

Recontextualization and production roles: Representations of interpreting in court transcripts

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Abstract: In a courtroom setting, a witness who is not a native speaker of the official language receives the services of a court interpreter, and the trial is transcribed by court reporters. In other words, once an utterance is produced by the witness, it undergoes two kinds of recontextualization involved in this process: it is 1) interpreted by the interpreter, and 2) recorded by the transcriptionist. This study investigates court transcripts of trials involving non-native witnesses and analyzes the shift of production roles when their utterance is interpreted and transcribed utilizing Goffman's (1979) participation framework. The study found that the court transcripts represented the witnesses with inconsistency and vagueness, which blurs the *animator* and the *author* of the utterance at each phase, while holding the witness as the *principal*. In legal settings, this could lead to the witness being held accountable for the inconsistency rooted in the recontextualizations.

Keywords: *language and the law; court interpretation; court transcription; participation framework; production format*

1 Introduction

Anyone in a law-governed state can be involved in legal cases, summoned to the court of law, and questioned. However, not everyone is fluent in the language spoken in the court. To begin with, legal language is often more complicated than so-called "ordinary" language, even for a native speaker (Tiersma, 2006). Moreover, some witnesses could be non-native speakers of the official language of the court. One could be an immigrant or a foreign traveller, or one could speak another official language that is not the language of the court. Based on these factors, non-native speakers could be at a significant disadvantage in the legal system, and even worse, face wrongful judgments or convictions in the courts.

In United States federal courts, to minimize such injustice caused by language barriers, speakers of non-official languages, or language minorities, are entitled to language interpretation in a court of law. That is, anyone who does not speak English (the language of the court) can request court interpretation services in order to ensure a fair trial. Despite these goals, however, various sociolinguists have determined that courtroom interpreting can disadvantage witnesses (e.g., Angermeyer, 2015; Eades, 2010). In addition, all court proceedings go "on the record"; that is, they are transcribed by a transcriptionist (i.e., court reporter). However, linguists have also discovered issues with court transcription (e.g., Eades, 2010), such as inaccuracy of transcriptions

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and misunderstandings by court reporters, especially when the speech is in a non-standard language variety, such as African American English (Jones et al., 2019).

As such, interpreting and transcribing practices can expose language minorities in the courtroom to the risk of linguistic disparities. This is especially the case because court transcripts are the official representation of what goes on in legal settings such that the discrepancy between the original speech and its representation, as it appears in transcripts, can have serious consequences.

This article examines the representation of witnesses' speech after it undergoes the processes mentioned above, i.e., interpretation and transcription. Both have the potential to change the integrity of courtroom participants' contributions. This study aims to examine court transcript data of a trial involving interpreters, and analyze how participants' roles change, based on Goffman's (1979) participation framework, and in what ways these changes can lead to (mis)representations.

2 Court interpretation

The following is from the Court Interpreters Act, 28 U.S.C. §1827 (d)(1).

The presiding judicial officer, with the assistance of the Director of the Administrative Office of the United States Courts, shall utilize the services of the most available certified interpreter, or when no certified interpreter is reasonably available, as determined by the presiding judicial officer, the services of an otherwise qualified interpreter, in judicial proceedings instituted by the United States, if the presiding judicial officer determines on such officer's own motion or on the motion of a party that such party (including a defendant in a criminal case), or a witness who may present testimony in such judicial proceedings—

(A)

speaks only or primarily a language other than the English language; or

(B)

suffers from a hearing impairment (whether or not suffering also from a speech impairment) so as to inhibit such party's comprehension of the proceedings or communication with counsel or the presiding judicial officer, or so as to inhibit such witness' comprehension of questions and the presentation of such testimony. (Court Interpreters Act, 1988)

This law states that non-English speakers must, under certain conditions, have a court interpreter to help them understand what goes on in the courtroom and to communicate effectively. That is, the court of law will provide court interpretation services to alleviate language barriers and to allow non-English speakers to have a fair trial.

However, not all minority languages receive the same quality of interpretation. Angermeyer (2015) observed court interpreters in a busy small claims court in New York City, US, and found that interpreters of different languages varied in their experience, qualifications, and available hours. Some of them had taken qualifying examinations testing their proficiency in English (the official language) and their interpreting skill, while others only had to pass an English proficiency test. Some were hired as full-time employees at the courts, while others worked as freelancers, depending on the language they interpreted (Angermeyer, 2015).

Even interpreters who have the required qualifications can provide inaccurate interpreting. Hale (2002) observed how Spanish-speaking witnesses' answers were interpreted into English in the court of Sydney, Australia, identifying features of a "powerless speech style," as distinguished by Conley & O'Barr (1990)². All of the interpreters "were accredited by the National Accreditation Authority of Translators and Interpreters (NAATI) at the Professional level" (p. 28), but they often changed the original speakers' speech styles, by adding or omitting features from the speakers' speech, and ultimately changed their character and credibility (Hale, 2002).

3 Courtroom transcription

Legal cases are recorded for future reference using audio/video recording and/or transcription. Many expect transcripts to represent what is said in court with maximum precision, but this is not necessarily the case. Firstly, it is impossible to transfer everything produced by a speaker into a transcription. Some sounds may be difficult to transcribe. Some sounds may not be clear speech sounds but still convey certain meanings. For example, there is more than one way to transcribe that the speaker said "Mm-mm," which could render its meaning ambiguous (e.g., whether it was used by the speaker to agree, to disagree, or to signal that they are only contemplating). Court reporters constantly have to make choices about what to include and what to leave out in the transcripts (Eades, 2010).

Furthermore, this process is not free of transcriptionists' stereotypes and biases. Jones et al. (2019) conducted an experimental study where a group of court reporters transcribed speech with prominent features of African American English (AAE). The study found that many court reporters had little knowledge of AAE and demonstrated a very low accuracy rate in both verbatim transcription and paraphrasing compared to their performance transcribing speakers of a standard language variety (Jones et al., 2019).

4 This study

4.1 Research question

This study aims to investigate the following research question: how is interpreted speech represented in court transcripts? The process of courtroom interpreting combined with the process of transcribing means that any utterance produced by a courtroom witness will be filtered through two other participants who may interpret it subjectively, insufficiently, and/or inaccurately. This could easily jeopardize the integrity of the original utterance. To what extent do these processes preserve the meaning of the witness, the original speaker? How accurately, or inaccurately, can courtroom transcripts represent what is uttered by the witness, and what part of it can be changed due to the contribution of the interpreter and the court reporter?

4.2 Data

This study investigates selected court transcripts from the 2015 trial of the individual charged with perpetrating the Boston Marathon bombing. The suspect, Dzhokhar A. Tsarnaev, who was born in the Russian Federation and moved to the United States, was brought to trial for 30 charges, including detonating bombs at the Boston Marathon, resulting in many injuries and deaths. In this case, the trial lasted for several weeks, and the transcripts from days 32, 54, and 55 showed the presence of witnesses accompanied by court interpreters. The data consists of the

² Conley & O'Barr (1990) define "powerless speech" as "the frequent use of words and expressions that convey a lack of forcefulness in speaking" (1990, p. 67). This includes speech forms such as hedges, hesitation forms, and intensifiers.

transcripts of those three days, which provide examples of the representation of court interpreting in court transcripts (*United States of America v. Dzhokhar A. Tsarnaev*, 2015).

4.3 Analytical framework

4.3.1 Goffman's participation framework

This study analyzes the data described above using Goffman's (1979) participation framework. Challenging the traditional analysis that simply dichotomizes participants involved in talk into two (i.e., the speaker and the hearer), Goffman (1979) suggests an improved paradigm for talk with a more detailed categorization of these participation roles. Specifically, this study focuses on the roles of "the speaker," or, in Goffman's words, "production roles." Goffman argues that "the production format of an utterance" consists of three roles: animator, author, and principal (1979, pp. 17–18). The *animator* is the one who physically produces the utterance. The *author* is the one who constructs the utterance; that is, they make choices as to what is said, and in what words it is said. The *principal* is the one responsible for the utterance; the utterance ultimately represents them, and they are held accountable for it (Goffman, 1979).

In addition, Goffman (1979) suggests the concept of *footing*, which he explains as "the alignment we take up to ourselves and the others present as expressed in the way we manage the production or reception of an utterance" (p. 5). He argues that in a talk, there is a constant shift in the participants' footing. Even in a short talk, two participants can constantly change their footing between the animator and the addressee, and even if there is only one animator, their utterance can have a different author and principal depending on how they position themselves in the talk.

Goffman's (1979) framework is particularly suitable for examining the representation of interpretation in court transcripts because 1) it allows for analysis of each participant's contribution to a talk beyond a simple dichotomy of speaker and hearer, as well as shifts of such contributions with the concept of footing; and 2) the question of responsibility is very salient in the courtroom, as speakers are legally held accountable for what they say in a court of law.

4.3.2 Three steps in the context

From the mouth of a witness to its representation in a transcript, a witness's utterance in court goes through three steps: it is 1) produced by the witness, 2) interpreted by the interpreter (transformed from one language to another language), and 3) recorded by the transcriber (transformed from spoken language to written language).

It is important to note that the process in question is recontextualization. Von Mengden & Kuhle (2020) define recontextualization as "the dynamic and flexible transfer of linguistic patterns/means from one utterance-in-context to another" (p. 265), and Eades (2012) defines it as "retelling the story (or part of it) in a new context" (p. 475). That is, processes such as interpretation and transcription are processes of recontextualization as they take speech and retell it with different language or form, and the data of this study is the result of such recontextualizations with two or more participants.

This study aims to identify the three production roles, the animator, author, and principal, based on the representation in the transcripts. Based on the transcripts, is it clear who is assuming which roles with respect to a particular utterance? For example, who is represented as choosing the words in the utterance? Who is deemed to be responsible for the utterance? Does recontextualization change who assumes which role?

5 Data analysis and discussion

5.1 Interpreted speech in court transcripts

5.1.1 Identity of each participant

The identities of the witnesses and the court reporters are rather easy to notice. Court reporters have their information, such as names and certifications, on the first and the last page of the transcripts. The witnesses' names are shown on the witness index on the third page of each transcript. They are also named in the transcripts, as a part of the examination.

On the other hand, the identities of the interpreters are not always clear. On Day 32, the name and the occupation of the interpreter are identified, as seen in Example (1). On Days 54 and 55, however, there is no information on the interpreters, as seen in Examples (2) and (3).

- (1) *United States of America v. Dzhokhar A. Tsarnaev* (2015). Day 32, p. 83
18 (Lilun Zhang, Certified Mandarin Interpreter, is duly sworn.)
- (2) *United States of America v. Dzhokhar A. Tsarnaev* (2015). Day 54, p. 6
24 (Interpreter sworn.)
- (3) *United States of America v. Dzhokhar A. Tsarnaev* (2015). Day 55, p. 40
15 (The interpreter is duly sworn.)

It may be possible to find information about the interpreters in some other records of this trial, but it is not available from the court transcripts.

5.1.2 Interpreted languages

As noted in example (1), it is identified that the interpreter's source language is Mandarin on Day 32. However, on Days 54 and 55, the source language is not noted, and is only inferable from the further questioning that occurs in the proceedings, with the witnesses' backgrounds explicitly mentioned as in Examples (4) and (5).

- (4) *United States of America v. Dzhokhar A. Tsarnaev* (2015). Day 54, pp. 6–7
24 (Interpreter sworn.)
25 RAISAT SULEIMANOVA, Sworn
...
13 Q. Where were you born?
14 A. In Russia, the Republic of Dagestan, the village of Chokh.
- (5) *United States of America v. Dzhokhar A. Tsarnaev* (2015). Day 55, pp. 40–41
16 MIRRA KUZNETSOV, duly sworn through interpreter.
...
17 Q. Okay. And did your store sort of serve the
18 Russian-speaking community here in Boston, the Boston area?
19 A. Yes, correct.

Both examples show that there are interpreters with the witnesses, but it is not specified what their source languages are. One can assume that they most likely speak Russian from the contents of the examination, but cannot be certain since it is only a circumstantial guess.

5.1.3 *Witnesses' language in court*

Day 32 involves a Mandarin-speaking witness and a Mandarin interpreter. Nonetheless, as can be seen in Example (6), the transcript indicates that the attorney plans to conduct the examination in English, while having the interpreter just in case the witness needs help.

(6) *United States of America v. Dzhokhar A. Tsarnaev* (2015). Day 32, p. 84

02 DIRECT EXAMINATION (In English)

...

18 MR. MELLIN: Actually, your Honor, I think that we are
19 probably going to conduct most, if not all, of this in English,
20 but we have the interpreter just in case Mr. Meng needs the
21 interpreter.

22 THE COURT: To the extent the interpreter is called
23 upon to translate Mr. Meng's Chinese into English, then I would
24 ask the interpreter to speak into the microphone with the
25 English answer, okay?

However, the transcript still leaves room for uncertainty. The transcript clarifies that the first examination with the Mandarin-speaking witness is done in English, as in the first line of (6). This does not mean that the witness never spoke in Mandarin, nor that the following cross-examination and redirect examination was done in English.

The hearing of Day 54 involves multiple witnesses of a similar ethnic origin, and there are circumstantial clues of the witnesses' native language as seen in Example (4). However, all utterances of the witness are transcribed in English. It is not noted whether the witness produced an English utterance, or the interpreter interpreted a Russian utterance by the witness. The only exception is when the interpreter speaks for themselves (e.g., for clarification or repetition of the question) as in Example (7).

(7) *United States of America v. Dzhokhar A. Tsarnaev* (2015). Day 54, p. 36

21 THE INTERPRETER: With Jahar? I'm sorry. Can you
22 repeat the question, please?

Similar to Day 32, Day 55 includes a witness who speaks in English, while having an interpreter just in case.

(8) *United States of America v. Dzhokhar A. Tsarnaev* (2015). Day 55, p. 52

22 Q. Dr. Niss, I understand that you speak English and you
23 speak other language [sic]. You're comfortable in Russian and
24 English?

25 A. More in Russian, but I'll try to speak English here.

However, in contrast with the transcript of Day 32, the transcript of Day 55 explicitly notes when the witness's utterance went through the interpreter, as in (9).

(9) *United States of America v. Dzhokhar A. Tsarnaev* (2015). Day 55, p. 70

15 (Through the interpreter) He was unwell. There was a
16 general condition of not being well.

17 (In English) So this day I decided to add Provigil.

5.2 Factors outside the transcripts

It is important to consider external factors that may influence the court transcripts, as well as the text of the transcripts themselves, in order to identify any inconsistency possibly rooted in procedural matters. Different court reporters and/or inconsistent formatting, not the linguistic processes themselves, may create discrepancies in transcripts.

To help prevent such discrepancies, the Office of Transcription Services of the government of Massachusetts put in place the Uniform Transcript Format (UTF). The introduction of the format states that “this UTF requires that all transcripts produced for Massachusetts state courts, whether by official court reporters, per diem court reporters, or approved court transcribers, shall be in accordance with this Administrative Directive #1-08” (Office of Transcription Services, 2008, p. 3). Importantly, this indicates that the format is in place to provide consistent representation of courtroom talk, no matter who the court reporter is.

However, that is not necessarily the case. As presented in 5.1, there are noticeable inconsistencies with how interpreted speech is represented. Day 32 notes the interpreter’s identity and their source language, while Days 54 and 55 only indicate that there are interpreters with the witnesses. Day 54 only specifies the interpreter’s contribution when they speak for themselves while Day 55 shows which utterance is interpreted by the interpreter. As such, the court transcripts of the three days already display varying patterns of representing court interpretation.

The court reporters’ names are stated on the first page of each transcript. For Day 32, Marcia G. Patrisso, and for Days 54 and 55, Marcia G. Patrisso and Cheryl Dahlstrom were the court reporters. Even though there is one court reporter who participated in the transcription on all three days, it is impossible to determine which court reporter transcribed and contributed to which part of the transcript on Days 54 and 55. In addition, the court transcripts of Days 54 and 55 still show inconsistency, despite the fact that they were transcribed by the same court reporters.

In conclusion, it is unlikely that the format is the cause of the discrepancies as seen in 5.1, and it is also hard to attribute them entirely to court reporters since there are more variant patterns of transcription than the reporters.

5.3 The blurred lines of production roles

5.3.1 *Uncertain animators*

The Uniform Transcript Format (UTF) stipulates how to transcribe interpreted testimony as follows:

The court interpreter’s voice is the voice of record. When court interpreters are used, it is assumed that answers are made in a foreign language and interpreted into English unless a parenthetical “(in English)” is inserted after the LEP (Limited English Proficiency) individual’s response. (Office of Transcription Services, 2008, p.18)

This guideline indicates that, on any occasion where a witness who speaks a foreign language uses a court interpreter, their utterance is assumed to be in the foreign language and interpreted into English. In cases where the witness speaks in English, their utterance should be explicitly noted as such. In other words, the witness testimony is always transcribed in English, but when spoken in English by the witness, it will have a parenthetical “(in English)” following the utterance. Following this guideline, one should be able to ascertain the animator of each utterance rather clearly from the transcripts.

Yet, despite the existence of such a guideline, the way interpreted speech is transcribed shows inconsistency throughout the data. For example, in the transcript of Day 54, the interpreter's presence is stated only in two occasions: when they first appear in the proceedings as in (2), and when they need to clarify matters related to their own understanding of the proceedings as in (7). When they are interpreting the witness's utterance, their presence is not evident.

The transcript of Day 55 is clearer about the interpreter's presence. Day 55 includes an examination where the witness and the attorney agree to communicate in English with the help of the interpreter:

(10) *United States of America v. Dzhokhar A. Tsarnaev* (2015). Day 55, pp. 40–41

24 Q. Good morning, Ms. Kuznetsov.
 25 And if -- the interpreter is there for your assistance if
 01 you need her, but if we can try, at least, to go back and forth
 02 in English -- can we try that way at the beginning, at least?
 03 A. Yes.

For such situations, the transcript clarifies when the witness does “go back and forth.” That is, it was explicitly noted when they did use the interpreter, instead of speaking in English themselves, as in (9). However, unlike (9), there was also an occasion with no clarification as to whether the witness goes back to speaking in English, as in (11).

(11) *United States of America v. Dzhokhar A. Tsarnaev* (2015). Day 55, p. 72

10 THE WITNESS: (Through the interpreter) Can you
 11 repeat the question, please?
 12 BY MS. CLARKE:
 13 Q. Was there any doubt in your mind when you finished
 14 treating Anzor in mid 2005 that he was a very sick man?
 15 A. Still, he was -- no such panic attacks, no paranoia
 16 anymore by that time, but the rest was like in the beginning.
 17 Q. Very disabled?
 18 A. Yeah.

In other cases, there is little to no dependable indication that specifies the animator of the utterance. In the transcript of Day 32, there is no indicator of the animator, and one can only guess that the witness spoke in English from the situational context.

This creates ambiguity with respect to the participation roles as the animator of utterances is obscured. The witness surely assumes the role of animator in the courtroom when producing their original utterance. However, because it goes through a recontextualization process of transcription that is not performed by court reporters with consistency, it becomes unclear which participant is assuming the role of the animator in the transcripts.

5.3.2 *Ambiguous authors*

The author, who constructs the speech, can also be ambiguous in the transcripts. As mentioned in 4.3.2, the original utterances are transformed from one language to another (interpretation) and then from spoken language to written language (transcription). The speech of the witness can be reconstructed by both the interpreter and the court reporter, selecting what to include and exclude (Hale, 2002).

As mentioned in 5.3.1, the animator is not always clear. In addition, the transcripts do not represent the original speech in the original language and are not necessarily accompanied by audio tapes. In other words, one cannot tell from the transcripts if the utterance is directly produced by the witness in English, or if it was reconstructed by the interpreter. If it is the former, the witness will be the author, but if the latter, the interpreter is the author, for they made decisions on constructing the utterance in English. Thus, the authors of the utterances are unclear.

5.3.3 *The sole principal*

In her study on the Pinkenba case,³ Eades (2012) brings up four language ideologies that affects “the evaluation and assessment of people’s stories and their recontextualizations in the legal process” (p. 476). One of them is “the ideology of narrator authorship” (p. 477), which is the ideology that holds the original narrator accountable for a story, even after it goes through recontextualization processes involving different participants.

It is evident that both interpretation and transcription can often be ambiguating, as other studies (e.g., Eades, 2010; Hale, 2002; Jones et al., 2019) and the inconsistency in transcribing practices in this data have shown. Nonetheless, the processes are considered to be tools that represent the original proceedings transparently. Through the ideology of narrator authorship, what is represented in court transcripts is understood to be the original utterances accurately produced by witnesses (and other courtroom participants). That is, witnesses are considered to be the principals of utterances attributed to them in the transcripts even though the utterances have gone through possibly several stages of recontextualization.

6 Conclusion

My analysis of how interpreting is represented in court transcripts, with respect to Goffman’s (1979) participation roles, shows clearly how language minorities can be impacted by the processes of recontextualization. The fact that witnesses are deemed to be the principals of the texts represented in court transcripts can have major consequences in legal settings as the transcripts are often used as grounds for further legal proceedings (e.g., future trials and appeals). Assumed to be the principal behind a represented message, despite other participants involved in recontextualization, the witness is legally held accountable for being “inconsistent” or “insincere” due to the potential discrepancies, even if they might be neither the animator nor the author of the message.

Another language ideology Eades (2012) points out to be prevalent in the courtroom setting is “the ideology of inconsistency” (p. 476). It is an assumption that inconsistency in a story equals “lack of truthfulness” (p. 476). The recontextualization processes can disadvantage language minorities in court because such inconsistencies, which they are held accountable for, are considered to be indicators of untruth.

Although this study mainly tackled how Goffman’s (1979) production roles were represented in court transcripts in a trial involving court interpreters, the transcripts themselves are insufficient in understanding the precise ways in which interpreters and transcribers may have recontextualized witness testimony. Due to the absence of corresponding audio/video recordings, this research lacks data connected to the concrete shifts in footing that may have occurred at each stage of the recontextualizations. Hence, investigations of courtroom transcripts alongside their

³ The Pinkenba case is a case in Australia where six police officers were charged with abducting three Australian Aboriginal teenagers. Eades (2012) analyzes this case and how four central language ideologies impact the case to perpetuate neocolonial control.

audio counterparts would help to make more detailed analysis of potential inconsistencies and discrepancies (created by the processes of recontextualization) possible.

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Appendix A: Court transcripts

Trial transcripts: <http://thebostonmarathonbombings.weebly.com/trial-transcripts.html>

- Day 32: https://thebostonmarathonbombings.weebly.com/uploads/2/4/2/6/24264849/1544_day_32_.pdf
- Day 54: https://thebostonmarathonbombings.weebly.com/uploads/2/4/2/6/24264849/day_54_trial_day_may_4_2015_transcript.pdf

RECONTEXTUALIZATION AND PRODUCTION ROLES

- Day 55:
https://thebostonmarathonbombings.weebly.com/uploads/2/4/2/6/24264849/1388_trial_day_55_may_5_2016_transcript.pdf