the testimony of an individual by the name of Matthew Crisp who indicated that on that day.....
may/maybe	13	17	While George Anthony may have normally been at work that day,...
might	3	3	There might be some evidence on them, gas cans.
possible	2	5	I'd like for you to hear it straight from the dog's mouth, but that's not possible.
seem	1	0	Casey Anthony begins to tell her friend Amy Huizenga that there is a smell in her car, that seems to be coming from the engine.
suggest	1	0	They're suggesting she doesn't work here.
would	9	25	Was there something in that garbage that would help the Orange County Sheriff's Office find his granddaughter?
almost	0	3	This is almost a month before he finds Caylee's remains.
certain....	0	12	Yes, the duct tape was deteriorated to a certain extent, but they still tried at the FBI.
doubt	0	5	The prosecution in a murder case is supposed to re prove their case beyond and to the exclusion of every reasonable doubt, not a forced doubt or speculative one, every reasonable doubt.
likely	0	1	And you'll see, as the evidence comes in, that that is the most likely conclusion of the evidence that something's not right here.
often	0	1	We often shed hairs very easily.
probably	0	6	 when Caylee was found, the sheriff came out and announced that they were all over that area and it was probably underwater.

relatively	0	1	Well, the answer is actually relatively simple.
usually	0	1	There's usually what we call 13 different markers where they test DNA.

Out of the (152) occurrences of hedging items in the (OSs) under study, two examples were selected for detailed analysis.

All situations when an attorney uses a hedge indicate that the statement is intended to create a mitigation effect of one kind or another. In the example below the defense attorney argues that some questions regarding the case remained unanswered. However, answers could have been found, had the investigation been directed somewhere else. The use of the non-assertive structure of the conditional clause together with the hedging adverbial (maybe) clearly indicates the mitigation effect that the defense attorney sought to create. The defendant's vulnerability was decreased by undermining the efficiency of the police investigation which was directed to the wrong direction and that left many important questions unanswered. Using these hedging expressions, the defense attorney sought to persuade the judge and the jury that the inefficiency of the police investigation led to the accusation of his client. Consider the example:

1. "If the investigation had gone in a different direction, maybe we'd have the answers to those questions, but unfortunately we don't, we've done our best and we'll do our best to bring all the information to you."

Though hedging lexical items are usually associated with an attenuating effect, it is realized that some of these items could have an aggravated effect. In the example below, the prosecution attorney utilized the hedging adverbial (maybe) in combination with the non-assertive structure of the conditional sentence to maximize the defendant's accusation. What is confirmed by the police investigation is the defendant's lie to be working for Universal Studios. This (maybe) hedging adverbial not only trivializes the possibility of clearing the accusation up but also maximizes the defendant's accusation because the core premise of the sentence is counter to the fact reached at by the police investigation. Consider the example:

2. " Maybe if Casey comes out to Universal Studios we can clear this up".

ANALYSIS OF BOOSTING IN CASEY ANTHONY TRIAL

This subsection discusses the created mitigating effect that was used in the Casey Anthony trial by both the attorneys representing the prosecution and the defense. According to the findings of the investigation into both attorneys' (OSs), boosting lexical words that produce a mitigating effect such as (actually, believe, determined, in fact, the fact that, know, never, obvious/ly, of course, must, should, sure, and show) occurred 56 times in (POS), and 120 times in (DOS). Table (3) below summarizes the boosting lexical items used by the attorneys and provides examples that qualify to create a mitigating effect:

Table 3. Boosting Lexical Items in POS and DOS in Casey Anthony Trial

Boosting item	POS	DOS	Examples
Actually	1	10	She, she actually runs out of gas.
Believe	5	5	George and Cindy Anthony, both believed that Casey had returned to a job....
Determined	4	0	The FBI determined that the tape was manufactured....
In fact	2	11	In fact, he took a special trip to the, to the Sheriff's.
The fact that	3	1	The fact that my matter is this is an accident that snowballed out of control.
Know	7	30	He knows he's smelling a dead body and this is a possible crime scene.
Never	7	30	That child never went without food.

Obvious	1	2	 they could just to try and well it's, it's quite obvious.
Obviously	1	1	So George and Cindy Anthony go back to their house, now obviously frustrated....
Of course	2	4	Of course, he's never, nor has anyone else in this case had truck...
Show	23	6	Casey Anthony's cell phone records show that she was at her boyfriend.....
Must	0	5	There's a confirmatory test that must be done.
Should	0	12	There should be multiple vehicles.
sure	0	3	They sure did do a thorough investigation on her....

Out of the 176 occurrences of the boosters being utilized in the (OSs), two examples were chosen for extensive analysis.

In their quest to achieve the intended effect that is prescribed by the definition of their very roles, the attorneys' use of boosting lexical items differs in accordance with their respective duties. In the example below, the defense attorney used the negative intensifying adverb (never), the negative modal (won't), and the phrase (a single person) to aggravate the defendant's care for her daughter by denying any negligence or abuse. So, the boosters here create such a maximized mitigation effect by emphasizing good care providence and rejecting negligence and abuse. In other words, though the boosters used an upgrading strategy, they in fact downgraded the vulnerability of the defendant. Consider the example:

3. She took care of Caylee. That child never went without food. Without clothing, without shelter. You won't hear a single person come up here and testify how she was neglected or abused.

The prosecution attorney's utilization of boosters aims at maximizing the accusation of the defendant. In the following example, the prosecution attorney used the boosting phrase (in fact) to emphasize the seriousness of the defendant's guilt. Hence, he used an upgrading strategy to create a maximized mitigation effect. Consider the example:

4. These findings led to the inescapable conclusion that, in fact, a dead body had been in the trunk of Casey Anthony's car.

3. RESULTS AND DISCUSSION

Based on the aforementioned analysis of the OSs in the Casey Anthony trial, it is noticed that the defense attorney tends to use more hedging expressions than the prosecution attorney. Results indicate that the defense attorney takes the lead with (72.368 %) of the total frequency of hedging expressions in both OSs. This leaves the prosecution attorney (27.632%) only of the overall number of occurrences.

The disparity in the utilization of the interactional metadiscourse marker of hedging indicates that the defense attorney is fully aware of his client's vulnerability or seriousness of accusation. That is why he hedges quite frequently to evade his client's responsibility for the truth of a statement that potentially enhances her vulnerability. The prosecution attorney, on the other hand, hedges less for he sees the defendant guilty and tries to lead the court to confirm the charges he proposes. His hedges mostly convey a negative message, they are more like elevation of the defendant's alleged wrong doing.

Not only there is a disparity in the occurrences of hedging expressions between the attorneys, but there is also a similar disparity in the frequency of boosters in the OSs. Results of the analysis show that the defense attorney comes first with (68.181%) of the total occurrences of the boosting expressions. Thus, the prosecution attorney is left with (31.818%) only of the overall frequency of boosters.

In his quest to intensify the good deeds of his client, the defense attorney uses boosting expressions quite frequently. This is part of the strategy he follows to reduce the vulnerability of his client. This means that the direct use of such expressions is meant to achieve the indirect effect of trivializing the accusation

charges. The prosecution attorney, however, uses these expressions directly to create a direct effect of maximizing the defendant's accusations.

4. CONCLUSION

From a linguistic standpoint, the functional diversity of the employed hedges and boosters are concluded to demonstrate that:

1. Depending on the situation, a given hedging statement may serve more than one purpose.
2. A hedging term may not always be used to lessen a defendant's susceptibility; instead, it may serve to intensify the accusation. This depends greatly on the person who extends the hedging statement.
3. The plaintiff attorney is most obviously, according to the data being investigated, the one whose use of hedges is to create an aggravated effect at the expense of the defendant. However, the defense attorney's employment of hedges is to minimize the accusation of the defendant.
4. Boosters are used by the defense attorneys to maximize the good nature of the defendant so as to downsize the importance or the seriousness of the accusations.
5. Boosters are used to elevate and reinforce the accusation of the defendant as they are used by the prosecution attorney.

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