

The Presentation of Voices, Evidence, and Participant Roles in Austrian Courts — A Case Study on a Record of Court Proceedings

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Abstract

This paper presents the analysis of a record of court proceedings that comprises the paraphrased and dictated statements of the appellant and the witness in the case. Due to the nature of how the transcript is created, it is impossible for the participants' statements to be "verbatim." Therefore, the judge's evaluation becomes subjective, which inevitably plays a role in the way the evidence and participants are represented in the record. Little research has investigated how the judge's voice is included in such records. Thus, it is the aim of this case study to investigate the judge's voice and whether the way the records are written can shed light onto the judge's stance. The judge's stance is analyzed through the use of systemic functional grammar (Halliday, 2014), metadiscursive markers (Hyland, 2005, 2015), and participant roles (van Leeuwen, 1996). The analysis shows that, to a certain degree, the outcome of the case, i.e. whose side the judge ruled in favor of, is already visible in the records. Therefore, this analysis has important implications and provides a foundation for further work with a larger data sample.

Keywords

court record, non-verbatim, participant roles, presentation of voices, metadiscourse, functional grammar

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1. Introduction

Courtroom transcripts or records of courtroom proceedings can be invaluable sources for forensic linguistic analyses. In the Austrian legal system, trials are usually not recorded and the transcripts that are produced are not verbatim either – instead, transcripts reflect the gist of what was said in court (Fraser, 2003). In the case investigated in this analysis, the presiding judge is responsible for summarizing (paraphrasing) the statements. That is, the judge would question the involved parties and after a certain amount of time, would dictate the gist of what was said to the court assistant. This process raises important questions concerning power in the courtroom (see, e.g., Conley and O’Barr, 2005): the judge has the power to decide which questions are asked, which information is important enough to be included in the final record, and, importantly, how this information is included (linguistically). Thus, by deciding how the original statements are (para)phrased, the presiding judge become the author of the record of proceedings. Since the judge has the power to decide which information is important and thus included in the record, this process can be seen as a form of translation of the social world for the legal system (see, e.g., Mertz et al., 2016). That is, the social reality of the involved parties is ‘translated’ into terms and information that is relevant from the legal perspective and for the respective legal system.

The process of writing a record of court proceedings is thus also characterized by selection. The person in charge of writing the record has to choose which aspects to include in the protocol, which is guided by the purpose of the final text. Banscherus (1977: 76) has argued that the process of selection carries the potential for manipulation, even if unintentional. For example, he outlines several components of the process of selection: the person in charge of writing the protocol needs to have specific cognitive and linguistic abilities to summarize the content in relation to the purpose of the final product. Previous experience is likely to have an influence on the decision about what kind of information will be included in the protocol, which can lead to a loss of information. Further, in cases where the involved parties use a non-standard code of their language, the author of the protocol is likely to paraphrase and change the content slightly (Banscherus, 1977: 76–79). The final record of court proceedings is supposed to represent the complete interview (Banscherus, 1977: 68), which is, however, an unrealistic expectation.

The concept of voice is a central one in this paper. However, the term ‘voice’ carries a rather imprecise meaning and often has literary connotations (Tardy, 2012). In this paper, the concept of voice is regarded as “the person behind the written word” (Hirvela & Belcher, 2001: 85 in Hewings, 2012: 1), and as a “means for self-representation” (Ivanic & Camps, 2001). Thus, I will investigate whether there are clear instances of the judge’s voice, i.e. instances that reveal the judge’s presence in the text. This is of interest as the record of court proceedings is written as a first person narrative from the point of view of the involved parties. Since the presiding judge is the author of the final text, it is expected that their voice is still present in the text, even if not explicitly. In this way, the

notion of ‘voice’ is related to the notion of ‘stance’, which investigates how words convey the speaker’s or writer’s attitude (Biber, 2006).

The judge in this case becomes “the co-constructor of the story-line” (Byrman & Byrman, 2018: 159) by turning the original questioning into a coherent narrative. In line with Toolan (2001) and Byrman & Byrman (2018: 161), a narrative is viewed as the “semantic representation of a series of events in the form of a story.” Thus, the term ‘transcript of court proceedings’ is, in fact, linguistically wrong: the final text is much less a transcript than it is a narrative of the happenings in court. Or, as Byrman & Byrman (2018: 156) put it: “the written report becomes a retelling of a retelling of the events.” An important characteristic of written reports in investigative settings is that the reports are much shorter than if the content was transcribed verbatim, implying that the written document is a summary of the happenings rather than an accurate representation thereof. Also, due to the nature of written language, the information in reports is much denser with many expressions (e.g. legal terminology) that are not commonly used in spoken language. Jönsson & Linell (1991: 429–434) have further identified that, compared with the spoken dialog, the written report is more or less chronologically structured, most information is included only once (i.e. there is less repetition), the report has a rather neutral tone (i.e. it contains fewer emotional features), and seems to be more objective. Jönsson & Linell (1991: 437) call reports “second generation” texts or discourses, which “will display features derived from the conditions and purposes, rationalities and perspectives, of the reporting activity itself.”

As hinted at above, courtroom protocols or reports are written with a clear purpose in mind, and this purpose has an immense influence on the content through the selection of relevant information. Jönsson & Linell (1991: 437) caution against the idea that a protocol is a ‘copy’ of what was said in the interview: “Even if we were indeed to encounter a ‘copy’ (in some sense), it would constitute a new event in the new context, acquiring some new meaning, and it would be voiced in a different way.” The idea that the content is ‘voiced in a different way’ is of particular importance for this article: the judge in charge of the dictating of the report selects the information that is deemed relevant to the specific context and reformulates it in a way that suits the purposes of the legal framework; thus, she is voicing the complainant’s and witness’ narratives through her words. Although often done unintentionally, any message that is re-voiced in such a way changes the initial message in meaningful and possibly even in fundamental ways.

2. Methodology & Theoretical Background

Functional Grammar, as proposed by Halliday (2014), is used as one of the frameworks with which the present court record is analyzed. According to Halliday, texts enact meaning on three levels: the textual level, the interpersonal level, and the ideational

level. On the textual level, the text is linked to its context and the main elements of analysis are the theme/rheme structure of propositions. The interpersonal function of a text is to enact social relationships between writers and readers. On this level, analysis is focused on the grammatical system of mood, of which modality is a part. Modality refers to the “intermediate degrees, between the positive and negative poles [and] construe[s] the region of uncertainty that lies between ‘yes’ and ‘no’” (Halliday, 2014: 176).

The ideational level reflects different kinds of processes. Halliday (2014: 214) differentiates between six processes that can be represented by clauses: material, behavioral, mental, verbal, relational, and existential. The lines between these processes are not always clear cut and sometimes overlap. Generally, though, material processes are “clauses of doing and happening” (Halliday, 2014: 224). The main participant in material clauses is the Actor who brings about a change of events through the use of some energy. In transitive constructions, the second participant that is directly involved in the process is the Goal. On the other hand, mental clauses “are concerned with our experience of the world of our own consciousness” (Halliday, 2014: 245) and are thus connected to processes of thinking, feeling, and seeing. The main participant of mental clauses is called Senser, and the perception the Senser perceives is called Phenomenon. In relational clauses, a Carrier or a Token is characterized and identified by an Attribute or a Value. Thus, relational clauses have two inherent participants (Carrier/Attribute; Token/Value), in which the latter is used to classify or identify the former by providing abstract categories of class-membership or identity. Behavioral clauses describe “physiological and psychological behavior” (Halliday, 2014: 301) and consist of a Behaver and the Behavior. Verbal clauses are used to represent processes of saying and are frequent in narrative texts, especially in dialogic passages. The main participant is called Sayer and the term Verbiage is used to describe the content of what is said. The last type of clauses describes existential processes that are used to “represent that something exists or happens” (Halliday, 2014: 307). These clauses, however, are encountered least often.

In this paper, the analysis of processes represented in the court record can shed light on the agency of the parties involved, as filtered through and perceived by the judge. This will be done especially in connection to the passages of the transcript that contain information vital to the outcome of the case. Further, the ways social actors are represented in the statements is investigated. Van Leeuwen (1996) provides a useful framework for this. First of all, he differentiates between the exclusion and inclusion of social actors. This can happen, for example, through suppression or backgrounding, and activation or passivation. When social actors are suppressed, for instance, no reference to them can be found at all. This can only be detected if several texts discussing the same topic are available for analysis, as suppressed actors do not leave traces in the text. If social agents are backgrounded, on the other hand, these actors might be mentioned or referred to, but it is left to the reader to infer their agency.

Included social actors can be either personalized or impersonalized. The most important differentiation for this analysis is made between categorization and nomination,

which form subcategories of personalization. Categorization refers to instances where social actors are functionalized (i. e. they are referred to by their role in a specific context, e.g. ‘the witness’) or identified according to classifications, relational or physical features (i. e. actors are referred to by what they more or less permanently are, e.g. ‘man’ or ‘woman’). Instrumentalizations, in contrast, refer to the actors through an instrument, thus rendering their representation much more impersonal. Nomination refers to the use of names, and is composed of the following subcategories: formalization, semi-formalization, and informalization. Formalization includes the reference to a social actor through their surname and an honorific; semi-formalization contains references through first name and last name, and informal references are made through the use of only the first name. Felton Rosulek (2015: 57) adds the category of nicknames to this framework as an even more informal category.

An analysis of how social actors are represented ties in with the analysis of meaning processes outlined above. Also, the way social actors are named can provide clues to their relationships and status within a given discourse. Naming practices can also be related to the use of legal terminology (e.g. ‘the defendant’), which is inevitably a part of a non-verbatim record of court proceedings so that the involved parties can be identified (for information on legal language, see e.g. Tiersma, 1999; Hoffmann, 1989).

Another area of analysis in this paper is metadiscourse, which, as used by Hyland (2005, 2015), is defined as a “cover term for the self-reflexive expressions used to negotiate interactional meanings in a text, assisting the writer (or speaker) to express a viewpoint and engage with readers as members of a particular community” (Hyland, 2005: 37). That is, metadiscourse is used as a powerful framework to identify how authors project themselves into their texts, their attitudes towards the propositions expressed, as well as their intended audience. In his system of metadiscourse, Hyland (2005: 49) differentiates between two main categories: the interactive and the interactional dimensions. The former “help[s] guide the reader through the text” through the use of transitions (such as conjunctions, and adverbial phrases), frame markers (e.g. elements that highlight the thematic structure of the text and help sequence and shift arguments), endophoric markers (i.e. anaphoric or cataphoric expressions referring to other parts of the text), evidentials (e.g. using information from other sources), and code glosses (i.e. additional information provided by rephrasing, or explanations of propositions). The interactional dimension “involves the reader in the text” (Hyland, 2005: 49), and consists of the following subcategories: hedges (to withhold commitment to a proposition), boosters (to show the author’s certainty), attitude markers (providing information about the writer’s attitude), self-mentions of the author through pronouns or possessive adjectives, and engagement markers (i.e. explicitly addressing readers as discourse participants). It is hoped that through the analysis of metadiscursive markers, instances of the judge’s presence in the text will become more visible.

To my knowledge, no analyses of similar texts (i.e. non-verbatim courtroom records dictated by a judge) have been conducted. However, Olsson (1997), for example, has

characterized dictated language, and Rock (2001) has investigated the composition of witness statements. Another study that is structured similarly, i.e. it also investigates the use of negation and presentation of evidence, but is concerned more specifically with direct manipulation of statements, is Canning's study (2018) on the foregrounding of hooligan schemata in witness narratives after the Hillsborough disaster. Further, several studies have addressed the writing of police protocols (see, e.g. Byrman & Byrman, 2018; Cetkovic, 2014; Jönsson & Linell, 1991; Komter, 2006), confession statements (Gudjonsson & Haward, 1983), and the use of metadiscourse in courtroom questions (Cavalieri, 2016).

The following research questions are investigated in this paper:

- (1) What is the structure of the record of court proceedings?
- (2) How can the judge's voice be located in the record, and how is it represented as opposed to the involved parties' voices?
- (3) Can the representation of the involved parties and the evidence be indicative of the judge's decision?

3. Data

The record of court proceedings analyzed in this paper was obtained from the Styrian administrative court in Austria in 2014. In the present case, the appellant, Mr. A (names were anonymized for data protection), has appealed against a fine he was supposed to pay for a traffic violation. Mr. P, the witness in this case, was the police officer who had pulled him over and fined him. The record consists of the statements of both parties. However, their statements were not recorded verbatim but paraphrased by the presiding judge. This is normal practice in Austria, where trials are hardly ever recorded verbatim. The appellant and the witness provided statements which were then paraphrased by the judge and dictated to a court assistant who typed the transcripts; to the best of my knowledge, there are no specific guidelines for transcriptions that the court assistant has to follow. It is crucial to mention that these records are frequently the basis for further litigation, should there be any.

The form of the statements does not make the question-answer structure of the original dialog visible. In fact, the statements take the form of narratives, although clearly it is based on the question-answer sequence of the courtroom trial. The narratives are written as first-person narratives, i.e. from the perspective of either the appellant or the witness. The judge is not explicitly present as the actual author of the paraphrases that she dictated to the court secretary during the trial. The dictating is done in front of both parties so that they can intervene if they do not agree that the paraphrase accurately represents what they have said. However, it is also clear that very often the involved parties would not find themselves in a position in which they feel to be able to oppose to what

the judge is saying (see, e.g., Banscherus, 1977; Conley & O’Barr, 2005). Further, minor differences in meaning might not be apparent at first sight but might become important at a later point (e.g. in an appeal).

The appellant’s statement consists of 460 words, while that of the witness is slightly longer (689 words). The appellant was questioned first, followed by the examination of the witness. The witness was not present during the appellant’s interview, but the appellant was present during the witness’ interview and was allowed to address questions to the witness. From a perspective of power in the courtroom, this leads to an interesting imbalance: the witness does not have to power to question the appellant’s story, while the appellant listens to the witness’ story and has the right to intervene – which he also made use of.

The individual sentences were analyzed according to the abovementioned areas: ideational functions, metadiscourse, and social actors. After the initial analysis, the statements in the record were divided according to the participant roles and evidence, i.e. clauses relating to either the witness or the appellant were analyzed in particular. Further, through numerous readings of the record, three main themes regarding the evidence in this case have emerged: (a) presence of other drivers (incl. the telephone technician); (b) the speed of the appellant; and (c) the appellant’s following or ignoring of the siren and emergency lights. These three themes have emerged as the most contested, which is why they were singled out for closer analysis.

4. Analysis

4.1. The Judge’s Voice

As mentioned above, the record is based on the question-answer sequence in court, yet it is structured as a coherent narrative. At a closer look, however, the underlying question-answer sequences become visible, which renders the whole record less coherent, as breaks in the narrative come to the fore. The appellant’s statement, for example, contains several clauses of negation that are not expected in narratives if the appellant is allowed to speak freely (e.g. Coulthard, 2006; Rock, 2001):

(1) ‘Ich weiß nicht mehr genau, was als Erster war, das Blaulicht oder der Folgeton.’ (‘I don’t remember exactly which was first, the emergency lights or the siren.’)

(2) ‘Ich kann mich nicht mehr genau erinnern aber es mag sein, dass ich in dieser Sache nicht einvernommen wurde, ebenso wie der vor mir fahrende Telefontechniker.’ (‘I can’t remember exactly, but it might be that I was not questioned in this matter, and neither the telephone technician driving in front of me.’)

In the witness’ statement, there are also negated sentences, such as ‘Ein zweites Fahrzeug ist nicht auf den Parkplatz gefahren’ (‘There was no second car that drove to the

parking lot’), and ‘Ich habe definitiv keinen zweiten Fahrzeuglenker dann weitergeschickt [...]’ (‘I definitely didn’t send a second driver away [...]).

These instances give some indication of the underlying questions. For example, it is likely that in example (1), the judge’s question was something like ‘Which was first, the emergency light or the siren?’, and in example (2), it is likely that the judge asked a question like ‘Were you and the telephone technician questioned in this matter?’

Similarly, breaks in the narrative give an indication of the question-answer sequence. The beginning of the appellant’s statement contains such an instance:

(3) ‘Ich war gemeinsam mit meinem Telefontechniker unterwegs, der im Wagen vor mir fuhr. Wir wollten bei der Telefonanlage zuhause etwas nachjustieren. Zur mir vorgeworfenen Übertretung [...] möchte ich Folgendes anführen: [...]’ (‘I was driving together with my telephone technician, who was in the car in front of me. We wanted to make some adjustments to the telephone system at home. I want to say the following about the misdemeanor I am accused of: [...].’

Here, there is a clear break in the narrative after the second sentence, which provides some indication that the judge has intervened by asking a concrete question about the alleged misdemeanor. Speculatively, this break can also indicate the point at which the judge finished dictating the first part before starting the second round of questioning. Other interesting instances in which the underlying question-answer sequence becomes apparent can be found in the witness’ statement:

(4) ‘Nochmals befragt gebe ich an: [...]’ (‘Questioned again, I state that: [...].’)

(5) ‘Ich betone, er hat dezidiert und bewusst in den seitlichen linken Außenspiegel gesehen und mich dabei wahrgenommen’ (‘I stress that he decidedly and consciously looked into the left side mirror and noticed me’)

(6) ‘Ich halte nochmals fest, dass [...]’ (‘I repeat again that [...].’)

Examples (4)-(6) not only hint at the underlying question-answer nature of the interaction, they also provides hints at the judge’s beliefs: for example, sentences (4) and (6) are related to the presence of other drivers. This suggests repeated questioning on the same topic, which further indicates that the judge, being unsure about the truth of the content of what the witness was saying, wanted to keep this particular information prominent and explicit in the record.

The judge’s voice becomes visible on another layer as well, namely through the use of legal formulaic language, as well as technical phrases which are unlikely to have originated in this form with either the appellant or the witness. Examples (7) and (8) below from the appellant’s statement serve as illustrations:

(7) ‘Am gegenständlichen Tag zur gegenständlichen Zeit war ich am Weg von meinem Büro in Seiersberg zu meinem Wohnsitz [...]’ (‘On said day and at said time, I was on the way from my office in Seiersberg to my residence [...].’)

(8) ‘Ich möchte hinzufügen, dass ich den gegenständlichen Beamten bereits kenne [...]’ (‘I want to add that I already know said officer’)

In example (7), the use of ‘said day’ and ‘said time’ is likely to be influenced by the judge’s voice. The same is true for the phrase ‘said officer’ in example (8). In both cases, it is likely that the judge has either used these terms in the formulations of her questions or that they were inserted later. It is highly unlikely, though, that these phrases originated from the appellant. In the witness’ statement, the following use of technical terms and specialized language could be identified: ‘Beschwerdeführer’/‘Meldungsleger’ (‘appellant’), ‘Organstrafmandat’ (‘administrative fine’), ‘Sicherheitsleistung’ (‘bail’), and ‘besagtes Fahrzeug’ (‘said vehicle’), among others. In the witness’ statement, however, it is not clear whether the use of specialized language such as ‘Sicherheitsleistung’ (‘bail’) and ‘Organstrafmandat’ (‘administrative fine’) originated from the judge or the witness, as the witness in this case was a police officer, whose professional jargon should also include these examples of legal language.

4.2. Functional Grammar

First of all, ideational meaning processes of the clauses in the statements were analyzed. Table 1 illustrates the different processes found in the statements of the appellant and the witness. The witness’ statement contains 90 clauses with ideational meanings, while the appellant’s statements contains only 55 clauses of relevance. Neither of their statements contain any behavioral processes, and existential processes are rare (7.4 % and 3.3 %). Material and mental processes, as well as verbal processes are dominant in both statements. The main difference between the statements can be found in the category of relational processes: the appellant’s statement only contains 3.7 % of relational processes, while the witness’ contains 14.4 %, which can be attributed to the multiple descriptions of speed in the witness’ statement, whose statement is longer in total. The main focus of this analysis, however, is on the material, mental, and verbal processes, as they account for the largest overall share of ideational meanings in both statements.

Table 1: Ideational meanings.

	Appellant’s Statement		Witness’ Statement	
	Absolute number	Relative freq. in %	Absolute number	Relative freq. in %
Material	29	52.7	42	46.7
Mental	12	21.8	15	16.7
Relational	2	3.6	13	14.4
Behavioral	0	0.0	0	0.0
Verbal	8	14.6	17	18.9
Existential	4	7.3	3	3.3
Total	55	100.0	90	100.0

In this paper, the processes are analyzed in order to investigate whether they shed light on passages that reveal the judge's voice and thus allow conclusions about her attitude towards the involved parties. In the following, the most important processes are analyzed in turn.

4.2.1. Material Processes

In the detailed analyses of the above-mentioned processes, only the ones where the appellant, the witness, or a third person were involved (a technician, who is a friend of the appellant) are taken into consideration, as these compose the majority of the statements and are most central to the analysis in this paper. In the appellant's statement, the appellant himself was the Actor in 48.3 % of the material processes, and the witness was the Actor in 13.8 %. Further, the appellant refers to himself and the technician who was driving in the car ahead of him collectively in 17.2 % of the material clauses, and the Actor of 3.4 % of the material processes is only the technician. Below, some examples are provided to illustrate these processes, with A referring to the appellant's statement, W to the witness' statement:

(9) A: 'Ich habe in der Folge mein Telefonat beendet und bin auf einer Ausweiche etwa auf Höhe Windorf rechts an den Rand gefahren [...]' ('As a consequence, I ended my phone call and pulled over to the right at the height of Windorf.')

(10) A: 'Wir wollten bei der Telefonanlage zuhause etwas nachjustieren' ('We wanted to make some adjustments to the telephone system at home')

(11) A: 'Ich war gemeinsam mit meinem Telefontechniker unterwegs, der im Wagen vor mir fuhr.' ('I was on my way together with my telephone technician, who was driving in the car ahead of me.')

(12) A: 'Der Zivilbeamte hat schließlich den Telefontechniker mit einem Lächeln weggeschickt und mich an Ort und Stelle behalten' ('The plainclothed officer ultimately sent the telephone technician away with a smile and kept me on the spot.')

In example (9), the appellant himself is the Actor, while in example (10), the appellant and the telephone technician are both the Actors. In the second clause of example (11), the telephone technician is the Actor, and in example (12), the witness takes the function of the Actor. Thus, it can be seen that several different participants take active roles in the appellant's statement; even other drivers that were driving in the line of cars ahead of the appellant and the telephone technician are mentioned as Actors:

(13) '[...] die Kolonne wich als Ganzes nach rechts aus.' ('All drivers in the line of cars swerved to the right.')

The witness' statement also contains many material processes: in 35.7 % he himself is the Actor, and in an equal amount the appellant is presented as the Actor. This can be accounted for by the fact that the appellant's actions are in the focus rather than the witness'. Interestingly, however, the technician is never used as the Actor in any of the sentences of the witness' statement. Below, some examples are provided:

(14) W: 'Ich habe dann unmittelbar danach die Verfolgung aufgenommen [...]' ('Immediately afterwards I took up the chase...')

(15) W: 'Ich versuchte ihn zwei bis dreimal zu überholen, da erhöhte er sogar noch die Geschwindigkeit.' ('I tried to overtake him two or three times, then he actually increased his speed.')

(16) W: 'Ich habe definitiv keinen zweiten Fahrzeuglenker dann weitergeschickt, weil ich den Beschwerdeführer eigentlich zur Anhaltung bringen wollte.' ('I definitely didn't send a second driver away, because I actually wanted to pull over the appellant.')

(17) W: 'Erst als er auf ein vor ihm fahrendes Fahrzeug aufschloss, bremste er seine Geschwindigkeit ein [...]' ('Only when he caught up with a vehicle ahead of him did he reduce his speed [...]').

Examples (14)-(16) illustrate sentences in which the witness himself is the Actor, and example (17) shows the appellant as the Actor. As mentioned above, the telephone technician is never mentioned as an Actor in the witness' statement. This can in fact be seen as backgrounding if the complete record of proceedings, including the appellant's statements, is considered, or even as suppression if the witness' statement is regarded in isolation (Felton Rosulek, 2015; van Leeuwen, 1996). However, other cars are mentioned in some instances, one of which is illustrated in example (18) below:

(18) '[...] woraufhin die zwei Fahrzeuge rechts ranfuhren [...]' ('[...] whereupon the two vehicles pulled over to the right [...]').

Mentioning other cars indirectly reveals the presence of other people and hints at the presence of the telephone technician, yet he is never explicitly mentioned and thus his importance is reduced or even negated. In fact, to my knowledge, he was also never questioned as a witness in this case.

4.2.2. Mental Processes

When looking at the mental processes in the statements, the following was found: in the appellant's statement, the appellant himself is the Senser in 75 % of the clauses, and the appellant and the technician collectively are referred to in 16.7 % in the function of the Senser. The witness is not mentioned as Senser at all. The witness' statement, on the other hand, contains the witness himself in 70.6 % of the clauses in the position of the Senser, and the appellant is the Senser in 29.4 % of the clauses. Some examples illustrate this:

(19) W: 'Ich kann mich an den Vorfall gut erinnern [...]' ('I remember the incident well [...].')

(20) W: 'Ich habe mir da schon gedacht, dass der Beschwerdeführer sehr flott unterwegs ist' ('At this point, I already thought that the appellant was driving quite fast.')

(21) W: 'Ich hatte schon den Eindruck, dass sie [sic] mehrfach in den linken Außenspiegel gesehen haben und sehr wohl erkannt haben, dass ich ihnen [sic] folge.' ('I did have the impression that you looked into the left side mirror multiple times and that you did indeed notice that I was following you.')

(22) A: 'Wir haben daher, als ich das Blaulicht oder den Folgeton wahrnahm, zunächst dieses nicht auf uns bezogen sondern dachten, das Fahrzeug wolle an uns vorbeifahren.' ('Therefore, when I perceived the emergency lights or the siren, we did not immediately think it referred to us, but thought that the car wanted to drive by us.')

(23) A: ‘Ich weiß nicht mehr genau, was als Erster war, das Blaulicht oder der Folgeton’ (‘I don’t remember which came first, the emergency lights or the siren.’)

Example (19) from the witness’ statement shows the witness himself in the position of the Sayer, as does example (20). Example (21), however, also has the appellant in the position of the Sayer (‘dass sie sehr wohl erkannt haben’/‘that you did indeed notice’). This is insofar interesting, as neither the witness nor the judge could possibly know whether or not the appellant noticed the police officer. Thus, this statement can only be based on speculation. Examples (22) and (23) from the appellant’s statement contradict the speculation in the statement of the police officer by claiming that he and the technician (both are Sayers in his example) did not immediately notice that the siren and the emergency light was directed towards them.

4.2.3. Verbal Processes

In the verbal processes in the appellant’s statement, the appellant is the Sayer in 75 % of the clauses. The rest of the clauses, 25 %, do not have an explicit Sayer. Here, the judge is clearly the Sayer, as can be seen in the following example:

(24) A: ‘Zur mir vorgeworfenen Übertretung, dass ich dem Blaulicht bzw. dem Folgetonhorn und der Lichthupe nicht Folge geleistet hätte, [...], möchte ich folgendes anführen: [...]’ (‘Concerning the transgression that I’m accused of, that I didn’t follow the emergency lights, or the siren and the headlight flasher, [...] I want to state the following: [...]’)

(25) A: ‘Ich habe zum gegenständlichen Zeitpunkt telefoniert, das gebe ich unumwunden zu [...]’ (‘At said time, I was talking on the phone, which I straightforwardly admit [...]’)

(26) A: ‘Angesprochen auf die vorgeworfene Übertretung der Höchstgeschwindigkeit, gibt der Beschwerdeführer an: [...]’. (‘Confronted with the alleged exceeding of the speed limit, the appellant states: [...]’)

While in examples (24) and (25) the appellant is the Sayer, there is no explicit Sayer in the first clause of example (26). Here, it is clearly the case that the judge has asked a question and thus she is the Sayer of the clause starting with ‘Angesprochen auf’ (‘Confronted with’), i.e. the judge confronted the appellant with the alleged exceeding of the speed limit. In the second clause of this example, the appellant is the Sayer.

Similarly, in the witness’ statement, the witness himself is the Sayer in 70.6 % of the clauses, the appellant is the Sayer in 17.6 % of the clauses, and no explicit Sayer is evident in 11.8 %. This is again illustrated in the following examples:

(27) W: ‘Gefragt, ob der Beschwerdeführer nicht in einer Kolonne unterwegs gewesen sei, gebe ich an: [...]’ (‘Asked whether the appellant wasn’t driving in a line of cars, I state the following: [...]’)

(28) W: ‘Befragt, ob es nicht unlogisch sei, dass, wenn jemand die Polizei, sowie ich den Eindruck hatte, sogar hinter sich wahrnimmt, dass er dann nicht unmittelbar danach die Geschwindigkeit verringert, gebe ich an: [...]’ (‘Asked whether it isn’t illogical that someone, whom I had the impression even noticed the police behind him, wouldn’t immediately reduce his speed, I state: [...]’)

(29) W: 'Ich möchte darauf hinweisen, dass [...] ich auch eine Sicherheitsleistung einheben hätte können' ('I want to indicate that [...] I could have collected a bail')

(30) W: 'Ich betone, er hat dezidiert und bewusst in den seitlichen linken Außenspiegel gesehen [...]' ('I stress that he decidedly and consciously looked into the left side mirror [...]')

In the first clause of examples (27) and (28), it is again the judge who has asked the witness a question and is therefore the implicit Sayer ('Gefragt'/'Asked'; 'Befragt'/'Asked'). In the third clause of example (27) and the final clause of example (28) it is the witness himself who is the Sayer. Also, in example (29), the witness has the position of the Sayer. However, examples (28) and (29) differ from one another in an important aspect: in example (28), the clause 'gebe ich an' ('I state') is more obviously the result of the question-answer sequence and therefore more obviously the judge's voice. In example (29), on the other hand, the role of the judge in choosing the structure of the clause ('ich möchte darauf hinweisen'/'I want to indicate') is less obvious and more readily attributed to the witness. The same is true for example (30), when the witness is attributed with stating 'Ich betone [...]' ('I stress [...]'). In these instances, it is clearly information important to the case which the judge wants to emphasize and keep in the record.

4.2.4. Processes Relating to Themes of Evidence

Of special importance are clauses relating to the themes of evidence mentioned previously, namely (a) the presence of other drivers (incl. the telephone technician); (b) the speed of the appellant; and (c) whether the appellant followed or ignored the siren and emergency lights. Other drivers are acknowledged in both statements, yet they appear in different roles. In the appellant's statement, several cars are driving in a line, which is presented as a justification that speeding would not be possible. However, in the witness' statement, there are no cars driving in a line, yet other cars are said to be responsible for the appellant eventually slowing down. As mentioned above, the technician is only present in the appellant's statement. The appellant's statement contains three sentences relating to the speed of the car. In example (31) below, he is clearly denying having driven too fast; in example (32) he is indirectly claiming that he could not have driven too fast, as there were other cars ahead of him; and in example (33), he again explicitly denies having driven too fast, although admitting to going slightly above the speed limit.

(31) 'Ich bin sicherlich nicht wie vorgeworfen von [sic] 95 km/h gefahren, ich glaube, das geht in diesem Bereich gar nicht.' ('I definitely did not drive 95 km/h as alleged, I believe that's not even possible in this area.')

(32) 'Wir sind in einer Kolonne unterwegs gewesen, ich hatte es eilig und im Gegenteil hatte ich sogar das Gefühl die Kolonne vor mir ist eine Spur zu langsam unterwegs' ('We were driving in a line of cars, I was in a hurry and on the contrary, I had the feeling the cars in front of me were even a bit too slow')

(33) 'Ich bin vielleicht nicht die 50 km/h gefahren sondern 55 km/h aber sicherlich keine 95 km/h' ('I might not have been driving 50 km/h but 55 km/h but definitely not 95 km/h')

The witness' statement contains twice as many sentences relating to the speed of the appellant, and in each it is proposed that the appellant was driving too fast, as in example (34) below.

(34) 'Soweit ich es wahrgenommen habe, waren es mindestens 95 km/h, die wir dann zwischen StrKm. 1,4 und 2,8 zurückgelegt haben' ('As I perceived it, we were driving at least 95 km/h between km 1.4 and 2.8')

Example (34) illustrates that the witness is in the position of the Senser, while in examples (31)–(33) the appellant is the Actor. That is, in example (34) we only receive information about the speed as it was 'perceived' by the witness, thus implicitly making it more subjective, i.e. they imply a reduced confidence in the proposed assertions, compared to examples (31) and (33) above. In addition, this sentence starts with 'soweit' ('as'), which further implies subjectivity and reduced confidence in that proposition. Example (32) implies subjectivity on the speed of the other cars rather than on the actions of the appellant himself. Two more sentences in the witness' statement regarding the speed of the appellant are equally subjective, with the witness in the position of the Senser. Examples (35) and (36) illustrate this.

(35) 'Ich habe mir da schon gedacht, dass der Beschwerdeführer sehr flott unterwegs ist' ('At this point I already thought that the appellant was driving quite fast')

(36) 'Nein, im Gegenteil, ich hatte das Gefühl er hat überhaupt seine Geschwindigkeit nicht verringert' ('No, on the contrary, I had the feeling that he did not reduce his speed at all')

This overview of meaning processes in the statements has shown the variety of processes included and also how the parties involved and their 'stories' are represented. Below, the representation of social actors in the statements will be investigated further.

4.3. The Representation of Social Actors

In the second phase of the analysis, the representation of social actors was looked at. The appellant's statement makes reference to the appellant mostly through pronouns (45 instances), but also through instrumentalization (one instance), and functionalization (one instance). Naturally, since the statement is written from a first-person perspective, the most common pronouns are 'ich' ('I') and 'wir' ('we'). The only instrumentalization used for the appellant is 'auf mein Fahrzeug aufschloss' ('caught up to my vehicle'), and the only functionalization is the use of 'der Beschwerdeführer' ('the appellant'), which is clearly attributed to the judge.

The witness is referred to through instrumentalization (three instances), functionalization (three instances), and pronouns (two instances). Thus, the witness is instrumentalized by referring to him through 'der Audi A3' ('the Audi A3'), and 'das Fahrzeug' ('the vehicle'); he is functionalized by referring to his function ('der Zivilbeamte'/'the plain-clothed officer', 'der Meldungsleger'/'the complainant').

Further, the technician is referred to only through functionalizations (four instances), i. e. through the use of ‘der Telefontechniker’ (‘the telephone technician’). He is also implicitly referred to through the pronoun ‘wir’ (‘we’) when the appellant talks about their collective actions.

In the witness’ statement, the appellant is referred to through functionalizations (15 instances) and pronouns (24 instances), the witness is referred to mostly through pronouns (47 instances) and also functionalizations are present (two instances). That is, the appellant is repeatedly referred to as ‘der Beschwerdeführer’ (‘the appellant’), and through pronouns, such as ‘er’ (‘he’). The witness himself is most commonly referred to through pronouns, which is again attributed to the fact that the statement is written from a first-person perspective. In addition, the witness is also referred to through functionalizations, namely through ‘der Zeuge’ (‘the witness’), which is encountered in instances that clearly contain the judge’s voice.

This analysis shows that although the statements are written from the perspective of the respective party, there are many instances in which the judge’s voice becomes visible, namely specifically in the use of functionalizations, i. e. in instances where the parties are referred to as ‘der Beschwerdeführer’ (‘the appellant’) and ‘der Zeuge’ (‘the witness’). These formulations are present in both statements, but they are of a different nature in either. For example, the witness’ statement contains more functional references to the appellant and vice versa. In these instances, it is less obviously (but still highly likely) the judge labelling the involved parties. However, in their own statements, the witness and the appellant are also referred to in their respective functions, i. e. as witness and appellant. These are the instances in which the judge’s voice comes to the fore. Example (37) from the appellant’s statement and example (38) from the witness’ statement serve as illustrations.

(37) ‘Angesprochen auf die vorgeworfene Übertretung der Höchstgeschwindigkeit gibt der Beschwerdeführer an: [...]’ (‘Confronted with the alleged exceeding of the speed limit, the appellant states: [...]’)

(38) ‘Vom Beschwerdeführer befragt, welchen Sinn es gehabt haben sollte/könnte, dass ich als Beschwerdeführer ihm mit unverminderter [sic] Geschwindigkeit davon gefahren wäre, gibt der Zeuge an: [...]’ (‘Asked by the appellant, what use it could/should have had that I, as the appellant, had driven away without reducing my speed, the witness states the following [...]’)

In example (37), the functionalization can be attributed to the underlying question-answer sequence. In example (38), there is also an underlying question-answer sequence visible. In this case, however, it is not the judge who asked the witness a question but the appellant. Still, the functionalization (‘der Zeuge’/‘the witness’) is attributed to the judge’s voice.

4.4. Markers of Metadiscourse

The analysis of metadiscursive markers revealed the following: the appellant's statement consists of 47.4 % of interactive markers and of 52.6 % of interactional markers, while the witness' statement contains more interactive markers (55.7 %) and fewer interactional markers (44.3 %). Here, the focus is on the judge's voice as the producer of the transcript, rather than on the witness' or appellant's voices. That is, there are naturally several instances of 'self-mention' that have either the witness or the appellant as a referent, but none of these instances have the judge as a referent. Thus, no instances of 'self-mention' were recorded. Interestingly, there is some use of attitude markers in the witness' statement, namely the use of 'illogical' (example 28) and 'with a smile' (example 12). Table 2 below illustrates these findings in more detail.

Table 2: Metadiscursive markers.

	Appellant's Statement		Witness' Statement	
	Absolute number	Relative freq. in %	Absolute number	Relative freq. in %
Interactive	27	47.4	44	54.3
Transitions	24	88.9	35	79.5
Frame markers	0	0.0	0	0.0
Endophoric markers	3	11.1	8	18.2
Evidentials	0	0.0	1	2.3
Code glosses	0	0.0	0	0.0
Interactional	30	52.6	37	45.7
Hedges	25	83.3	22	59.5
Boosters	5	16.7	13	35.1
Attitude markers	0	0.0	2	5.4
Engagement markers	0	0.0	0	0.0
Self-mentions	0	0.0	0	0.0

4.4.1. Interactive Markers

In both statements, the main interactive markers used are transitions, which are used to "express semantic relation[s] between clauses" (Hyland, 2005: 3). This finding can be explained by the fact that the statement takes a narrative form, and transitions such as 'and', 'or', and 'because' help structure the narrative and the causal relationships between individual clauses. Example (39) below shows how the transition word 'and' is used in the appellant's statement to indicate the relationship between the appellant and the telephone technician:

(39) A: ‘Als der Audi A3 auf den vor mir fahrenden Telefontechniker und mein Fahrzeug aufschloss, waren wir in einer Kolonne unterwegs’ (‘When the Audi A3 caught up to my vehicle and the telephone technician ahead of me, we were driving in a line of cars’)

Endophoric markers, which “refer to information in other parts of the text” (Hyland, 2005: 3), were also found in both statements. However, in the present texts, these markers are not used to refer to distant parts of the statement; they are used to refer forward to information that is provided in the subsequent sentences, as the examples below illustrate:

(40) A: ‘Zur mir vorgeworfenen Übertretung [...] möchte ich Folgendes anführen [...]’ (‘Concerning the transgression that I’m accused of, I want to state the following [...]’)

(41) W: ‘Ich halte fest, dass [...]’ (‘I maintain that [...]’)

These examples show that the endophoric markers include the judge’s voice in the text, although they are often presented from the respective party’s point of view. For example, in the clause ‘I want to state the following’, the perspective is that of the appellant, yet it is also clear that this clause originated from the judge. In addition, these instances reflect the underlying question-answer sequences in a similar way that the negated statements do, as was outlined above.

Only one evidential marker was found in the witness’ statement, and none was found in the appellant’s. Evidentials are used to make reference to information from other texts, and the one instance that was found in the witness’ statement makes reference to legal texts:

(42) W: ‘wie in den Vorschriften vorgesehen’ (‘as designated by the regulations’)

The use of evidential markers, as is the case in example (42), can contribute to the credibility of the content of the assertion. That is, citing a source (in this case legal regulations) as a basis for actions heightens the credibility and reliability provided in the assertions that are based on the external source.

4.4.2. Interactional Markers

The most common interactional markers in both statements are hedges and boosters (incl. intensifiers). Hedges are used to withhold full commitment to a proposition stated in the respective sentence, and boosters are employed to do just the opposite: to emphasize the “writer’s certainty in proposition[s]” (Hyland, 2005: 3). While the appellant’s statement contains 83.3 % hedges, the witness’ contains 62.9 %. Examples (43), (44), and (45) below illustrate the use of hedges:

(43) A: ‘Ich weiß nicht mehr genau [...]’ (‘I don’t remember exactly [...]’)

(44) A: ‘[...] [wir] dachten, das Fahrzeug wolle an uns vorbeifahren’ (‘[...] [we] thought that the vehicle wanted to pass by us’)

(45) W: ‘[...] so wie ich den Eindruck hatte [...]’ (‘[...] like I perceived it [...]’)

Although the appellant's statement contains many hedges, they are less commonly found in the passages discussing the themes of evidence outlined above. The passages related to important evidence, however, contain boosters as well, which supports the appellant's position. The appellant's statement 16.7 % of boosters, while the witness' contains 37.1 %. Examples are given below:

(46) A: 'Das dürften sich offensichtlich auch die anderen Fahrer gedacht haben [...]' ('The other drivers obviously thought the same [...]')

(47) W: 'Ich kann mich an den Vorfall gut erinnern [...]' ('I remember the incident well [...]')

(48) W: 'Ich habe definitiv keinen zweiten Fahrzeuglenker dann weiter geschickt [...]' ('I definitely didn't send a second driver away [...]')

Put into relation with one another, the witness' statement contains more expressions that are signs of certainty, and the appellant's statement contains more expressions that are signs of uncertainty, or at least of incomplete commitment to the stated proposition. The frequent use of boosters in the witness' statement also reflects the witness' status as a police officer, who seems to be sure about what he is saying. Upon closer examination, however, two contrasting tendencies are visible: the use of hedges in the witness' statements increases towards the end, while the use of boosters declines (the opposite for the appellant). This can be taken as indication that the appellant's certainty in the asserted propositions increases, and with it his believability, while the witness' certainty and thus also his believability decreases throughout the statement.

5. Discussion

The first research question can be answered easily: the structure of the record is a narrative based on a question-answer sequence that is visible through the use of negation, breaks in the narrative sequence, and verbal processes that reveal the judge's voice. The appellant's statement is provided first, followed by the witness' statement. Both statements are written from a first person perspective, which can disguise the fact that the involved parties are not the linguistic authors of the texts. Interestingly, the statements are not necessarily written in a chronological order: especially in the witness' statement, previous parts of the statement are taken up again at the end, which implies repeated questioning by the judge. Additional elements that are not a part of this analysis but are a part of the official protocol is personal information about the involved parties, the date and time of the trial, and meta-comments, such as 'Die Richterin eröffnet [...] die Verhandlung, prüft die Persönlichkeit der Anwesenden' ('the judge opens the trial [...], examines the personality [sic] of the present parties [...]'), 'Die Verhandlung wird auf Grund der divergierenden Aussagen auf unbestimmte Zeit vertagt' ('the trial is adjourned indefinitely due to diverging statements'), and 'Die Richterin schließt um 12.04

Uhr die Verhandlung' ('the judge closes the trial at 12.04 o'clock'). An interesting note at the end of the protocol is that the witness did not sign his statement ('Da keine weiteren Fragen an den Zeugen mehr gestellt warden, entfernt sich dieser ohne Unterfertigung der Zeugenaussage'/'As no more questions are addressed to the witness, he leaves without signing the statement').

Clearly, the judge's voice is present in many instances of the statements: for example, in the mental processes that lack an explicit Sayer, as well as in naming practices in the form of functionalizations and instrumentalizations, metadiscursive markers, and legal vocabulary. The use of personal pronouns, like 'I' and 'me', though, are associated with the respective speaker rather than the judge, although the statement was filtered through the judge's voice. That is, most of the content originates from the involved parties, yet the language is mostly the judge's, even though the statements are written so as to convey the perspective of the individuals involved.

The outcome of the case is in some ways reflected in how the evidence and participants are represented linguistically. For example, although at first sight the witness' statement reflects a certain amount of confidence in the asserted propositions (e.g. through the frequent use of boosters), this does seem to change upon closer analysis: the witness' statement contains more boosters in the beginning, but throughout the statement the use of hedges, especially in regard to important pieces of evidence, increases. This indicates higher levels of uncertainty in the asserted propositions. The judge's critical position towards the witness' statement is mainly reflected in the repeated questioning on critical topics, as well as in the use of evaluative attitude markers ('illogical', 'with a smile'). The use of these markers implies that the witness' statement is in fact illogical and that he had a different agenda in mind than issuing a fine for speeding. That is, by including 'with a smile' and other information such as 'I actually wanted to pull over the appellant', it is implicitly asserted that the witness' focus was completely on the appellant and thus his agenda was more personal (as evidenced by the previous repeated contact between the appellant and the witness) than is visible at first sight. The complete focus on the appellant is also reflected in the absence of references to the telephone technician. Also, in many of the passages relating to important evidence, the witness is presented in the role of the Senser, which implies a certain degree of subjectivity, thus rendering his statement less believable.

The appellant's statement, on the other hand, although initially containing more hedges, is presented as more believable, as the use of hedges decreases throughout the statement. This can be an indication of the judge initially being more skeptical about his statement, but also of increasing confidence towards the end of the examination. Further, by admitting some minor transgressions (e.g. going 55 km/h instead of 50 km/h, or talking on the phone and paying the respective fine without further trouble), the rest of the statement seems to be more plausible as well. In addition, the appellant's statement contains fewer mental processes relating to important evidence that have the ability to render the statement more subjective. The combination of these factors allows for

the conclusion that the appellant's statement is presented as more believable and more trustworthy, thus giving an indication of the judge's final decision, which, in fact, was to believe the appellant.

From the statements themselves, it is difficult, if not impossible, to draw conclusions regarding their believability, as it is not the verbatim statements that are analyzed (see, e.g., Adams & Jarvis, 2006; Olsson, 2004). However, they reveal the judge's stance towards the involved parties and, in fact, through the use of boosters and hedges, even reveals her changing stance throughout the trial.

6. Conclusions

The analysis in this paper has shown that a record of court proceedings, which does not contain verbatim statements of the parties involved, does indeed contain many different layers of voices and can reveal the author's (i.e. judge's) presence through close analysis. In this specific case, the judge is undisputedly the most powerful actor and also the author of the statements languagewise. Contentwise, as mentioned above, the individual parties are the sources of information. Thus, the judge acts as the spokesperson of the parties by conveying their message through her own words though trying to express the original ideas as accurately as possible (Harris, 1990). The judge also decides on which information will be put into the records based on her knowledge of what is important for the present trial, as well as keeping in mind potential future trials where the present record could become the only source of information and evidence (i.e. should there be any further trials in this case, other judges will rely on the present record as a source of evidence, for example in cases of false testimony, § 288 StGB – Austrian Criminal Code). Thus, the decision of which information will be included in the record is highly selective and presented from the judge's point of view.

It could be shown that particularly the analysis of metadiscursive markers, but also the analysis of meaning processes can provide insights into the author's stance and, as in this case, can even reflect the outcome of the trial. Indeed, it would be an important step in advancing the analysis (and also the production) of courtroom transcripts or records of court proceedings to investigate verbatim recordings and compare them with the final written documents. This, however, is not possible in Austria under current legislation and the new General Data Protection Regulations (GDPR) of the European Union does not facilitate collecting verbatim data either. Nevertheless, it is important to analyze and evaluate existing data in order to improve current practices or, at least, increase awareness of existing problems.

Of course, it is not possible to make any generalizations based on this data sample, but it has been shown that further investigations in this area, especially with larger collections of data, can yield invaluable insights into the composition of non-verbatim

court records, power relations among the parties involved, and ideologies of the person responsible for the paraphrasing of the verbatim statements. Analyses with larger samples promise exciting new insights into trials and the production of records of court proceedings.

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