PHILIPP SEBASTIAN
ANGERMEYER

# SPEAK ENGLISH *or* WHAT?

## Codeswitching and Interpreter Use in New York City Courts

OXFORD STUDIES IN LANGUAGE AND LAW

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Philipp Sebastian Angermeyer



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# CONTENTS

Acknowledgments vii

1. **Indexicalities of language choice in small claims court 1**
2. **Challenging claims: Immigrants in small claims court 16**
3. **"I've heard your story:" How arbitrators decide 42**
4. **Only translating? The role of the interpreter 69**
5. **Testifying in another language: What's lost in translation 101**
6. **Codeswitching in the courtroom 142**
7. **Language ideology and legal outcomes 191**

Appendix: Transcription conventions 207
Notes 209
References 225
Index 241

1

# Indexicalities of language choice in small claims court

One evening in 2004, in a busy small claims court in New York City, two people were arguing in front of an arbitrator about the cause of a traffic accident in which their cars had collided in the middle of an intersection. The claimant, a West Indian immigrant, argued that the defendant had caused the accident by driving through a red light. The defendant, who was Haitian, claimed that the light had been yellow when she crossed the intersection. She was speaking in Haitian Creole, which was translated into English by an official court interpreter, who also translated the other participants' English turns into Haitian Creole for her. After initial testimony, during which both claimant and defendant had narrated their versions of events to the arbitrator, the clamant was given the opportunity to ask questions of the defendant. Like many litigants in small claims court, he had appeared *pro se*, whereas the defendant was accompanied by an attorney representing her insurance company. The claimant's questions, which eventually gave way to direct comments, aimed to raise doubts about her testimony, and in the process, questions about her truthfulness came to be intertwined with the issue of language choice, as shown in excerpt (1) (see the appendix for transcription conventions).

(1)

| | | |
|---|---|---|
| 1 | Claimant: | You said that the light changed to what? |
| 2 | | [Yellow?] |
| 3 | Interpreter: | [Ou di ke] limyè (a te to-) tounen jòn? |
| | | {'you said that the light (had) turned yellow'} |
| 4 | Defendant: | (0.6) limyè a te vert, |
| | | {'The light was green,'} |
| 5 | | et puis lè m ap pase (anba l ap) tounen yellow. |
| | | {'and then, when I passed underneath, it turned yellow.'} |
| 6 | Interpreter: | The light was green but when I was |

| | | |
|---|---|---|
| 7 | | (.) driving across the light it was turning yellow. |
| 8 | Claimant: | (1.2) So which means then that |
| 9 | | (0.7) when you came to the intersection + |
| 10 | Interpreter: | (Sa vle di) ke lè ou vin nan [enteseksyon ] |
| | | {'That means that when you came to the intersection'} |
| 11 | Claimant: | [of Maple] Avenue, |
| 12 | | you were saying [the light was green]? |
| 13 | Interpreter: | [(xxx Maple Avenue)], ou di limyè a te vert? |
| | | {'(Maple Ave.), you said the light was green?'} |
| 14 | Attorney: | Arbitrator, this questioning is repetitive, this is the |
| 15 | | [exact same-] |
| 16 | Arbitrator: | [It's okay], I'll allow it |
| 17 | | (3.1) I'll allow it, |
| 18 | | you know [he's not- not professional.] |
| 19 | Claimant: | [She was saying the light] was green. |
| 20 | | So why she told the police the light was yellow? |
| 21 | Interpreter: | Pou ki sa ou di [polis (la xxx)]+ |
| | | {'Why did you tell the police (xxx)'} |
| 22 | Claimant: | [It's in the report.] |
| 23 | | She gave a report, she can [speak English!] |
| 24 | Interpreter: | [(xxx)] jòn) + |
| | | {'(xxx). yellow . . .'} |
| 25 | Claimant: | She spoke English when- to the- [to the] police officer!= |
| 26 | Interpreter: | [(xxx)] |
| 27 | Arbitrator: | =Sir, Sir! |
| 28 | Claimant: | I'm sorry, Sir. |
| 29 | Arbitrator: | You can [ask questions,] no commenting. |
| 30 | Claimant: | [Okay I'm sorry.] |

Not unlike an attorney would in cross-examination, the claimant in excerpt (1) seeks to expose contradictions in the defendant's testimony in order to undermine her credibility. To do so, he juxtaposes a part of her courtroom testimony (*limyè a te vert*, 'the light was green' line 4) with a statement that she reportedly made to the police at the scene of the accident (*the light was yellow*, line 20). However, he does not simply point out that the two statements are contradictory, he also emphasizes that they were made in different languages. During the hearing, the defendant has been speaking Haitian Creole (albeit with occasional codeswitching), but at the scene of the accident, she allegedly spoke English. Because the claimant's own version of the events depends on the claim that he himself had a green light and she did not, the implication of this juxtaposition is clear: When she speaks English, she is telling the truth, but when she speaks Haitian Creole, she is lying. Moreover, by exclaiming that *she can speak English!* (line 23), he implies that the act

of speaking Haitian Creole in court is deceitful in and of itself, irrespective of the words that are spoken. The presiding arbitrator rejects the claimant's comments, but he does not explicitly object to the notion that language choice is connected to truthfulness.

This example highlights several of the issues that are faced by speakers of languages other than English in American courts and that are addressed in this book. For one, it speaks to language ideologies about speaking English and using an interpreter—that is, beliefs about language and how it should be used. As the use of English is the norm both in the legal institution and in American society more generally (Silverstein 1996), using another language in the public sphere is fraught with risks, as it constrains the ability to communicate with institutional agents and has the potential to associate the speaker with negative social attributes. In the American legal system, interpreter use is generally viewed as dependent upon a person's inability to speak English, which is sometimes compared to a physical handicap (e.g., Pousada 1979). As Haviland (2003:769) notes, this notion of language handicap shows that English is seen as being "in the repertoire of skills of a 'standard person,' one who is socially and, perhaps, morally whole or 'normal.'" Based on such ideologies, linguistic practices thus come to be associated with particular social attributes—that is, they are viewed as *indexing* particular social meanings (Silverstein 1979; Ochs 1992). As in excerpt (1), language use becomes a moral question, especially when a person's language proficiency is in doubt, which is often the case with L2 learners of English. Both at the macrosociolinguistic level and at the level of the interaction, speaking a language other than English can thus come to index negative social attributes and contribute to the negative evaluation of the speaker's moral character.

Excerpt (1) also illustrates several important aspects of court interpreting practice. In the initial question and answer sequence (lines 1–13), the interpreter translates in consecutive mode—that is, he is generally able to produce renditions of immediately preceding talk before another participant takes a new turn. By contrast, he does not translate the subsequent byplay exchange between arbitrator and attorney (lines 14–18). Finally, as the claimant gradually moves from questioning to commenting, becoming agitated and speaking mostly without pauses (lines 19–25), consecutive interpreting is no longer possible, but the interpreter is unable to keep up as he attempts to interpret simultaneously. While some of the interpreter's words are inaudible on the recording, it is clear that he does not translate the claimant's "accusation" that the defendant does in fact speak English (lines 23 and 25). Ironically this omission serves to further strengthen the claimant's argument, since it seems to momentarily give in to the idea that the defendant doesn't "need" a translation and understands what was said in English. As will be shown in Chapter 5, this distribution of consecutive and simultaneous interpreting modes, which is typical of court interpreting, systematically

disadvantages speakers of other languages. When they testify, they need to pause frequently to allow the interpreter to interpret consecutively, but these pauses make their testimony less coherent and easier to interrupt by others. By contrast, English speakers often do not pause, particularly if they address another English speaker, and so interpreters are forced to interpret simultaneously. However, as illustrated in excerpt (1), simultaneous interpreting of talk-in-interaction often leads to renditions that omit some of the source content, especially if multiple speakers overlap. As a consequence of this distribution of interpreting modes, speakers of other languages are less likely than English speakers to understand all of their opponents' testimony. However, these potential problems with interpreting are generally not acknowledged by the legal system, which sees interpreting as a neutral event that does not alter the proceedings in any way.

The issues addressed in this book thus raise important questions about multilingualism in the legal system. Can you get a fair trial if you don't speak the language of the court, or don't speak it fluently? Or, put differently, how do linguistic differences between individuals affect communication in the courtroom and the ability of claimants, defendants, and witnesses to make their voices heard? These questions pose themselves in legal systems all over the world, but they are especially pertinent in places like the urban areas of the United States, where international migration has given rise to record levels of linguistic diversity. According to census figures, approximately half the population of New York City speaks a language other than English (LOTE, cf. García & Fishman 1997) as their primary home language. About a quarter of the population speaks Spanish, and another quarter speaks one or more of a large number of other languages, as there are approximately 30 other languages that are spoken by 10,000 or more people in the city. Like in other first-world legal systems, the response of the English-based courts to this linguistic diversity has been to rely on interpreting. This is based on the assumption that persons who speak another language can participate in proceedings to the same extent as English speakers, as long as they are assisted by a qualified court interpreter who translates accurately between the languages. In line with such legal perspectives, linguistic research on multilingualism in court has often focused on the impact of interpreting, with the aim of improving justice by identifying best practices for court interpreting and improving the training of interpreters (Berk-Seligson 1990; Colin & Morris 1996; Hale 2004). However, less attention has been paid to the sociolinguistic context of court interpreting or to the pragmatic differences between interpreter-mediated interaction and same-language talk. Sociolinguistic research on language use in the legal process has typically focused on intercultural interaction between speakers of different varieties of the same language. Such research has consistently shown that speakers of nonstandard or nonnative varieties are disadvantaged in the courtroom when their

cultural communicative practices are interpreted according to institutional norms (Gumperz 1982a, 2001; Eades 2008) or when their varieties are taken as indexical of stigmatized social identities (Jacquemet 1996). In line with the above-mentioned language ideologies that view the use of the standard language variety as normative (Silverstein 1996; Haviland 2003), legal professionals often blame lay participants for their inability to communicate in the standard language (Lippi-Green 1994). Taken together, these studies illustrate Blommaert's observation (2003:615) that "*differences* in the use of language are quickly, and quite systematically, translated into *inequalities* between speaker."

The impact of linguistic difference on equality before the law can be observed even in jurisdictions with multiple official languages, where the functional equivalence of different languages is institutionally mandated. Recent ethnographic research on courtroom interaction in bilingual jurisdictions has shown that the choice between co-official languages can also have profound pragmatic and legal implications, potentially altering courtroom procedures and affecting a litigant's ability to argue persuasively in the particular cultural context of the hearing. For example, Richland's (2008) study of a Hopi tribal court explores meta-pragmatic debates where language choice between English and Hopi is explicitly negotiated by the participants, revealing language ideologies that link the languages to particular forms of argumentation and jurisprudence. While there is a general assumption that speech in one language can be translated into the other without loss of meaning, some participants argue that certain matters can only be discussed in Hopi (p. 102), and Richland finds that language choice does have implications for the ability of participants to appeal to traditional Hopi notions of morality and responsibility. Similarly, Ng (2009a) finds that language choice in bilingual courts in Hong Kong has important consequences for the way trials are conducted. He identifies a "gap in the linguistic habituses" of English and Chinese (p. 159), as adherence to the juridical formalism of the British common law system is tied to the use of English and is much reduced when trials are conducted in Chinese. Ng argues that this has profound consequences for the ability of Cantonese speakers to participate in the proceedings, as the use of Chinese re-embeds disputes into their original Chinese-language social context, whereas the use of English removes them from it. Moreover, as interpreter use is also very widespread in nominally "English" trials, language choice is often more fluid during these hearings, as lawyers tend to elicit evidence in Cantonese, while more formal and monologic trial components, such as the judgment or opening and closing statements, are spoken in English (p. 238). The studies by Richland and Ng both point to a functional linguistic relativity, as language choice is shown to have implications for how participants can interact in the courtroom. In doing so, they challenge the notion of "literal" translatability that is prevalent in legal approaches to multilingualism—that

is, the belief in pragmatic and semantic cross-linguistic equivalence that Haviland (2003) characterizes as the ideology of "referential transparency" (see below).

The impact of linguistic diversity on justice thus clearly represents a central concern in the field of language and law, and this book aims to contribute to this growing body of work by exploring the pragmatic consequences of language choice and interpreter use in courtroom talk. The data analyzed in this book were collected in ethnographic fieldwork in small claims courts in New York City in 2003 and 2004, during which I observed over 200 court proceedings and tape-recorded 60 hearings that involved at least one speaker of a language other than English. To facilitate cross-linguistic comparison, my study focused on speakers of four languages that are frequently spoken in New York courts, and of which I have at least a basic working knowledge: Haitian Creole, Polish, Russian, and Spanish. As will be explained in detail in Chapters 2 and 3, small claims court differs from other courts because of its relative informality (Abel 1982a; Conley & O'Barr 1990; Merry 1990), and in New York, most cases are decided by volunteer arbitrators instead of judges. The court provides a venue for local residents to pursue claims of limited monetary value without having to hire an attorney. Typical small claims cases result from disputes between tenants and landlords, between workers and their former employers, between customers and business owners, or between parties involved in a minor automobile accident. As noted by Merry (1990:86), many of these disputes represent "weaker parties' challenges to the hierarchies of authority controlling their lives," and in New York, these weaker parties often have more limited proficiency in English than do their opponents. This makes small claims court an ideal venue for studying the impact of linguistic diversity on interaction in legal settings, as speakers of different languages and language varieties come to court, speak on their own behalf, and argue their case in a relatively informal manner. At the courts where I conducted my fieldwork, as in all New York civil courts, professional court interpreters are provided free of charge to all litigants who request them. Yet, as I discuss in more detail in Chapter 6, all of the participants I recorded also used some English alongside their other language, and consequently they can be described as limited L2 speakers of English and as incipient or limited bilinguals who engage in codeswitching between English and their L1. In fact, when these litigants interact with institutional representatives, they are often unsure about their language choice. Anticipating the need to speak English, but perhaps uncertain about their ability to do so appropriately, many come to court accompanied by family members or acquaintances who are prepared to translate or speak on their behalf, if needed. Others may request a court interpreter but still expect to use English when possible. As a consequence, court proceedings often begin with explicit language negotiation sequences (Heller 1982; Auer 1984, 1995). This is illustrated

in excerpt (2), from a dispute between a Russian-speaking tenant and her landlord. The claimant's succinct question in line 4, which provided me with the title for this book, suggests both a preference for speaking English (in this context) and a willingness to accommodate to institutional practices. Prior to the question, she shows her orientation to talk in both languages, English and Russian. Her *uhm* in line 2 indicates that she wants to claim the next speaking position—that is, it suggests that she is preparing to respond to the arbitrator's English question in line 1 even before she hears the interpreter's translation in line 3. Her false start in line 4 (*ja žila* 'I was living') on the other hand initiates a response to the interpreter's question in Russian. As can be seen in line 5, the arbitrator rejects her suggestion and asks her to speak Russian instead. This is then translated into Russian by the interpreter (line 6), and, to a bilingual participant, this translation of the request arguably also doubles as a reiteration. Finally, the claimant accepts this instruction and switches back to Russian (line 8), continuing where she had left off with her false start in line 4 (*ja žila*). (All name are pseudonyms.)

(2)

| | | |
|---|---|---|
| 1 | Arbitrator: | Alright (.) why are you suing Green Realty? |
| 2 | Claimant: | Uhm- |
| 3 | Interpreter: | Počemu vy sudite G- Green (.) Realty? |
| | | {'Why do you sue Green Realty?'} |
| 4 | Claimant: | Ja žila- (.5) speak English or what? |
| | | {'I was living'} |
| 5 | Arbitrator: | (.) No, speak Rus [sian please.] |
| 6 | Interpreter: | [Govorite po-] [russki.] |
| | | {'Speak Russian.'} |
| 7 | Claimant: | [Ah, okay.] |
| 8 | | (.) uhm (.) ja žila v ploxix uslovijax, |
| | | {'I was living in bad conditions'} |
| 9 | | i [vos-] |
| | | {'and the 8-'} |
| 10 | Interpreter: | [I was] living in a bad condition, |
| 11 | Claimant: | Vos'maja Programma menja perevela v drugoj building. |
| | | {'Section 8 transferred me to another building'} |

On the surface, it may seem surprising that litigants are told not to speak English, even though it is the language of the institution. But in fact, judges, arbitrators, court staff, and interpreters in New York small claims court routinely discourage L2 speakers from using English (Angermeyer 2008). This practice appears to be motivated in part by a belief that litigants are better off if they can speak in their L1. This perception can be seen as derived from the legal basis for court interpreting in the United States (the Court Interpreters

Act of 1978), which holds that individuals who do not speak the language of the court are denied due process unless they are provided with an interpreter. Accordingly, the failure to provide an interpreter may provide grounds for an appeal (Berk-Seligson 2000), so legal professionals may want to err on the side of caution, even in relatively informal legal venues like small claims court. However, as I seek to demonstrate throughout this book, the belief that litigants should speak their L1 is also grounded in language ideologies about communication and translation. It rests on the common assumption (named "conduit metaphor by Reddy" 1979) that successful communication requires a speaker to put his or her thoughts "into words," and that these words can then be translated without any change in meaning by a competent translator, following Haviland's (2003) ideology of "referential transparency." In Chapter 5, I will show how this ideology may interfere with the goal of communication. But, as I argue in Angermeyer (2008), the institutional instruction to not speak English is also a "monolingualizing" practice. While bilingual litigants, like the claimant in excerpt (2), orient to talk in both of their languages, the court wants them to use only one language throughout the hearing—that is, to act as monolinguals and either speak only English or speak no English at all. The only participants who are permitted to use more than one language are the court interpreters. Nonetheless, many litigants resist this monolingual norm of language choice, as will be shown throughout this book. As speakers of languages other than English living in an English-dominated society, using both languages, and codeswitching between them, is part of their everyday linguistic practices, but when they do so in court, they risk being reprimanded by institutional representatives, as even minimal use of English may become ground for criticism of a litigant's behavior in court.

While court staff may thus criticize L2-speaking litigants for using English, other participants often criticize them for relying on an interpreter instead. Such criticism was hinted at in excerpt (1) above, but it is often made more explicitly. Consider the following excerpt from a case with two Polish-speaking women who had sued their former employer for outstanding wages. A Polish interpreter is present in the room to translate for them. Like most claimants in small claims court, they appear *pro se*, but their former employer is represented by an attorney. The excerpt shows a routine procedure from the beginning of arbitration hearings, when litigants and witnesses are asked to swear to tell the truth. In line 3, the interpreter is shown translating the arbitrator's initial question into Polish. The claimant responds with *yes* in English (line 4), to this question as well to the subsequent follow-up question, which is not translated (lines 5 and 7). Such minimal use of English is very common, even for litigants like this claimant who speak very little English otherwise (see Chapters 2 and 5). This should not be surprising, since responding *yes* to a yes/no question requires only minimal proficiency in English, particularly if the question itself has been translated as in (3). Nevertheless, the defendant's

attorney takes this rather emblematic display of English as an indication that her request for an interpreter is not genuine. He asks the arbitrator to inquire about her competence in English (line 9), and then asks her himself when this request is ignored (line 10). When the claimant declares that she understands "a little," the attorney responds with a comment that directly accuses her of not being truthful, speaking "a little bit more than you would like us to believe" (line 15).

(3)

| | | |
|---|---|---|
| 1 | Arbitrator: | Do you swear the testimony you're about |
| 2 | | [to give is the truth?] |
| 3 | Interpreter: | [Czy Pani przysięga] mowić prawdę i tylko [prawdę?] |
| | | {'Do you, Ma'am, swear to speak the truth and only the truth?'} |
| 4 | Claimant: | [Yes.] |
| 5 | Arbitrator: | For your case as well as ah (.) [Zofia's case?] |
| 6 | Interpreter: | [(Ah, for-)] |
| 7 | Claimant: | Yes. |
| 8 | Arbitrator: | Okay. |
| 9 | Def. Attorney: | Ask her if she understands English? |
| 10 | | (2.2) You understand [English?] |
| 11 | Arbitrator: | [Uh:-] ] Uh- |
| 12 | Claimant: | Uh, a little (bit). |
| 13 | Def. Attorney: | (.) A little bit. |
| 14 | Arbitrator: | [Okay-] |
| 15 | Def. Attorney: | [I think] a little bit more than you'd like us to believe |
| 16 | | but [(that's okay) {*laugh*}] |
| 17 | Arbitrator: | [Well, no no no,] That's unnece- [ssary]. |
| 18 | Def. Attorney: | [Okay.] |
| 19 | Arbitrator: | They obviously feel more comfortable with a |
| 20 | | [Polish interpreter and it's their right.] |
| 21 | Def. Attorney: | [ah okay I have (no problem with it).] |

Such accusations as in excerpt (3) are by no means unusual, and they have been described in other studies of interpreter-mediated interaction in legal settings (see Maryns 2012:304). During my fieldwork, I observed multiple other occasions when a participant's language proficiency became a point of dispute. This occurred especially in situations when a request for interpreting resulted in the postponement of a hearing because no interpreter was available. In such instances, opposing litigants or their attorneys sometimes insinuated that the request for interpreting had been made in order to delay the hearing, or they would try to convince the litigant to go ahead

without an interpreter. Similarly, the case from excerpt (3) had originally been scheduled for a different court date but was postponed when no Polish interpreter was available that day. However, this delay was hardly in the interest of the Polish-speaking claimants, who after all were suing for payment of outstanding wages. In fact, the defense attorney in excerpt (3) does not speculate what the claimant's motive could be for "pretending" not to speak English, what she could stand to gain by doing so. Instead, his accusations are made simply to call her truthfulness into question. As can be seen in excerpt (3), the arbitrator rejects this attempt to discredit the claimant. First, he does not follow the attorney's prompt to ask her (lines 9–10), and then he interrupts and rebukes him for his comments and asserts that the claimant is entitled to interpreter assistance (lines 17, 19, and 20). While the attorney's criticism, like the claimant's comments in excerpt (1), is thus rejected by the court, it still suggests that language choice can have profound implications for how a litigant is perceived by others. The examples show the potential of language choice to become part of so-called demeanor evidence, which legal decision makers draw on to evaluate a person's reliability and truthfulness. In any case, such criticism can be understood as an indirect consequence of the court's monolingual language policy noted above, which treats the use of court interpreters as incompatible with any additional use of English (Angermeyer 2008:393). Against this expectation of monolingualism, any use of English, no matter how minimal, can come to be interpreted as deceitful, but so can *not* using English, if other participants have evidence of the litigant's L2 proficiency (such as from prior interaction outside of court, as in excerpt (1) above). Consequently, the language choice of immigrant litigants is inherently problematic, no matter which language they choose, or are told to use. This distinguishes the situation of L2 speakers from litigants whose L1 is English, and who do not risk being evaluated in this way (though they may of course be evaluated for their vernacular variety if it is perceived as nonstandard).

The examples show that practices of court interpreting affect legal proceedings in ways that go beyond the question of how closely the interpreters' renditions relate to the source speech they translate. For one, interpreter use has profound pragmatic consequences that will be examined in detail in Chapter 5. Moreover, as shown in this chapter, language choice affects proceedings by indexing social meanings, at both micro and macro levels of analysis. As shown in the discussion of excerpts (1) through (3), language choice is indexical at the level of the interaction, where it can come to index a lack of credibility or cooperation if it is seen by others as contrary to expectations. Haviland (2003:772) notes that the language choice of bilinguals is often evaluated as a matter of volition. As he shows in his discussion of English-only regulations in the workplace, when bilingual employees speak the other language with each other (or codeswitch), their choice is interpreted