

HEARING BETWEEN THE LINES: STYLE SWITCHING IN A COURTROOM SETTING

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Introduction

The speech of both lawyers and witnesses has been examined by sociolinguists in the context of speech act theory (Atkinson and Drew), conversation analysis (Nofsinger, 1983; Philips, 1987) and power dichotomies (Erikson et al., 1978; Lakoff, 1990). However, little work has been done on style shifting, or change of register, as a linguistic strategy in the courtroom.

This study, based on data from a case aired on Court TV, analyzes the shifts in style of the lawyers in terms of socio-pragmatics. (I distinguish between pragmatics, where the form of the utterance carries meaning about the social situation, and socio-pragmatics, in which the form of the utterance carries meaning about the identities of the interlocutors (Myers-Scotton, personal communication)). Thus the social identities of the participants in this speech event are an integral part of my analysis.

My data show that style shifting is used by lawyers in the courtroom to imply things that they are not allowed, according to court protocol, to say directly. To do this, speech styles are used as metaphors to make characterizations and to create changes in alignment. The jury, the audience for the lawyers, must hear between the lines.

In section one of this paper the theoretical framework is given for style switching. In section two, I introduce the conclusions of previous studies on courtroom speech, which provide guidelines for determining markedness in this study. In sections three and four, I present my data and conclusions.

1. Theoretical framework

A vital underlying idea of codeswitching patterns is that they are rule-governed, as opposed to being arbitrary switches in code. Saying that switching is rule governed does not, of course, imply that there are restrictions on the speakers in some prescriptive way, but that, descriptively, patterns can be found in speech and that

these patterns carry social meaning.

One of the forerunners in codeswitching theory is Gumperz, whose article in collaboration with Blom was one of the first to present code switching as a legitimate means of communication (Gumperz and Blom, 1978). In their article, Gumperz and Blom posit a distinction between metaphorical and situational codeswitching. Situational code switching, as the name implies, is code choice determined by social situation; metaphorical code switching refers to code choices in which the variety itself is a socially meaningful symbol.

Metaphorical style switching occurs often in my data. While formal speech is used for much of the discourse, both lawyers switch into other styles to change alignment. Goffman (1981) maintains that "footing," or alignment, can be created in and displayed by speech. In this data, speech styles often serve to create a role for the speaker, and show his/her position in relation to the audience.

This position is symbolized by code choice in two ways. First is the above-mentioned metaphorical code choice; the second is the markedness of that choice. The Markedness Model (Myers-Scotton, 1993 and elsewhere) is based on the assumption that communicative competence includes the ability of speakers to assess linguistic choices in terms of not only grammatical well-formedness, but also social appropriateness; an unmarked choice is the expected code for a certain interaction. The assessment of markedness is based not only on social identity (including such factors as ethnicity, gender, and age) but also the role relationship between two individuals, which is reflected in and created by the interaction.

Markedness is a relative evaluation; on a continuum, codes can be designated as more or less appropriate for a given situation. The spectrum of styles used by any one speaker will reflect the variation in the speech community as a whole (Bell, 1984). Thus the speaker draws on common knowledge of the styles, their symbolism for the speaker's identity, and the conventions of usage (i.e. markedness) to form a message.

In my study, which involves the speech of two African American lawyers in Detroit, the styles used by these participants reflect the varieties spoken in their community: African American Vernacular English (AAVE), Standard English and formal courtroom speech styles. I maintain that in this setting, the styles on the formal end of the continuum are unmarked, and AAVE speech markers always constitute marked usage.

Features of style

The first level of style apparent in this data is found in the lexicon. Some lexical items are clearly formal or technical, like "herewith" or an uncommon acronym;

others carry a biblical or folksy connotation, such as "Thou Shalt Not Steal" or "you done good." I call the use of these lexical items within another genre of language "lexical coloring" (Myers-Scotton, 1985) and argue that it is a method of style switching because the choice of lexicon carries meaning. A classic example of this is Myers-Scotton's "what the heck, sir" in which the "sir" is clearly a contrast in style to the phrase "what the heck." However, all lexical items cannot be so easily categorized and contrasted, which forces us to go to other levels of linguistic analysis to ascertain what creates a style.

Much can be done with morpho-syntactic devices to create a linguistic style; an interesting fact of my data is that very little variation is found on this level. There are only two ways in which syntactic features are manipulated for style, and they are at the extremes of the style continuum. First, formulaic and unnecessarily complicated constructions are used to create formal courtroom speech style, as in the following example.

(1) (defense attorney to plaintiff)

- 1 I'm going to make it easier for you, Mrs. Was,
- 2 and try to *propound or at least propose* questions
- 3 that can be responded to *in a yes or no fashion*.

Second, non-Standard constructions found in AAVE are used to evoke a social metaphor of the common people.

(2) (prosecuting attorney in closing argument)

- 1 Sympathy and/or prejudice is not supposed to
- 2 enter into your decisions at all,
- 3 so the mere fact that this young lady's seventeen
- 4 *doesn't have nothing to do with nothing to do with nothing*.

This switched item contains a double negative, a feature of AAVE, as well as other informal dialects of American English, particularly Southern White English (Lourie, 1978). Used by an African American speaker to a largely African American audience (the jury), the categorization as an AAVE marker is legitimate.

On the phonological level, changes in pronunciation, tempo, pitch, rhythm and intonation all contribute to the shift in style. Syncope, consonant cluster reduction, alveolar final nasals of progressive participles and r-lessness are the major features of pronunciation which mark utterances as AAVE in this data. Falsetto

and the rhythm and intonation of gospel music are used as style markers.

2. Courtroom speech

Atkinson and Drew (1979) outline some characteristics of the kind of talk found in courtrooms during examination as opposed to conversation. One salient aspect of examination is that there is a pre-determined format for talk, namely question and answer adjacency pairs. Each speaker is required to use either one or the other of these turns: the attorney asks the questions, and the witness answers. When either speaker deviates from this pattern, the guilty party is cautioned by the judge and told to adhere to his/her role in the discourse. However, as Atkinson and Drew point out, other speech functions such as accusations, challenges, justifications, denials and rebuttals occur within this framework.

Within the speech act of questioning, there are different syntactic forms which can be used to various ends. Philips (1987) maintains that the form of a question represents the degree of control over the respondent. The use of *wh*-questions gives witnesses more freedom in their answers, whereas *yes-no* questions give a narrow range of possible answers. Even more forceful, and more apt to be thinly veiled accusations, are declaratives with a question tag ending, which presuppose an answer as well as limiting the response to *yes* or *no*. In Owsley and Scotton's article on powerfulness and code choice by television interviewers, they found that such questions, particularly with downward intonation, were interpreted by listeners as symbols of power (Owsley and Myers-Scotton, 1984).

Repetition as a linguistic strategy is used differently in courtroom speech than in conversation. Repeating a point or a question to insure clarity for the jury is a tactic often used by court lawyers. In everyday conversation, unnecessary repetition can reduce coherence, but in examination it serves to enhance intelligibility (Nofsinger, 1983).

Repetition can also be used to display power. Owsley and Myers-Scotton found that "underlining" -- repeating the previous speaker's words -- is intimidating because it indicates that every word is being monitored (Owsley and Myers-Scotton, 1984).

In the following example, both repetition and question tags with downward intonation are used to create an aggressive examination style.

(3) (D=defense attorney, P=plaintiff)

1 D: What do you want to do

- 2 as a result of being on the ground
 3 but defend yourself, isn't that correct.
 4 P: I didn't defend myself.
 5 D: You want to protect yourself, then, don't you.
 6 (1) AM I RIGHT OR WRONG.
 7 D: I played dead.
 8 L: Excuse me ma'am. You played dead.

Other formal features of courtroom speech are ritual speech events, formal address terms, and formulaic utterances such as objections, instructing the jury, etc. (Lakoff, 1990). However, lawyers may also choose an informal style in both examination and their closing arguments, as shown in my data. I argue that this switch is marked behavior, and signifies that the speech style, as well as the utterance itself, carries meaning.

The form of closing arguments, and the role style switching plays within them, is functionally different from examination. Although the jury is the audience throughout the trial, in examination the discourse is built up between the attorney and the witness. In the closing arguments, not only is the audience addressed directly, but many of the restrictions on the speech of the attorneys are lifted. They are allowed to refer to any of the testimony accepted by the court during the trial, as well as use their own opinions and pass judgements.

In my data, style shifting is used in closing statements to create characterizations of the plaintiff, defendant, and witnesses, as well as the other lawyer. These characterizations are in turn used to create alignments, each lawyer aligning his side of the case with the jury through linguistic style.

Style switching in the courtroom

Style switching enables the lawyers to do indirectly what they are not allowed to do directly. A lawyer cannot, for example, baldly accuse someone of being a chronic liar or irresponsible or an alcoholic; s/he cannot say that the witness is stupid or has impure motives. All of this can be implied, however, with style switching. In the following example, the prosecuting attorney uses style switching in her closing argument to cast doubt on the testimony of a witness. The shift in style is created phonologically.

(4) (prosecuting attorney)

- 1 I don't know why Alice Bankson, alias a.k.a. Denise Cotton,

- 2 alias a.k.a. Alice Reed, alias a.k.a. Alice Locks,
 3 came in and said what she did,
 4 *Ah don't know.*
 5 Why she came forward three months after the fact
 6 and said things the defendant didn't even say
 7 three days after it happened,
 8 *Ah don't know.*

3. The Rutherford Case

The data analyzed in this paper is from a case of the State of Michigan versus Cassandra Rutherford. Rutherford is an African American youth who has been accused of participating in an attack on a white woman, Joanne Was, at Fourth of July festivities. An amateur cameraman on the scene video-taped the attack. The video, used as evidence in the case, shows Rutherford's companions beating Was, but Rutherford herself cannot be seen. She claims that although she was present, she did not take part in the attack. To confuse matters, her twin sister, Cassandra, who was also present, can be seen on the video, and pled guilty to the charges. Cassandra Rutherford is the only one of the accused who maintains that she is innocent.

The trial took place seven months after the incident. The defense attorney, Cornelius Pitts, has several lines of defense: first, he tries to get Was to admit that she had covered her head during the attack, in which case she could not identify the attackers; second, he implies that she instigated the attack with racist comments, bringing in a witness who claims that Was often made racial slurs; and third, he attempts, primarily in his closing statement, to escalate the trial into a racial conflict, where a white woman is trying to take advantage of a helpless black girl.

The prosecutor, Lisa Lindsey, build her case by pointing out the defendant's reputation as a member of a street gang, her presence at the scene of the crime and her intent of the crime. In Lindsey's rebuttal to Pitts' closing argument, she belittles his portrayal of the trial as a racial conflict.

Both lawyers and the judge for the case are African-American, as are ten of the twelve jurors. This, as will be shown, influences Pitts' tactics in his closing statement, and the strategy Lindsey uses to minimize the racial aspect of the trial. This aspect of social identity also colors the type of style switching used by both lawyers. Switches into a speech style containing features which are common in AAVE are used to create a "just folks" image to offset the speaker's role as a lawyer. These features, mentioned briefly in section 1, will be dealt with in detail in

the following sections.

3.1 *The style of accusation*

Pitts uses intonation, as well as tempo and pronunciation changes, to create a style switch. In the following example, Pitts is questioning the plaintiff Was about her behavior after she had been thrown on the ground and the attack was underway. (See Appendix A for a key to the transcription.)

(5) (D=defense attorney, P=plaintiff)

- 1 D: You were trying to protect your purse.
 2 P: Yes.
 3 D: =What about you he:ad? //(high pitch)
 4 P: //and myself.
 5 D: =What about //you he:ad?
 6 P: //The purse was //protecting me.
 7 D: //Donchu wanna protek you he:ad?
 8 P: I//
 9 D: //Ma'am I din ask you that. //I asked you
 10 P: //I couldn't.
 11 I'd like to, but I couldn't.
 12 D: =Whaddy gonna do with your arms?
 13 P: I had my purse.
 14 D: Listen ma'am what about puttin a hand over the head?
 15 What about puttin another hand over the head?
 16 Did you do that?
 17 P: No, not that I know of.
 18 D: You didn't protect your head at all.

In this dialogue, the pace is fast, with overlapping and confusion in the question and answer format. Further, Pitts uses AAVE phonological markers: syncope and consonant cluster reduction ("whaddy," "donchu," "gonna") and final velar nasals ("puttin"). He also diphthongizes the vowel in "head," creating two syllables. This marked pronunciation serves to emphasize his point: she neglected to protect her head. There are two interpretations of this action which Pitts encourages: either she wanted to protect her material possessions (her purse) before her physical well-being (her head); or she is lying, and did indeed protect her head (as, he implies, would have been the natural thing to do) and therefore can not identify her attackers.

Another example of style switching to make accusations is found in the following segment, in which Pitts accuses Was of provoking her attackers.

(6) (D=defense attorney, P=plaintiff)

- 1 D: As a matter of fact
 2 you didn't call her any names, did you?
 3 P: No I didn't.
 4 D: The excitement didn't cause you to lose control of your
 5 indeed your speech with reference to your emotions,
 6 did it?
 7 P: No it didn't.
 8 D: You just touched her again.
 9 P: I touched her once.
 10 D: =Din you grab 'er?
 11 Din you grab 'er an say
 12 leggo a that girl's hair?
 13 P: No, I didn't.
 14 D: =You did nothing like that.
 15 You just touched her.

Pitts also uses switches in style to change his alignment from accuser to ally. After confronting Was about protecting her head without getting her to admit she did so, he switches tactics.

(7) (D=defense attorney, J=judge)

- 1 D: You mean to tell me you just left your face unguarded
 2 as the result of someone KICKING your face? (1)
 3 *Now you understand,*
 4 *((low pitch)) nobody is condoning what transpired.*
 5 J: You asked a question you did not permit her to answer.
 6 D: I'm sorry let me withdraw that question
 7 and lead up to it in the following manner,
 8 *((low pitch)) You understand, Mrs. Was, (1)*
 9 *that indeed no one (3)*
 10 *and I repeat (1) no one, condones what has transpired.*
 11 *You understand?*

Here, Pitts is aligning himself with the witness, against her attackers, an about-face from his last stance. His lowered pitch and slower tempo indicate a more moderate, soothing approach; no longer on the side of the attackers, he is aligning himself with the side of the law through a more formal, serious style.

However, his further strategies (no doubt a new attack now that Was has been given a false sense of security) are foiled by the prosecuting attorney, who objects on the grounds of irrelevance, and the judge asks that the comment be struck from the records.

3.2 *The style of characterizations*

In her closing statement, Lindsey uses style switching to create characterizations. The characters she creates are used to make negative comments about Pitts and Rutherford.

Her most powerful moments are toward the end of her rebuttal to Pitts' closing statement. She is responding to Pitts' attempts to define the case in racial terms, that is, a privileged white woman unfairly accusing a black girl. While overtly Lindsey is telling the jury they are being distracted by irrelevant material, she uses style switching to make an unflattering characterization of Pitts and his tactics.

(8) (prosecuting attorney)

- 1 Because if you are way over he:re,
- 2 (2.8) ((moving to the other side of the court room))
- 3 thinkin bout what the governor di:d
- 4 thinkin bout the po black
- 5 but you know as a matter of fact
- 6 when he was talkin bout
- 7 the governor not doin this
- 8 an he couldn't be president because he was black
- 9 I was waitin for him to go back
- 10 to the sla:ve shit
- 11 you know get the who:le history
- 12 I was waitin for him to start singin
- 13 Swing Low Sweet Chariot
- 14 coming fo' tuh carry me ho:me.
- 15 Because this case is a:ll about **race**
- 16 as far as **he's** concerned.

This style switch is apparent on all levels. First, on the phonological level, there is a clear difference between this and her former speech style. She speaks more rapidly, alveolarizes the final nasals of "-ing," deletes the /r/ of "poor," and elongates several the vowels of "slave" and "whole" for stress.

Also, the intonation of the last line gives it a distinct stylistic flavor. Although "Swing Low Sweet Chariot" is spoken as a title, with an even beat, "coming for to carry me home" is said in an imitation of gospel singing. Each word has rising intonation, the final /r/ in "for" is deleted, and the vowel of "home" is elongated. 63

Lindsey also uses lexical coloring in her choice of the phrase "slave shit." The speaker's identity as a lawyer and the setting are part of the markedness of this utterance: lawyers in the courtroom stereotypically use formal language, and typically do not use the word "shit."

This characterization is part of an intricate argument which includes the use of deixis. As can be seen in the above transcription, Lindsey moves to the other side of the courtroom to deliver this part of her speech. She talks about being "way over here," (across the courtroom near the door) which is away from all the real issues of the case. This is her characterization of Pitts, a caricature of a Black who sings gospel songs while waiting to be saved, blaming all his problems on his race relations going back to the ante-bellum years. This is set in opposition to "over here," (near the witness stand and where the defendant is seated) "thinking about this young lady." She ends her characterization of the second location/standpoint - - where the jury members should be -- by saying:

(9) (prosecuting attorney)

- 1 Because he's hoping that race
- 2 so clouds your mind that you can't see through it.
- 3 That's what he's hoping to do.
- 4 But I **know** you're more intelligent than that.

The contrast she makes, using characterizations and deixes, is between the feeling-sorry-for-himself Black and the "more intelligent" jury.

Lindsey also uses style switching to create a characterization of herself, similar to what Myers-Scotton calls "self-enhancing code switching." It is a bid for "interactional power" -- power that is created within the discourse when one speaker shows him/herself off to an advantage (Myers-Scotton, 1988:199).

In this excerpt, Lindsey is struggling against Pitts for power over the jury. She uses a characterization of herself as a down-home kind of person -- in contrast with Pitts' highfalutin ways -- to appeal to the jury. As in the last example, the code

choices are metaphorical. Her use of an informal style symbolizes her role as a common sense person, not one who is tied up in legal rigmarole. It can be seen as a strategy to talk directly to the jury as peers.

This interpretation is supported by Garner and Rubin's findings in an attitudinal study on southern Black attorneys, who maintained that they used AAVE to convey solidarity with other African Americans and humility (Garner and Rubin, 1986).

(10) (prosecuting attorney)

1 The defense counsel talked about certain **poets** and **writers**
 2 he had come across in his travels
 3 and I might not be quite as **learned** as the defense counsel
 4 when it comes to citing poetry (.)
 5 but when I heard the defense counsel talk,
 6 um, a philosopher came to mind.
 7 And that philosopher is in a sense a modern philosopher
 8 because he's a songwriter.
 9 And you probably know him as
 10 the godfather of soul, James Brown.
 11 And he recorded a song called Talkin Loud and **Sayin Nothin**.
 12 That is precisely what the defense counsel has done
 13 for the last almost two hours. (1)
 14 Another wise person comes to mind,
 15 I'm not going to quote the Bible or quote Shakespeare
 16 or anything like that, but my mother (.)
 17 used to tell me something when I was a little girl,
 18 when I was jus running my mouth
 19 talking bout all this stuff,
 20 She always told me, Lisa, you know,
 21 a empty wagon makes the most noise.
 22 And that's essentially what you have had
 23 in the defense counsel's comments today.
 24 A empty wagon, makin a whole lotta noise.

This segment of Lindsey's closing argument illustrates the use of a metaphorical depiction of herself and the defense counsel Pitts on several linguistic levels. First, the lexicon sets up the contrast: Lindsey refers to Pitts by his title, "the defense counsel," five times in this sequence, and three times in the first sentence

alone. He is also referred to as being "learned ... when it comes to citing poetry." She emphasizes this with her mention of Shakespeare. She is insinuating here that she knows that's the last thing the jury wants to hear, more intellectual mumbo jumbo. This point is brought home when she lets drop that the defense counsel talked for almost two hours, finishing the picture of him as long-winded and boring.

The picture she paints of herself is quite different, and is rooted in the fact that this entire speech is in an informal style. First, the content emphasizes her down-to-earth mentality. Instead of quoting famous poets like a member of the 76 intellectual elite, she cites the godfather of soul, James Brown, and her mother. She refers to herself not by any title, but simply by her first name.

Second, her speech style is simple on several levels. She gives short, to-the-point quotes -- "Talkin Loud and Sayin Nothin" and "an empty wagon makes the most noise." She further simplifies her argument by summing it up, twice, in lines 12-13 and 21-23.

Finally, her speech is marked by informal phonological features. Most salient of these are the ellipsis of unstressed syllables and the alveolar final nasals. She also uses an increased tempo in lines 18 and 19, illustrating herself running her mouth as a little girl.

Lindsey also uses the strategy of characterization in her closing statement to create an unflattering picture of the defendant.

(11) (prosecuting attorney)

- 1 Did it ever dawn on you,
- 2 that in order for this young lady seated here today
- 3 to be right,
- 4 everybody else in the whole world has to be wrong?
- 5 ((falsetto)) *In order for me to be right,*
- 6 *everybody else has to be wrong!*
- 7 *They're lying on me!*
- 8 *I didn't do nothing, I was just there!*

The delivery in a falsetto, as well as the double negative in line eight, are AAVE speech markers. Here, the style is used as a metaphor for the African American gang culture, the sub-culture most often associated with AAVE (Lourie, 1978). Lindsey's case rests in part on the portrayal of Rutherford as a gang member, and this style switch reminds the jury of this aspect of the defendant's identity.

4. Conclusion

The use of contrasting linguistic styles can be analyzed in much the same way as the use of distinct languages in codeswitching. Metaphorical switching, in which each choice carries a symbolic meaning, is particularly apparent in my data. Portraying someone as speaking language X, or in style Y, portrays them as belonging to a certain category of speakers. The contrast of the segments delivered in a marked informal style with the unmarked formal code of the courtroom make it clear that the speaker is relaying a covert message with code choice. This tacit commentary is particularly useful when explicit commentary is inappropriate or disallowed.

In the courtroom, where justice is blind, she is far from deaf. A trial by one's peers means a trial by members of one's speech community, where linguistic styles carry strong connotations. The informal styles found in this data are metaphors for the sub-culture associated with AAVE, the connotations of which are both positive and negative.

The theoretical implications of this analysis rest on the assumption that speech styles can be used not only to create and portray one's own identity, but also to make comments on that of another. When style switching is used to make a characterization, the style indexes the characterized individual (be it the speaker him/herself or another person) to a role relationship within the speech event, and in the society at large.

Appendix A: Transcription Key

(.)	pause of up to one second
(2)	pause of __ number of seconds
((falsetto))	descriptive information; not part of the dialogue
//	overlap
?	rising intonation
=	latching to preceding utterance
CAPS	increased volume
bold	stressed syllable or word
a:	elongated vowel
<u>underlined</u>	fast speech
<i>italics</i>	switched segment within a turn

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