The Discourse of
Court Interpreting

Sandra Beatriz Hale

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The Discourse of Court Interpreting:
Discourse practices of the law, the witness and the interpreter
by Sandra Beatriz Hale

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of Court Interpreting

Discourse practices of the law,
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To the Australian court interpreter

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Acknowledgments

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Introduction

In Australia the practice of court interpreting has been ad hoc, devoid of much theoretical underpinning and almost completely ignored by researchers as a field of study. Interpreters work as individuals rather than as part of a collegial group of professionals. Many lack a commitment to the profession, using their bilingual skills to work as interpreters only part time while they train in another field, or to complement the family's income (Ozolins, 1998). This lack of professional identity among those working as interpreters themselves makes it difficult for those working with them to perceive them as professionals. There is also a minority group of highly qualified, motivated and dedicated court interpreters who become frustrated at the lack of professionalism evidenced in many of their colleagues, and at the lack of recognition and respect their qualifications and professional attitude inspire in those who work with them.

Attempts have been made by a small group of lawyers and practitioners through their professional association (AUSIT), and through the available training courses, to professionalise legal interpreting. Much of what is written or said on the topic, however, is of a very prescriptive or anecdotal nature, rarely based on empirical evidence. There is no real tradition of research in the field of legal interpreting, although the body of research has increased in the last twenty years, with the majority of data-based linguistic research being carried out in Spanish-English (Berk-Seligson, 1988, 1989a, 1989b, 1990,1999; Hale, 1996a, 1996b, 1997a, 1997b, 1997c, 1999, 2001, 2002; Rigney, 1997,1999, Roy, 1996). There has been very useful work published based on ethnographic research (Dueñas Gonzalez et al., 1991, O'Toole, 1993, Laster & Taylor, 1994, Ozolins, 1991, 1998), and some published on issues of role, practice and instruction, based mainly on secondary data, ideologies and personal experience (de Jongh, 1992, Ginori & Scimone, 1995; Morris, 1995, Edwards, 1995, Gentile et al., 1996, Roy, 1990, 1992, 1993, Fenton, 1997, Moeketsi, 1999, Mikkelson, 2000).

In the context of the current reality of court interpreting in Australia, this book aims to fill part of the gap that exists in the knowledge about the practice of court interpreters. The book deals primarily with the micro-linguistic analysis of Spanish interpreters' renditions in the courtroom, but draws on social and professional issues to explain the interpreters' performance. It is hoped that the results of this

research will serve to inform the practice of interpreting, promote the overarching need for specialist court interpreting training and to help develop appropriate curriculum based on the results of research.

The book explores the intricate processes of interpreting in the ritualised and constrained context of the courtroom. It describes the discourse practices of interpreters vis-a-vis those of the lawyers and the Spanish witnesses in the triadic interaction. Of particular interest is the way interpreters manipulate, filter and alter the messages of the main participants in their interpretation, and the impact such alterations may have on the legal process. Based on authentic data, the book shows how the lawyers' monolingual practices, such as the strategic use of questions to maintain control and reinforce their power, can at times be thwarted by the interference of the interpreter and at times reinforced or enhanced by it. Power is constantly being negotiated through the control of the discourse in the interpreter-mediated interaction. The book also presents results that show that subtle linguistic changes in the interpreter's renditions, such as the omission of discourse markers, can have pragmatic significance on the message. The maintenance of equivalence of style in the interpretation of the witnesses' testimonies is presented as a strong argument for accurate interpreting. The data clearly show that interpreters are often not faithful to the style of the original text even when they are faithful to the content. The results of experiments support the hypothesis that such changes can have an impact on the impressions of credibility, competence and intelligence formed about the witnesses.

The book also explores the possible reasons for the different choices made by interpreters in the course of their work. Some of those decisions are assumed to be influenced by the interpreters' own views about their role and their ethical considerations, some by their own linguistic and interpreting competence, some by the constraints of the language pair, and some by the constraints of the exercise. It is not the intention of this book to criticise the work of interpreters or to highlight their deficiencies, but to highlight difficulties of the interpreting process and suggest solutions. It is hoped that the results of this study will raise the awareness of interpreters, lawyers and policy makers of the issues pointed out above. Although the book concentrates on data drawn from Australian Local Court[1] cases and discusses the Legal Interpreting profession in Australia, the situation does not differ greatly in the rest of the world where the profession is practised. Therefore, the book is relevant to court interpreters everywhere.

The data were extracted from seventeen Local Court hearings in New South Wales (NSW) with permission from the Chief Magistrate. NSW Local Court proceedings are routinely audio-recorded, whereas higher courts' proceedings are taken down on paper by stenographers who record only the interpreter's English version of the witnesses' testimonies. For the purposes of researching the

interpreters' renditions, audio recordings were essential, hence the use of Local Court data. All names and other personal details were changed to ensure confidentiality.

Book structure

The book is divided into chapters, which, although are linked and related to each other, deal with discrete and complete topics, each with its own introduction and conclusion.

Chapter 1 introduces the underlying issues about court interpreting which will be further analysed in detail and in context in the rest of the book. Chapter 2 provides an overview of the history and status of court interpreting in Australia.

Chapters 3 and 4 deal with the language of lawyers in the courtroom through their use of questions. Chapter 3 systematically analyses the types of questions used in examination-in-chief[2] and cross-examination by counsel for their specific strategic purposes. It then looks at the treatment of the different types of questions by the interpreters and the tendency to change or omit certain features, with possible explanations for such decisions. Chapter 4 analyses the use of discourse markers to preface counsel's questions, their significance, and the interpreters' rendition of them in the different contexts, revealing a systematic omission of such markers by interpreters.

Chapter 5 looks at witness testimony through their answers. It discusses the importance of testimony style in witness character formation and looks at how such styles are either maintained or altered by the interpreter. It explores features of powerless and powerful speech styles as well as the concept of relational versus rules orientations in witnesses' testimonies advanced by O'Barr (1982) and Conley & O'Barr (1990). The chapter also presents the results of matched-guise experiments on impressions of credibility, competence and intelligence.

Chapter 6 looks at the interaction between the questions and the answers and explores the notions of power and control in the courtroom, the institutionalised division of roles and the interpreter's interference with this established notion. It discusses the power of the interpreter to manipulate language in very subtle ways. It looks at specific examples of role reversals and at the way counsel's questioning tactics are either frustrated or enhanced by the witness or the interpreter. The chapter also highlights the constant negotiation of power that occurs in the courtroom.

Chapter 7 presents the results of a questionnaire to practising Spanish interpreters. The questionnaire asks interpreters about their views on issues of role, accuracy and the language of the courtroom and asks them to translate segments

extracted from the data, which are then compared to the results previously discussed in other chapters.

Chapter 8 concludes the book by summarising the results of each chapter and arriving at a further understanding of the linguistic performance of interpreters working in the courtroom. It suggests possible implications of interpreters' discourse practices, defines the role of the court interpreter based on the results, and makes recommendations for further research and training.

Court interpreting: The main issues

1.1   Introduction

> "This relieved him of the need to employ an interpreter — a class of people who are always bothersome and sometimes indiscreet"
> (Dumas, 1844–translation 1996: 185).

The above quote taken from *The Count of Monte Cristo*, written by Alexandre Dumas one hundred and sixty six years ago, reflects an attitude towards interpreters that unfortunately is still prevalent with some today. It is common to hear criticism of interpreters. Much of it is justified, but much of it is not. Wadensjö, in discussing the issue of how interpreters make themselves accountable as trustworthy professionals, expresses the fact that often when misunderstandings occur the first one to be suspected is the interpreter in the middle. "Before suspecting the other party of talking nonsense, or oneself of being unclear, many would rather suspect the interpreter of getting things wrong" (1998: 19). When speaking about the South African court interpreter, Moeketsi states that they are "…ill-trained, over-worked, unsupervised, generally undermined and …bound to be erratic" (1998: 72).

As an interpreter with many years experience in the courtroom, I am very much aware of the many problems interpreters face, including the need to always prove themselves amidst constant suspicions of infidelity to the original text, the extremely high demands placed on them, the inherent complexities of the interpreting process, the inadequacies of the system they are to work in, the misunderstanding of their role by lawyers and witnesses alike, the poor working conditions and the low remuneration. As a linguist, on the other side, I am also very much aware of the desperate need for most interpreters to improve their performance. Lack of compulsory pre-service tertiary training has led to a great disparity in the quality of interpreters, from the very skilled and highly educated, who form a minority, to those with even insufficient bilingual skills. As a consequence, the majority of court interpreters in Australia, and indeed what appears to be the rest of the world (Moeketsi, 1999: 138–39), rely on intuition rather than theory, to make their daily interpreting choices.

When I worked as a court interpreter myself, I found there were many unanswered questions and a lack of theoretical underpinning to my work, even

though I had completed a Bachelor's degree in Interpreting and Translation. This feeling, which was the main motivation for embarking on research, was shared by Wadensjö, who states "Being myself an interpreter, I have felt a lack of theoretical ground for my work in this profession" (1998: 4), which gave her the impetus to conduct her research into interpreting as well. I intend through this book to share the findings of my research with fellow interpreters in an attempt to help improve the quality of the services rendered by providing interpreters with a theoretical framework on which to base their interpreting decisions throughout their practice. However, in order to improve the legal interpreting profession as a whole, changes must come from all sides:

Interpreters must first become aware of their responsibilities as professionals. These responsibilities include understanding and recognising the importance of their role; obtaining formal pre-service university training and in-service professional development in order to constantly upgrade their skills; being accountable for their performance, by being able to make informed choices which can be justified if questioned, realising that each choice of words, style, and delivery will invariably impact on the next turn in the interaction. They must also become familiar with the legal system in which they operate, understanding the importance of language in the courtroom, its strategic use, the rules of evidence, which constrain certain behaviours, and other legal procedures which are crucial to the delivery of a court case.

Secondly, lawyers must become aware of the difficulties of the interpreting process and recognise that it is an activity that requires fully qualified, trained professionals; they must fully understand the role of the interpreter; take responsibility for their own speech rather than expect interpreters to clarify their utterances or ensure that comprehension is reached; and they must treat interpreters with the respect they deserve, as equal professionals. Lastly, the system must change to make pre-service university training compulsory, ensure that professional interpreters are adequately remunerated and enjoy proper working conditions. It is hoped that this book will help achieve at least some of the goals stated above.

Among the main controversial issues that will be discussed throughout the book are the different understandings of accuracy of interpretation and of the role of the interpreter. These differences of opinions lead to a lack of uniformity in the practice of the profession. These will be summarised below.

1.2   Accuracy of interpretation

In some previous work I explore disparate views on the meaning of accuracy (Hale, 1997c). On one extreme there are those who believe in maintaining accuracy of

propositional content alone, with liberties to change style and register (Conomos, 1993, Barsky, 1996), on the other, those who believe in literal, verbatim interpretation, especially in the legal system (Wells, 1991). Morris explains that some lawyers still believe that,

> … court interpreters are not to *interpret* — this being an activity which only lawyers are to perform, but to *translate* — a term which is defined, sometimes expressly and sometimes by implication, as rendering the speaker's words verbatim." (Morris, 1995: 26).

There are those who take the middle view and argue for accuracy of message intention and effect (Berk-Seligson, 1990, Benmaman, 1997, Dueñas Gonzales et al., 1991, Dueñas Gonzales, 1993, Fowler, 1997, Hale, 1996a, 1996b, 2002, Hatim & Mason, 1997, Krouglov, 1999). This view, which is adopted by this book, considers accuracy as a pragmatic reconstruction of the source language into the target language (House, 1977). As Hatim and Mason (1990) state "equivalence is to be achieved not only of propositional content but also of illocutionary force" (1990: 76). Accuracy, however, must be viewed in the context of the interpreting process, with its many limitations.

1.2.1   The interpreting process

The interpreting process is complex in many ways. It involves the intricate process of translating from one language to another and the added difficulty of achieving it in real time. Whereas with written translation there is time to read a text repeatedly to fully comprehend it, and subsequently make a number of drafts before the final translated version, with interpreting the entire process of listening, comprehending and converting takes but a few seconds, at the most, minutes. The interpreting process, therefore, consists of three main stages: comprehension, conversion and delivery (Ginori & Scimone, 1995). The process begins at the initial level of understanding the source text in the way it was intended. Thomas (1983), in discussing the concept of pragmalinguistic failure, presents cases where communication breakdown occurs between speakers of the same language who have failed to understand the pragmatic meaning of the other speaker's utterances. Message production through language is complicated in itself. As Scollon observed: "We say not only what we want to say but also what the text must inevitably say for us" (Scollon, 1998: 15). This is a very significant concept in the context of interpreting. It implies that speakers are bound by their language resources in expressing their ideas.

Understanding a message can be influenced by a number of factors, including knowledge of the language, of the subject matter, of the context, of the institutional culture as well as the speaker's own culture, and also by the speaker's speech

coherence and presentational style. This phase can of course also be influenced by the individual interpreters themselves, who will have their own experiences and views of the world, who are, as Wadensjö comments, "…subjects who make sense (of other's utterances) in their own subjective ways" (Wadensjö, 1998: 7).

Hatim and Mason (1997) view the interpreting process from the perspective of three domains of textuality: context, structure and texture, with the three modes of interpreting (liaison, consecutive and simultaneous) drawing primarily on one of these dimensions for understanding the text. They suggest that context is more readily available to liaison interpreting, structure to consecutive interpreting and texture to simultaneous interpreting. This book deals exclusively with the liaison mode of interpreting which takes place during the giving of evidence in the court-room. Hatim and Mason explain that because the liaison interpreter is forced to interpret short segments, s/he cannot rely on the whole text structure and texture to deduce meaning, but must primarily rely on context to pre-empt the rest of the text. They name three relevant contextual factors that should be considered in order to interpret the utterances correctly: the register membership of the text, the pragmatic force of the utterance and the culture-specific genre requirement (1997: 52). Such considerations add to the difficulty of achieving accuracy of interpretation and further illustrate the complexity of the interpreting process. These aspects are highlighted repeatedly throughout this book in the analysis of the interpreter's renditions.

The conversion stage begins when the interpreter makes mental choices about the best way to interpret the message. This involves finding equivalence in the other language. As direct equivalents are rarely available to two different languages, interpreters are confronted with a number of different choices. The interpreter's main objective should then be to convey the pragmatic meaning of utterances in a way that would achieve the same effect the original utterance would have achieved in the source language listener.

In liaison interpreting, the conversion phase occurs almost simultaneously with the comprehension phase. Time and courtroom imposed constraints make this phase extremely difficult. As one practising interpreter said: "Time constraints and an impatient response by counsel and magistrates/judges should also be taken into consideration when analysing interpreters' performance at court".[3] Interpreters need to resort to the appropriate linguistic resources quickly, without any real time to stop and think. The interpreter's language competence, training, memory capacity, listening and interpreting skills as well as experience, will impact greatly on this phase. As Wadensjö states "the quality of interpreting is not a question of interpreters' intentions, but of their proficiency in the two languages and of their interpreting skill." (1998: 52).

The final phase is the delivery phase. This is the interpreter's verbal output, the result of the previous two phases. The interpreter's output, unlike translation, cannot be edited once uttered. If it is, in the form of backtracking or self-correction, it can have negative repercussions on the original speaker. The delivery phase has been perhaps the most neglected one in the study and training of interpreting, and is the main focus of this book. It refers not only to the production of the converted propositional content of the message, but also to the manner in which it is presented. Just as the delivery of an original message has an impact on listeners' understanding of such message and on the impressions formed about the speaker (See Chapter 5), the delivery of the interpreter's rendition produces the same effect.

1.2.2   Pragmatic equivalence

It is common to view language in terms of distinct steps in a pyramid, the word level at the bottom, the sentence level in the middle and the discourse level at the top. When interpreting, the interpreter must first understand the message at the discourse level and work his/her way down to the word to express what was said in the discourse. This is referred to as a top down approach. Accurate interpreting cannot be performed using the bottom up approach, that is, interpreting word for word and hoping that at the end the same meaning will be achieved at the top level, as that will rarely be the case. These three different levels can be matched with three different approaches to interpreting: literal (word for word), semantic (sentence by sentence) and pragmatic (discourse).

Pragmatics refers to the meaning of words in context, to the appropriate use of language according to tongue, culture and situation. It refers to the intended meaning behind the surface, semantic meaning. Pragmatics in this book is viewed as encompassing "principles and practices underlying *all* interactive linguistic performance — including all aspects of language usage, understanding, and appropriateness" (Crystal, 1987: 120). Understanding the pragmatic meaning of utterances implies understanding "…the purposes for which sentences are used, of the real world conditions under which a sentence may be appropriately used as an utterance" (Stalnaker, 1973: 380). More importantly for this book is the meaning of pragmatics as the "study of the relationships between linguistic forms and the users of those forms" (Yule, 1997: 4).

A number of studies (Berk-Seligson, 1990, Hale, 1996a, 1996b, 2001, Rigney, 1999) have found that interpreters often make the mistake of interpreting the semantic meaning only, the "fixed context-free meaning" (Cook, 1989: 29), ignoring, misunderstanding or simply not conveying the pragmatic meaning of utterances. Thomas refers to this as "pragmalinguistic transfer", defined as:

> … the inappropriate transfer of speech act strategies from one language to an-
> other, or the transferring from the mother tongue to the target language, of
> utterances which are semantically/syntactically equivalent, but which, because of
> different 'interpretative bias' tend to convey a different pragmatic force in the
> target language (Thomas, 1983: 101).

It is often easy to find ready semantic equivalents across languages that are not
pragmatically equivalent. For example, a swear word can be translated semantically
into another language, but the intended meaning (that of an insult) and the intended
force (how serious the insult is) may not be equivalent, therefore a pragmatic
equivalent must be opted for, which may be completely different semantically.

It is important at this point to refer to Speech Act Theory, as advanced by
Austin (1962) and later developed by Searle (1969). A speech act is a combination
of three simultaneous acts: a locutionary act, which is the utterance itself, an
illocutionary act, which is the communicative act, the intended meaning behind
the utterance, and the perlocutionary act, which is the reaction the utterance
produces on the listener. For example, the locutionary act "Would you like to close
the door?" has the illocutionary point of a request to close the door, with the force
of a polite request, even though semantically it is a question of whether the person
would like to do something. The perlocutionary act would be the other person
actually closing the door. Whether the perlocutionary act is successful or not
depends on whether the listener understood the illocutionary act and its force and
whether they are cooperative. The relationship between the speaker and the hearer
will also determine whether such a request is appropriate or not. If it is an appropri-
ate request and the listener does not close the door, the speaker will construe that
action as impolite. The interpreter needs to aim at achieving an equivalence of the
illocutionary act, including its point and force, in the target language. This means
understanding what that illocution is in the first place and then conveying it in the
other language using whatever linguistic resources are available in the target lan-
guage to produce the locution. With the example above, for some languages it
would be more appropriate to make a request with the use of the imperative mood,
rather than the interrogative mood, for it to convey the same illocutionary act.

In the courtroom, it is important to understand that the illocutionary point
behind cross-examiners' questions, for example, is often to accuse, to confuse or to
trick, and very rarely to ask for information. The illocutionary force is the strength
with which the illocutionary point is portrayed. For example, both a request and a
command have the same illocutionary point, to ask someone to do or say some-
thing, but a command is stronger in force than a request. This is where levels of
politeness come into play. The interpreter needs to achieve an equivalence in the
level of politeness of the original, which may sometimes require the addition of

politeness markers in some languages or the change of syntax in others. Interpreting at the semantic level and not at the pragmatic level will inevitably lead to misunderstandings.

Fowler found that very often there is a misunderstanding from bilinguals and interpreters themselves about the meaning of accuracy, having little regard for pragmatic concepts:

> Interpreters come to our training course with their ideas firmly rooted in the notion that interpreting is about words, term banks, and terminology lists. But our training of interpreters must include an understanding of pragmatic equivalence in interpreting. That is, students must understand the meaning intended by a speaker in an utterance, and how that meaning will be perceived and understood by the listener. They must then transfer the meaning to the target language, keeping it as close as possible to that of the original. It is not the literal meaning with which we are concerned here, but with the meaning in the context of the utterance. (Fowler, 1997: 198–99).

Berk-Seligson, in her study of Spanish court interpreters in the United States, also found that there was little regard or awareness of the pragmatic dimensions of language, resulting in changes of intended meaning in the interpretation.

> Problems of syntax and pragmatic scope are given slight attention if any at all. Yet observation of interpreters at work reveals that inattention to pragmatic aspects of language results in a skewing of a speaker's intended meaning: an interpreter can make the tone of a witness's testimony or an attorney's questions more harsh and antagonistic than it was when it was originally uttered, or conversely, she can make its effect softer, more cooperative, and less challenging than the original. (Berk- Seligson, 1990: 2).

Morris agrees that the interpreter must understand "…the speaker's intention, and not merely the speaker's words" (1995: 28), which implies the need for a pragmatic equivalence.

Pragmatic equivalence, however, does not mean a complete disregard for form, as seems to be implied in Nida's (1964) distinction between "formal equivalence" (an equivalence of form), and "dynamic equivalence" (an equivalence of effect). The form of an utterance will impact on its effect. In other words, the pragmatic meaning will be represented through the lexis and the syntax, as well as the suprasegmental features of speech. The "what" and the "how" together make up the pragmatic meaning of an utterance. The interpersonal, textual and ideational functions of speech (Halliday, 1985) are inextricably bound and cannot be treated in isolation. This complex relationship between form and function is what this book aims to analyse in the context of interpreter-mediated speech.

1.3   The role of the court interpreter

Those who speak through an interpreter have a right to express their message in whatever way they like and for it to remain unaltered in the process. Indeed, the Code of Ethics of the Austrian Association of Court Interpreters states in its preamble that the interpreter's crucial role is to uphold basic human rights and equality before the law (Mikkelson, 2000: 48). Such a task is extremely difficult, if not impossible. The interpreter's aim, however, ideally is to render the source language text into the target language as accurately as possible. Australian interpreters are bound by a professional Code of Ethics (AUSIT, 1996), which among other points, emphasises the need for accuracy and impartiality. Both of these points, however, are complex and controversial (Mikkelson, 2000) and are often predicated on the interpreter's own beliefs about her/his role.

However, there is also controversy over the role of the court interpreter (Anderson, 1976, Brown, 1993, Fenton, 1997, Gentile et al., 1996, Dueñas Gonzalez et al., 1991, Mikkelson, 1998, Moeketsi, 1999, Roy, 1990). At one extreme of the spectrum there are those who believe that the role of the interpreter is to help disadvantaged non-English[4] speakers to succeed in their case. This arises out of a sense of social justice and justifies deviating from the source language utterance to give explanations to the non-English speaker to ensure clear understanding (Conomos, 1993) or to embellish the answers to help gain a more favourable result (Barsky, 1996). In this school of thought, the interpreter takes on the role of advocate rather than neutral agent. The other extreme argues that interpreters act as machines or conduits, repeating verbatim what they hear in one language in another. This is a view mostly held by members of the legal profession without much knowledge of languages, as evidenced in this comment by a former Supreme Court judge of South Australia:

> It cannot be overemphasised that an interpreter should interpret every single word that the witness utters, exactly as it is said, whether it makes sense or whether it is obviously nonsense; whether the witness has plainly not heard or whether, if he has heard, he has not understood. The interpreter should look upon himself rather as an electric transformer, whatever is fed into him is to be fed out again, duly transformed (Wells, 1991: 329).

Such a perception is also prevalent among some interpreters themselves, as Foley, a lawyer and academic involved in the training of interpreters, found in a study of practising interpreters. He states that

> This narrow concept of the role of the interpreter has been dictated by the law's need to overcome problems associated with the hearsay objection. But the conduit model has largely been discredited in practice because it was often the justification for a judicial direction to "Mr/madam interpreter" to "just interpret word for

word!" To hear very experienced interpreters now categorising their own role in terms of this "conduit pipe" was a real surprise. (Foley, 2003: 3).

Foley goes on to discuss the different perceptions held by lawyers and interpreters of what constitutes their "client" and explains that those differences lead to frustration from both sides. To lawyers, their client is the one who pays them to represent them and the person to whom they owe their primary duty, balanced against their duty to the court and to their profession. Foley found that most interpreters did not accept the Non English Speaking Background person (NESB) as their client, to whom they owe a duty of partiality, as this goes against their code of ethics. Similarly, they rejected the service provider as being their client, although a small group felt they owed primary duty to the party who paid them. A group of perceptive interpreters offered an interesting perspective by viewing "language" as their client. "Their view was that if they served this `client' well by faithfully interpreting, the NESB person was also served well by being made `linguistically present' in the proceedings, without needing to be shown a preference" (Foley, 2003: 3).

This last view of "language as client" fits in well with the next school of thought about the role of the interpreter, which is the one that takes the middle ground and is adopted by this book. Generally speaking it proposes that the role of the interpreter is to attempt to place the non-English speaker in as close a position as an English speaker in the same situation. This involves interpreting what is said and mimicking the way in which it is said, so that the interpreted version is understood by its listeners in the same way as the original and achieve the same potential reaction (Laster & Taylor, 1994, Dueñas Gonzalez, 1991, Edwards, 1995, Hale, 1996a, 1996b, 2002, Moeketsi, 1999, Mikkelson, 2000).

Moeketsi states that the crucial role of the interpreter is to maintain an equivalence of meaning by preserving "all the vital elements of the message he can, like pauses, tone of voice, hesitations, other extralinguistc features, style and register" (1999: 100). She further explains that

> For the interpreter to carry out this crucial speech performance accordingly, he needs a thorough understanding of his role as an interpreter. He should therefore confine himself to interpreting, and refrain, for instance, from giving his opinion on legal, linguistic and cultural matters… (Moeketsi, 1999: 100).

Wadensjö argues that since interpreted interactions are dialogic rather than monologic, they can never be the same as monolingual encounters, and interpreters take the role not only of "translator" but also of "coordinator" of others' talk (1998: 9–18).

In interpreter-mediated interactions control over the original message shifts from its author to its interpreter. When the message is expressed through the interpreter, the interpreter becomes responsible for portraying the original message

and effect, and hence accountable for her/his performance. As Fenton states:

> Interpreters in the courtroom are far from being perceived by everyone else in the courtroom as non-thinking, mechanical or electronic devices, but rather as men and women in possession of special skills, the application of which requires good judgement and integrity, and who can be held accountable for their performances. (1997: 33).

The interpreter's aim then is an attempt to remove the language barrier and to the best of their skill and ability place the non-English speaker in a position as similar as possible to that of a speaker of English.

> …the interpreter's role is to put the non-English speaking witness or defendant in the same position as an English speaking witness or defendant. It is not the interpreter's role to simplify language or arguments used in the courtroom to ensure that the non-English speaker understands them. It is a major misconception that an interpreter should assist out the non-English speaker by reducing a complicated argument to a simple one. If the original message is not clear, the interpretation should remain unclear. (Commonwealth Attorney General's Department, 1991: 90).

Although the often-quoted statement above speaks of placing the non-English speaker in "the same position as an English speaking witness", I would argue that such a task is impossible in view of the fact that the interaction is triadic rather than dyadic. Drawing on Gulliver's (1979) understanding of "mediators" and "middlemen", Wadensjö states that "in general, … a third party who is present at a negotiation will always exert some influence on the process" (Wadensjö, 1992: 30). Nevertheless, with the above caution in mind, the interpreter's aim is to replicate the original source language message in the target message in a manner that would have the same effect on the listeners. It should be pointed out at this stage that interpreters do not have a mediating role in the traditional sense. Their "mediating" role is in terms of language interpreting alone. As Dueñas Gonzalez comments:

> … the court interpreter… has a duty to conserve not only the precise meaning of the SL message, but also the exact register, style, and tone. Thus, the interpreter faces a formidable task, first in deciphering the meaning of sometimes obscure, convoluted, or deliberately vague language, and secondly in conveying that message in exactly the same manner as it was spoken. (Dueñas Gonzalez et al., 1991: 272).

In the introduction I noted that the prevalent feeling of mistrust for interpreters can be traced partly to the confusion about roles. The interpreter's understanding of her/his role will impact on her/his performance. Roy states that "interpreters don't have a problem with ethics, they have a problem with their role" (1990: 84).

Hatim and Mason comment that "it seems that liaison interpreting is the one area where each individual defines her or his own procedures on an *ad hoc* basis" (1990: 90). Gentile et al. state:

> Since the operations of liaison interpreters have been little studied, and not much interest has been shown in the social dimension of liaison interpreting, the construction of the role has occurred in a fairly haphazard and uncoordinated manner. This has created significant professional and ethical problems for the interpreter. (Gentile et al., 1996: 31).

Interpreters often find themselves confronted by different expectations from the various professionals with whom they work and from the non-English speakers themselves. Ozolins comments that from the beginning the occupation of the Australian liaison interpreter "was being invented with few clear guidelines as to what the role of the interpreter should be: there were variations in the expectations of many clients, and in the performance of interpreters themselves" (Ozolins, 1998: 20). Foley argues that it is the "different client" perception held by lawyers and interpreters "which underlies much of the misunderstanding (and in some cases conflict) between the two professions. It may help to explain some of the tension which can characterise the lawyer-interpreter-client relationship" (2003: 5).

It is not only the service provider, however, who misunderstands the interpreter's role, it is also the NESB person. In a study carried out by Hale and Luzardo (1997), it was found that a great majority of non-English speakers who often rely on interpreters are completely unaware of the interpreter's conventional role and ethical obligations, and expect them to provide assistance, advice and moral support as well as interpreting. Such an expectation is reinforced by the view that interpreters are compatriots and not university trained, impartial professionals. This perception is shared by some English speaking service providers who not always recognise the need to employ the services of professional interpreters when faced with non-English speaking clients (Ozolins, 1995).

If the interpreter believes that her/his role is to "help" the non-English speaker and to "facilitate" communication (Guthrie, 1986) s/he will feel compelled to edit utterances to improve their comprehensibility, coherence and relevance. Barsky argues strongly that the interpreter's role should be extended in the refugee claims tribunal to allow them "…the latitude to assist by intervening with questions and clarifications that are pertinent to the case and likely to improve the claimant's chances of obtaining refugee status" (Barsky, 1996: 46). Such an idea of the interpreter's role goes counter to the ethical obligations of interpreting accurately and remaining impartial. The underlying reason for such a definition of the interpreter's role is the belief that non-English speakers in the courtroom find themselves in an unfamiliar environment, are poorly educated and unable to

express themselves to their best advantage. Such a view is no doubt true in some instances; however, it can also be applicable to native English speakers (Mikkelson, 2000). Studies have shown (Conley & O'Barr, 1990, Wodak-Engels, 1984) that very few native English speakers ever feel comfortable in a courtroom, understand the proceedings, are able to express themselves to their best advantage or are all well educated. Critics of the legal system argue that it is an unfair system in desperate need of reform, unfair to English and non-English speakers alike (see Laster & Taylor, 1994). However, that is an issue that goes well beyond the prerogative of the court interpreter. In this book it will be shown that interpreters often seem to adhere to this view of the role as "helper", and when such attempts to "help" occur, they do not always have the intended effect, often disadvantaging the non-English speaker, due to the interpreter's unawareness of the rules and underlying practices of the courtroom.

If the interpreter believes her/his role to be that of a machine that robotically transforms words from one language to another, with no room for "interpretation" or decision-making on their part, their renditions will very rarely be accurate. Hale (1996a, 1997a) presents illustrative examples about the pitfalls of translating "literally" or "semantically" rather than pragmatically. This strict role of "translating verbatim" is reinforced by the legal profession, as previously mentioned. "Because interpreters have power over language, lawyers have consciously sought to regulate and constrain their role within and outside the courtroom. This has been achieved by constructing a narrow role for interpreters, as neutral machines, or `conduits'" (Laster & Taylor, 1994: 111). It will also be shown in later chapters that when interpreters adhere to this role and interpret literally, this leads almost inevitably to inaccurate interpretation or ungrammatical utterances.

However, if the interpreter considers her/his role to be that of removing the language barrier from the interaction, leaving the responsibility for effective communication to the primary interlocutors, a more accurate, and hence impartial rendition of the original will ensue. With this view of her/his role, the interpreter will attempt to interpret pragmatically.

Edwards, an interpreter herself, summarises this in broad terms:

> Our role is to make a full and faithful interpretation of courtroom speech… Impartiality helps us keep out of a case by allowing us not to be swayed by sympathy for one side or another. Keeping us out of the case also means not helping, not fixing things. Frequently questions are unclear so that the answer will be non-responsive, that is, it will not respond to or answer the question asked. It is not up to the interpreter to tell the witness what counsel really meant. Nor is it up to the interpreter to suggest in court how counsel or the court might frame their questions for clarity. Counsel will have to figure that out themselves (Edwards, 1995: 63, 66).

Harris agrees with Edwards in that he believes that the interpreter ought to "reexpress the original speaker's ideas and the manner of expressing them as accurately as possible and without significant omissions, and not to mix them up with their own ideas and expressions" (Harris, 1990: 118).

The role of the interpreter will vary slightly according to context (Wadensjö, 1992, Gentile et al., 1996). This book is concerned with court interpreting only. Taking on the role of "helper" in this context will inevitably impact on the delicate balance that exists in the adversarial system. It is often the case that questions are deliberately confusing, used as a tactic by the cross-examiner. As Quynh Du (1996: 105) suggests:

> In an adversarial legal system, legal settings fall into two broad categories: those occasions where the interlocutors have a genuine need to communicate… (lawyer/client conferences)… (legal submission)… (judge's instructions)… *and* those events which are not exercises in communication but dramas played out for another party — the judge and/or jury (evidence-in-chief, cross-examination and re-examinations).

Therefore, by changing the questions in any way to improve their clarity, the interpreter would be interfering with the lawyer's tactics. Mikkelson stresses that the "interpreter's task is not to ensure that the defendant understands the proceedings"(1998: 22). On the other hand, polishing the style of the witness's testimony will interfere with the impression given by that witness about his/her credibility and character (Hale, 2002).

Mason comments that all studies of liaison interpreting to date have demonstrated the mismatch that exists between the misconstrued view of the interpreter's role as a "translating machine" and "the observable reality of a situation in which meaning is subject to constant negotiation" (1999: 149). It is worth pointing out at this stage, however, that reality presents us with interpreters who are for the most part completely untrained. As the historical overview will reveal, even though we now speak of accredited and professional interpreters, the training available is very limited and not available to all language pairs, and above all, not compulsory (Plimer & Candlin, 1996, Ozolins, 1998). Berk-Seligson states that the same is true of the United States (2002: 229). Mikkelson (2000) aptly explains that it is a natural inclination for interpreters to simplify complex language for an unsophisticated witness or defendant in order to ensure understanding, but warns that "…such well-intentioned editing distorts the legal process, particularly in the adversarial system" (Mikkelson, 2000: 49).

Harris and Sherwood (1978) spoke of "natural interpreters" over twenty years ago, referring to untrained bilinguals who acted as interpreters. I would argue that except for the minority who have received formal university training, all other

practising interpreters can be referred to as "natural interpreters" also, as they base their choices on intuition and natural inclinations rather than on any systematic method arising out of results of research studies of interpreting. When interpreters receive training, they are trained to do what does not come natural, but to adopt practices solidly based on theory, which take time and effort to acquire. The results of the studies carried out to date, including the ones presented in this book, reflect a situation that should not be taken as the ideal, but simply as the reality. We therefore cannot argue that accuracy of interpretation is impossible because the current practice proves it to be so.

1.4   Conclusion

This chapter has introduced the main issues that surround the theory and practice of court interpreting, namely issues about interpreter training, the meaning of accuracy, the perception of interpreter roles and the expectations of interpreters by themselves and others who speak through them. All of these issues will be discussed again throughout the book in the context of each study presented in the subsequent chapters. We will see how the issues introduced in this chapter have a pivotal role in the performance of court interpreters.

CHAPTER 2

Historical overview of court interpreting in Australia

2.1 Introduction

When evaluating the performance of court interpreters, it is important to realise that from the outset court interpreting in Australia was not considered a profession and hence no training, academic or practical was seen as necessary. Consequently, as stated in Chapter 1, most of the choices made by the majority of interpreters in the course of their work can safely be attributed to natural intuition rather than to the result of considered, studied, systematic choices based on any theory of interpreting or linguistics. This is an important insight that needs to be considered when discussing the interpreter's performance in subsequent chapters. As Laster and Taylor aptly put it:

> Many of the deficiencies blamed on individual interpreters, now and in the past, are the result of systemic problems, such as the lack of uniform education and testing to promote high levels of technical competence, and the failure to develop proper mechanisms for service delivery. Underlying these, of course, are inadequacies in the resources for legal interpreting services and levels of pay for interpreters (1994: 14).

The Australian "community interpreter"[5] was born out of necessity during postwar immigration in the 1950s (Martin, 1978, Ozolins, 1991). With the intake of numerous immigrants from non-English speaking countries, Australia found itself linguistically unprepared, unable to communicate with many of its new residents. The early Assimilationist policies did not provide for any long-term solutions, misguided by the belief that this was a temporary problem which would disappear as soon as migrants became assimilated and learned English.

> There has been a strong tendency on the part of authority to dismiss the need for interpreters on the basis that migrants will eventually learn English anyway, or if they do not do so it is their own fault (Jakubowicz & Buckley, 1975: 17).

The first de facto interpreters were immigrants who spoke varying degrees of English and one or more other languages, or the children of immigrants who were learning the language at school.

> Some were well educated intellectuals, fluent in European languages, but the vast majority of interpreters were whoever happened to be on hand who spoke a relevant language, and spoke somewhat more English than the totally non-English speaking migrant… Domestic staff or clerical staff became interpreters de facto, occasionally being elevated to newly created interpreting positions (Ozolins, 1991: 16).

In the 1970s, after a number of surveys were conducted, it was recognised that despite the efforts through English learning programs to equip migrants with the language, there were still many who suffered communication problems (Australian Department of Immigration, 1973). Reality proved that the "migrant language problem" was more permanent than previously believed, and after sad incidents of misinterpretations by ad hoc "interpreters", particularly in the mental health area, efforts were made to rectify the problem. A number of reports were officially commissioned by the Government to ascertain interpreting needs in the community (Martin, 1978), which assisted in the establishment of the different interpreting services throughout Australia, some funded by the Commonwealth and others by the states. Among these were: the Department of Immigration's Emergency Telephone Interpreter Service (ETIS), which later became the Telephone Interpreter Service, and recently the Translating and Interpreting Service (TIS); Migrant Services of the Department of Social Security; the State Health Care Interpreter Service in public hospitals; and the Ethnic Affairs Commissions in New South Wales, Victoria and Western Australia, some of which are still in operation today under different names. The NSW Ethnic Affairs Commission recently changed its name to the Community Relations Commission for a Multicultural NSW, and the Victorian Ethnic Affairs Commission was privatised and renamed as the Victorian Interpreting and Translation Services.

2.2   Review of government reports on interpreting and translation services in Australia

The first government interpreter service in Australia was the Chief Government Interpreter and Translator who was appointed in 1954 as a public servant under the NSW Attorney General's Department. The interpreters working for this service performed the bulk of their work in the courts, yet no training on court procedure, legal terminology or the role of the interpreter was provided for them. Qualifications for acceptance as an interpreter on this panel were nowhere specified, and complaints of poor quality interpreting and unethical behaviour were common (Jakubowicz & Buckley, 1975: 18–19).

In the early 1960s, the Commonwealth Bank and the Bank of NSW established their "Migrant Information Centres" to provide general as well as banking advice to

migrants in their own language. They employed full time in-house interpreters, with other banks following their lead and offering similar services. Their services extended well beyond their original aim of providing goodwill towards the bank to providing interpreting and translation services to hospitals, schools, social security offices and other government departments (Jakubowicz & Buckley, 1975: 20).

Between 1971 and 1972, the then Department of Immigration conducted the first Australia wide survey of Interpreting and Translation services, the results of which were published in 1973 as the Report on the Survey of Interpreting and Translating Needs in the Community (Australian Department of Immigration, 1973). A cross section of organisations and individuals who had dealings with migrants were surveyed about issues relating to settlement, welfare and integration of migrants. The survey found that not only were interpreting and translation services in Australia insufficient, the quality of interpreters and translators was deficient due to a lack of training. In its introduction the Report states that:

> … it is hoped that the findings of this survey will stimulate a wider recognition in the community generally of a need not only for more interpreters but also for interpreters who are better trained and qualified for the many specialised tasks required of them in Australian society today (Australian Department of Immigration, 1973: 2).

The survey found deficiencies in interpreter services in the courts and the police. Over half of the solicitors and barristers surveyed indicated that many of their non-English speaking clients were accompanied by a friend or relative who could assist with the interpreting, or alternatively office staff or bilingual professionals were asked to assist free of charge. When those measures failed, "paid help" was sought from outside "interpreters" who were in fact local "shopkeepers, office workers or housewives" (Australian Department of Immigration, 1973: 73–74). The Police reported that 50 to 80% of their non-English speaking clients provided someone to "interpret" for them. Three quarters of police reported arranging the "interpreter" themselves, sometimes from internal staff and sometimes from outside, 56% of whom were paid. Although these people were called "interpreters", they were, just as in the case of lawyers, "shopkeepers, semi-skilled or unskilled workers or professional persons, office workers, housewives or welfare workers, including clergy" (Australian Department of Immigration, 1973: 73–78). Although monolingual service providers were unable to assess the quality of the interpretation, in terms of accuracy, most "…emphasised that voluntary and untrained interpreters often had serious shortcomings in meeting their requirements" (Australian Department of Immigration, 1973: 105). The most important outcome of this Report was the establishment of a 24 hour, 7 day a week Interpreting facility run by the Department of Immigration: the Emergency Telephone Interpreter Service (ETIS). ETIS

began its operations in Sydney and Melbourne in 1973, with limited hours in Perth, later extending to Brisbane and Adelaide, and employed its interpreters with very little training or qualifications. In Sydney, interpreters wanting to work for the service were asked to give a self-appraisal of the language or languages they claimed to be competent in and to translate a list of words into the language other than English, which would then be checked by English speakers with no knowledge of the languages concerned. In Melbourne applicants received more stringent testing and a one week full-time training course with follow up lectures. Complaints about the incompetence of interpreters were common for this service also (Jakubowicz & Buckley, 1975: 20–21).

In November 1973, the Federal and State Ministers for Immigration sought assistance from the Committee on Overseas Professional Qualifications (COPQ) to establish standards to professionalise interpreting and translation and improve the level of services available to the community. The Committee convened a meeting on 25 February 1974 and established a working group consisting of interpreters and translators, employers, educational institutions, and migrant and community group representatives to assess the situation and write recommendations to the government. The result was the Report entitled The Language Barrier published in 1977 (COPQ, 1977). The Working Party began its work based on the premise that the information available to date indicated:

> … a strongly felt community need for improved interpreting and translation services, particularly in situations relating to employment, housing, health and welfare services, and court and legal matters. The Working Party has noted that at present, with important but rare exceptions, these needs are, in many cases, not being met at all, or are being met by using poorly qualified and poorly paid personnel — to the detriment of all concerned (COPQ, 1977: 3).

Throughout the Report, the Working Party repeatedly reinforced the need for interpreters and translators to be qualified. This was an obvious attempt to educate the Australian population and raise the community's awareness about the dangers of using children and domestic staff as ad hoc interpreters, explaining that "even truly bilingual speakers are not necessarily satisfactory interpreters" (COPQ, 1977: 8–9). Employers were urged to consider the "social, technical and financial impact of inaccurate interpreting and translation" before deciding not to employ a qualified interpreter (COPQ, 1977: 14), as:

> Experience to date appears to suggest that employers tend to underrate the level of interpreters required, just as they have, over the past twenty-five years, underrated the need for interpreters of any kind. In both cases this may lead to the violation of the human and civil rights of those involved (COPQ, 1977: 14).

The three main recommendations of the Report were:

1. The need for interpreter and translator training at tertiary level: "The Working Party emphasises that the linguistic and professional skills involved in interpreting and translating normally require education and training at the tertiary level." (COPQ, 1977: 3);

2. The need for Government and all other employers to recognise the skills required by interpreters and translators, and to remunerate them accordingly:

> The Working Party emphasises that its findings and recommendations depend for their effectiveness on the adoption by the Australian and State governments of an occupational classification that gives adequate recognition to the qualifications and contribution of the interpreters and translators at the various levels of skill. There is also an obligation on others using the services of interpreters and translators to recognise that the quality of services provided by tertiary trained personnel calls for commensurate remuneration (COPQ, 1977: 4);

and

3. The need to establish a National Council as an overall "standard setter", to issue certificates of competence to interpreters who have completed approved training courses or demonstrated their competence to a panel of examiners, to act as a regulatory body, and to coordinate the development of training courses in consultation with educational authorities (COPQ, 1977: 3).

The Working Party, based on the recommendation of the Bureau of International Language Coordination (BILC), proposed a five-tier classification of interpreter and translator levels. The interpreter levels were: (1) language aid, (2) advanced language aid, (3) professional level, (4) advanced level reserved for delicate cases such as "higher courts" and (5) for international conferences. The Report proposed that level 3 interpreters were to have "a considerable degree of linguistic ability and general education" and be capable of full-time employment as interpreters, whereas levels four and five would represent "more advanced skills again as those possessed by conference interpreters working in international settings" (COPQ, 1977: 13). When adopting the five levels of interpreter accreditation NAATI departed slightly from COPQ's recommendations, considering level 3 to be the basic professional level which would be adequate for court work, and level four exclusively reserved for conference/simultaneous interpreting (Ozolins, 1998: 40).

The Report also recommended very demanding education requirements for each of the levels (COPQ, 1977: 19–21).

The Working Party stressed that unless proper employment opportunities and appropriate remuneration for graduates were put into place, their recommendations for highly educated interpreters would come to naught (COPQ, 1977: 32).

They stressed that:

> Inadequately paid employment will not attract competent people to the profession. Offering pay at a level that takes no account of interpreting skills as distinct from linguistic ability results in unskilled people being employed to do skilled work, and serious adverse consequences occur for lives of people whose affairs are affected by the inevitable misunderstandings (COPQ, 1977: 14).

The major outcome of the COPQ Report was the establishment of the National Accreditation Authority for Translators and Interpreters (NAATI) in 1977, as the National Council recommended by the Report, and of a number of Interpreting and Translating diploma and degree courses throughout the country. However, the stringent education requirements were never implemented.

In 1975, the Jakubowicz and Buckley Report entitled "Migrants and the Legal System" was published (Jakubowicz & Buckley, 1975). The research found that the main obstacle encountered by migrants in the legal system was their inability to communicate as a result of no English competence and of inappropriate interpreter provision. The Report identified three formalised interpreter services in New South Wales (NSW), Victoria (Vic) and Western Australia (WA): the Chief Government Interpreter's Panel in NSW, the Migrant Information Services in a number of banks in the three states, and the Emergency Interpreter Service also in the three states with a later addition in South Australia. The Report stressed however, that these services fell short of providing adequate services.

The Report concludes that "a major review is needed of the presently existing interpreting services, an extension of facilities into other areas and the establishment of proper training programs for interpreters" (Jakubowicz & Buckley, 1975: 22). Like the Report, this one also tried to discredit the prevailing belief that interpreting is a task easily carried out by any bilingual, and reinforced the belief that:

> competent interpreting is not merely an ability to speak a language, however fluently, but is an acquired skill with specialisation needed in appropriate areas together with a strict code of professional ethics. This is of vital importance in legal matters, where precision of interpretation, understanding of legal procedures and unbiased presentation are required (Jakubowicz & Buckley, 1975: 22).

On 27 April 1978, the Report of the Review of Post-Arrival Programs and Services for Migrants (The Galbally Report), was presented to the Commonwealth Government. One of the guiding principles of the Report was that "all members of our society must have equal opportunity to realise their full potential and must have equal access to programs and services" (Australian Institute of Multicultural Affairs (AIMA), 1982: 7). In May 1978 the Government accepted the recommendations of the Report with its associated financial outlays, with an implementation period of three years. On September 15th 1981, the Minister for Immigration and Ethnic

Affairs requested the Australian Institute of Multicultural Affairs to conduct an evaluation of the effectiveness and implementation of the Report, which was published in 1982 as The Evaluation of Post-Arrival Programs and Services. The evaluation found that although there was "an impressive record of implementation" (AIMA, 1982: 8) — for example the Telephone Interpreter Service (TIS — formerly ETIS) had extended to Canberra, Hobart, Darwin, and several regional centres — it recognised that interpreting and translation needs were still far from being satisfied (AIMA, 1982: 140). The Evaluation concluded that the lack of qualified interpreters and translators was hindering the development of the profession. It noted that there was a shortage of training courses and that the rate of NAATI approval of existing courses was very slow. The Evaluation therefore recommended that:

> The National Accreditation Authority for Translators and Interpreters or its successor should proceed, as a high priority, to consult with the Commonwealth Tertiary Education Commission and tertiary education institutions about the establishment of such courses, or the introduction of interpreting and translation units within existing language courses, and report progress to the government within 12 months (AIMA, 1982: 12).

The Report also noted that: "NAATI testing has faced considerable problems and the organisation has come under significant criticism for its performance in this area" (AIMA, 1982: 153), hence it recommended that "tertiary institutions share the task of examining candidates for levels I, II, III and IV in accordance with NAATI guidelines to expedite the process and produce more qualified interpreters and translators" (AIMA, 1982: 133, 153).

The need for specialised legal interpreters was also emphasised by the Report (AIMA, 1982: 160).

On 25 May 1982 the Standing Committee on Education and the Arts was charged with a Senate Enquiry into the development and implementation of an Australian language policy. The Report of this Enquiry was later published in 1984 as the Report on a National Language Policy (Senate Standing Committee on Education and the Arts, (SSCEA), 1984). As with the previous Reports, issues of inadequate services, lack of training and poor quality predominate in the discussions on Interpreting and Translation (I&T). Ten years after the first survey was conducted, the comments on I&T services and recommendations for improvement remained almost unchanged. There was still the need to emphasise that those members of the Australian community with little or no knowledge of English "may find that the language barrier prevents them from enjoying the same access to services as those who speak English" (SSCEA,1984: 184). There were still claims that most interpreting and translation in Australia is conducted ad hoc by casual part-time professionals or by friends and relatives who volunteer for the job.

In 1983 TIS continued to be the major provider of interpreters and translators in the country, with State Governments providing some services with federal funding. No improvement in the recruitment procedures of such services was reported. On the contrary, submissions were received by the Standing Committee expressing "considerable reservations about the effectiveness of many of the translation and interpreting services in Australia", with NAATI's response being that "these services are rarely adequate in quantity and, rather more alarmingly, are frequently seriously deficient in the quality of the work done" (SSCEA, 1984: 187).

The Committee stated that:

> While the evidence indicates that substantial progress has been made towards improving specialist translation and interpreting services, there were suggestions of inadequate services in some areas. The legal field is of particular concern for two reasons: The first is that there is no objective assessment of the professional standards of court interpreters. Secondly, at present a defendant does not have the right to an interpreter except with the leave of the court (SSCEA, 1984: 188).

The Committee considered that specialist training in fields such as law, health and welfare was vital, recommending that such specialist training should be aimed at an adequate number of interpreters already holding NAATI level III (SSCEA, 1984: 189).

An innovative recommendation of this Report was that tertiary institutions "incorporate instruction in the use of interpreters" particularly in courses in law and medicine, and that in-service courses for training professionals in the use of interpreters also be developed by institutions who train interpreters in conjunction with practising interpreters (SSCEA, 1984: 190).

The Standing Committee went one step further than the Evaluation (1982) in recommending that all government employed interpreters and translators should be accredited at NAATI level III or higher, whereas the Evaluation had recommended Level II as the basic qualification (SSCEA, 1984: 189). It did not agree with the Evaluation's proposal that tertiary institutions share the testing of interpreters with NAATI, as it expressed reservations that the standards would fall, their justification being that most tertiary institutions were principally involved in language teaching rather than teaching of interpreting (SSCEA, 1984: 194).

The Report noted that in 1983 NAATI became an independent authority, with the status of a company, being jointly subsidised by the Commonwealth, States and Northern Territory governments, and continuing the same work as the previous organisation. The Committee endorsed the work of NAATI and considered as the only acceptable policy the strict adherence to the standards prescribed by them (SSCEA, 1984: 193).

The Galbally Report (1978) on Post Arrival Programs and Services for Mi-

grants triggered the Commonwealth Government's Access and Equity strategy, which was developed as part of the social justice rubric of the national agenda for multicultural Australia. As part of this strategy, in 1989, the then Federal Attorney-General, the Hon. Lionel Bowen MP, requested an examination of the existing and proposed interpreting services in the Australian legal system to be carried out by the Commonwealth Attorney-General's Department. The results of the project were published in 1991 as the Access to Interpreters in the Australian Legal System Report. Many of the Report's recommendations were influenced by the papers and discussions presented at the "Interpreting and the Law" conference organised by the Office of Multicultural Affairs in conjunction with NAATI and Human Rights Australia, held on 28 July 1988. The Hon. Lionel Bowen gave the opening address and in it stated that "this conference will add a lot of valuable policy suggestions and it will help the development of a National Agenda" (Bowen, in Martin, 1991: 6).

The Access to Interpreters in the Australian Legal System Report presented a state-by-state description of the interpreter services available at the time, with NSW, Victoria and South Australia providing the most comprehensive services. All states and territories had access to the Telephone Interpreter Service, with Tasmania, Western Australia and the ACT having no other interpreter service. Queensland and the Northern Territory had very limited services apart from TIS. Most interpreter services gave preference to NAATI level III interpreters, with Victoria being the only state to provide an orientation course in legal interpreting accompanied by financial incentives. However, even in the larger states with more comprehensive interpreter services "the delivery of language services to the legal system has serious gaps in service delivery and coordination. There is a lack of awareness by potential service users on how to access interpreter services and where these services are located" (Commonwealth Attorney General's Department (CAGD), 1991: 36).

The only two states that had enacted legislation to give non-English speakers the right to an interpreter in court in certain circumstances are Victoria and South Australia. In all other jurisdictions, the Common Law principles apply which give the presiding judicial officer the discretion to decide whether a person needs the services of an interpreter or not (p. 39). The Report found that in many cases where Common Law discretion is exercised, many judges are reluctant to allow the use of an interpreter unless the person asking for one cannot speak a single word of English (p. 52). The Report recommended that all states and territories should be encouraged by the Commonwealth to enact uniform legislation providing the right to an interpreter to those people who need it (p. 66).

> In the exercise of Common Law discretion, considerable weight has been given to the need to ensure that a witness with some English does not obtain an unfair advantage, and to difficulties in assessing the veracity of evidence given where an

> interpreter is interposed between the cross-examiner and the witness. Less attention has been given to the real risk that, if a witness has some, albeit minimal, knowledge of English, he or she may not be able to adequately understand the questions or convey the meanings he or she wishes to express (CAGD, 1991: 36).

The Report emphasised that providing incompetent interpreters will not ensure a right to access and equity:

> …it was recommended that legislation be enacted to ensure that people with insufficient English language skills should be entitled to an interpreter in the criminal investigation process and in court. If such legislation is not accompanied by measures which will ensure, as far as possible, the use of competent interpreters, then it would merely create the illusion of a right, without providing the means necessary to effectively exercise it (CAGD, 1991: 81).

The Report identified the same problems as previous Reports, mainly the inadequate training for legal interpreters as well as little incentive for interpreters to become better qualified. It also highlighted the inadequacies of the NAATI examination at the professional level in its inability to measure the competencies required of a legal interpreter.

> According to NAATI, interpreters working in the legal field should have further training, beyond NAATI level III accreditation, to enable them to work effectively in this specialised area. It considers such training programs could be in-service, of short duration and of an intensive nature (CAGD, 1991: 84).

The Report stated that there have been criticisms against using NAATI level III as the minimum qualification for legal interpreters as it does not adequately assess a legal interpreter's competence. Level III accreditation provides a generalist qualification rather than a specialist one. Similarly, there have been criticisms against graduates of tertiary courses, claiming that they do not ensure uniform true professional standards. The Report stated that:

> Although there may be some basis for these criticisms, it does not follow that the adoption of NAATI level III accreditation as the appropriate linguistic standard for practising as a legal interpreter should be abandoned. There will always be people who perform better in tests than in practical situations and vice versa… The need for uniformity of standards between tertiary courses is being addressed by NAATI, in conjunction with representatives of interpreting/translating courses. However, provided appropriate standards are set, entry to the profession through a NAATI-accredited course is preferable to other means (CAGD, 1991: 86–7).

The Report identified five main reasons for the unavailability of competent legal interpreters: inadequate remuneration and lack of a career path, interpreters' unwillingness to work in the legal system due to extreme pressures and demanding

nature of the job, the law's failure to enforce minimum qualifications for those working as legal interpreters, the shortage of appropriate courses and the cost of NAATI tests (CAGD, 1991: 95).

> "The availability of training is crucial to the future supply of competent and adequately qualified interpreters" (CAGD, 1991: 98).

The introduction of a registration system was presented as a suggestion to ensuring that only qualified interpreters be allowed to work.

In October 1994, the NSW Women's Legal Resource Centre released the report entitled "Quarter Way to Equal: A Report on Barriers to Access to Legal Services for Migrant Women", with recommendations for service providers to help improve Non English Speaking (NES) women's access to the law. On 8 March 1996, the Quarter Way to Equal Implementation Report was released (Coory, 1996). The Implementation Committee found that most of the recommendations had not yet been implemented and hence reinforced the original recommendations and made some further ones. The three major recommendations that are relevant to this work were: One, that "the Charter of Victim's rights be amended to include the right to an interpreter" (Coory, 1996: 7); two, that a legal interpreter specialist training course be implemented for a selected group of Ethnic Affairs Commission interpreters; and three, that a course on the effective use of interpreters and on cross cultural issues be mandatory for lawyers, police and all other government organisations who deal with non-English speaking people (Coory, 1996: 9).

2.3   The Australian legal interpreter today

> It is surprising that in the multicultural Australia of today there is so little material available on the evidential and other issues relating to the use of interpreters in the law… This lack of material is no doubt a reflection of the wider apparent lack of appreciation within the justice system and the legal profession of the importance of language and the nature and proper use of professional interpretation (Roberts-Smith, QC, 1990: 36).

Despite the many recommendations put forward by the various Reports, the situation today remains only partially better than it was thirty years ago. The main avenue by which most enter the interpreting profession in Australia today is by sitting a one-hour generalist NAATI examination, with no interpreting training required. The original objective in establishing NAATI was for it to be a provisional body that would set up a basic infrastructure to allow for a self-regulating professional entity to assume the responsibility for accreditation. It was also anticipated

that ultimately all aspiring interpreters would enter the profession via the completion of degree courses (NAATI, 1978). Unfortunately neither of these two objectives were ever met. Even though the Australian Institute for Interpreters and Translators (AUSIT) was founded in 1987 as the national professional association, NAATI continued to exist unchanged and unchallenged. "Although NAATI has supported the establishment of a professional association, NAATI's articles of association do not contemplate any devolution of its regulatory role" (Laster & Taylor, 1994: 35).

2.3.1 Legal interpreting training

The 1980s was the decade for the blossoming of professional interpreting and translation courses approved by NAATI at level III. Most states had a tertiary institution that offered a Bachelor's degree in the area, leading up to automatic NAATI accreditation in a variety of languages. Unfortunately NAATI continued to test in the languages for which courses were available, acting as competition for the tertiary institutions. As agreed by many "probably the most serious flaw in the NAATI scheme is the failure to realise the NAATI blueprint for formal interpreter education" (Laster & Taylor, 1994: 35). Gradually degree courses began to disappear. Today, the University of Western Sydney is the only institution in Australia which has uninterruptedly offered since 1984 NAATI approved degrees at level III, both at undergraduate and post graduate levels, in nine languages, with two full subjects dedicated to legal interpreting. Macquarie University has begun to offer NAATI approved post graduate Interpreting and Translation courses in 2004, and the colleges of TAFE (Technical, And Further Education) have begun offering one-year-diploma courses in Interpreting, also approved by NAATI at the first professional level (level III). Such a move does not support the push for a degree as a minimum qualification for professional interpreters, as recommended by a number of reports, as the entry requirement for TAFE courses does not exclusively require possession of a degree. Candidates with completion of secondary studies and NAATI Paraprofessional accreditation can be admitted to the course.

NAATI does not conduct any special examination for legal interpreters. The 5-tier system was changed to the levels of: "Paraprofessional Interpreter" (old level II), "Interpreter" (old level III), "Conference Interpreter" (old level IV), "Senior Conference Interpreter" (old level V) (NAATI, 1992). The change in the nomenclature reflects the misconception that only conference interpreting deserves a specialised level of accreditation. This aspect was heavily criticised by Dueñas Gonzalez et al. (1991), as they compared the federal court interpreting specialist certification examination run in the United States with NAATI's generalist interpreter test. Currently, the majority of interpreters working in the courts are accred-

ited at the "Interpreter" (old level III) level. The examination for this level comprises two simulated dialogues on any topic, which could include settings such as a court hearing, a medical consultation or welfare interview; two 300–330 word passages for consecutive interpreting into and from English on a general topic, which are read with no pauses and must be rendered in the other language with the aid of notes taken by the candidate; and four short questions on the ethics of the profession and on socio-cultural issues related to each dialogue. Dueñas Gonzalez et al. (1991) also state adamantly that the NAATI examination, at any level, is not adequate to test court interpreters. They opine that:

> … the test should not be used to examine court interpreters for three reasons: (1) it does not reflect the rigorous demands of the three modes used in judicial interpreting: simultaneous (unseen or spontaneous), legal consecutive and sight translation; (2) it does not test for mastery of all the linguistic registers encountered in the legal context, … and (3) it would not be a valid instrument to determine ability in judicial interpretation because its format, content, and assessment methods are not sufficiently refined to measure the unique elements of court interpreting (Dueñas Gonzalez et al., 1991: 91).

In 1998 NAATI published the Guidelines for professional development courses in legal interpreting, stipulating 60 hours of specialist instruction for interpreters already holding the "Interpreter" (formerly level III) accreditation. As the completion of such a course is not a requirement for working as a court interpreter, and it would offer no additional accreditation or remuneration, it is doubtful whether it will ever become a viable option. Recently, however, the Attorney General's Department of New South Wales has commissioned the University of Western Sydney to provide thirty-five hours of specialist legal interpreting training to all interpreters employed by the Community Relations Commission, who primarily work in the courts. This was done in response to the Quarter Way to Equal Report quoted above. Although this is a step in the right direction, and the course has been very useful for practising interpreters, thirty-five hours of non-language specific training is not sufficient to achieve the desired results. As Benmaman comments with regards to the United States' situation, such short courses are "valuable because of their existence" but they are "only stop-gap measures…" and "more permanent and comprehensive solutions are needed to address the education needs of court interpreters" (Benmaman, 1999: 112).

2.3.2 Research

Interestingly, none of the Reports ever written on interpreter services and quality has ever mentioned the need for research to inform the training courses' curricula and NAATI examinations. The lack of a research tradition in the field and of

mandatory pre-service training are the most serious deficiencies in the interpreting profession in Australia. Bearing this in mind, it is important to reiterate once again that the vast majority of court interpreters are not trained in this specialist field. Hence, the few empirical studies that have been conducted (Berk-Seligson, 1990, Lang, 1976, 1978, Hale, 1996, 1997c, 2001. 2002) which describe the performance of court interpreters are largely based on the performance of untrained interpreters. These studies are indeed illuminating in describing the current state of affairs, but they cannot be used as evidence to claim that ideas of accuracy are unrealistic and that interpreting cannot be expected to be any more than an imperfect practice. As Berk-Seligson comments: "No amount of oath-swearing can guarantee high quality interpreting from an interpreter who does not have the necessary competency" (Berk-Seligson, 1990: 204). These necessary skills need to be acquired through adequate training which is based on the results of empirical research.

2.4   Conclusion: A matter of access and equity

> The concept of access implies that all who are entitled to a public service should be able to have access to it on a comparably equitable basis to all others so entitled… while services may be universally applicable they may not be equally accessible if they are uniformly delivered, because the clientele is not uniform… Equity implies that all who are entitled to government provision should be equally likely to receive it if eligible. Thus potential clients unable to access services are not being treated equitably, for example if they are only served in a language which they do not understand and no provision is made to translate or interpret for them… (Jupp & McRobbie, 1992: 2).

The quotation from Jupp and McRobbie encapsulates the essence of access and equity in the public sector for those who do not speak the dominant language of the country in which they live, which in the case of Australia is English. People who cannot speak English cannot access the same services as the rest of the community unless they are provided with the services of an interpreter. Providing interpreting services should therefore place such people in an equal position to the rest of the community. Interpreting in the Australian community has revolved around this principle, especially when dealing with migrant populations. As Plimer and Casquilho observe:

> Language services are now seen, quite properly, as an access and equity issue… all departments and agencies must meet access and equity requirements, namely — "Language Services: implement measures to overcome communication barriers for clients and potential clients who do not speak, understand, read or write English well" (Plimer & Casquilho, 1993: 3).

Reality demonstrates, however, that the goal of achieving access and equity for the linguistically disadvantaged in Australia has not been fully met. There are a number of issues surrounding this fact. The most elementary aspect is that of limited provision of interpreter services. As it has already been mentioned, interpreter provision has been and continues to be deficient for a number of reasons. Candlin and Plimer comment that:

> Part of the access and equity issue surrounding the availability and provision of interpreters concerns the informal and ad hoc assessment by professionals — who are not linguists — of the supposed English language competence of the client. It appears that this competence is often over-estimated, and in consequence access to an interpreter is made difficult or denied (Candlin & Plimer, in press: 22).

Therefore, one reason for the insufficient use of interpreter services is the service providers' overestimation of the client's ability to speak English.

Another major reason has been the lack of resources or the desire to save money by encouraging non-English speaking clients to use their family and friends as interpreters. This fact is illuminating in itself in that it reflects the lack of understanding about the complex and specialised nature of interpreting, and the devaluation of the profession. As Moerman states about the state of court interpreting in the United Kingdom, an observation applicable also to Australia: "At present, as far as the criminal justice system is concerned, an interpreter is a luggage handler, an engineer, a nurse, an immigration officer… anything as long as `they've been sent fast and cheap'" (Moerman, 1993: 34).

A further legitimate reason for the insufficient level of interpreter services is the unavailability of trained and/or accredited interpreters. This leads us to the question of quality of services. Providing interpreter services to those who do not speak English cannot ensure access and equity unless those interpreters are competent. Such a practice can only provide the "illusion of a right" (CAGD, 1991: 81). Hence the linguistic aspect of interpreting: "competence", and the professional aspect of interpreting: "ethics", impinge on the social aspect: "access and equity". Much has been reported anecdotally about unethical and incompetent interpreters which have led many to suspect the integrity of all interpreters and even their usefulness. Plimer and Candlin (1996) quote a Spanish-speaking woman from Cabramatta, NSW, who, as a result of an interpreter's unethical behaviour, wishes never to use interpreters again. Laster and Taylor admit that "horror stories about the inadequacies of legal interpreters abound" (1994: 14). Such experiences are to be expected in a "profession" which does not prescribe minimum training requirements, has no registration system and provides very little incentive for improvement. However, many conscientious interpreters would welcome adequate training opportunities if accompanied by commensurate remuneration. As one practising interpreter expressed:

> From an interpreter's point of view, there should be more training available… As interpreters we are asked to interpret in a variety of situations ranging from medical appointments, including psychiatric, to legal matters including court, police, child protection, etc. Specialisation in certain areas could be encouraged through training and benefits (Plimer & Candlin, 1996: 76).

Therefore, the quest for access and equity should begin by ensuring that suitable training based on results of empirical research is available, that practising interpreters be required to undertake such training and that performance and ethical behaviour be monitored through a registration system. Only then, will non-English speakers "…by the use of an interpreter, be placed in the position in which he or she would be if those defects [their lack of English] did not exist" (Gradidge v Grace Bros. P/L (1988) 93 FLR 414 at 425).

CHAPTER 3

Courtroom questioning and the interpreter[*]

3.1 Introduction

3.1.1 The discourse of the adversarial system

Australia is a Common Law country. Most of its state courts operate under the adversarial system. The cases that form the data for this study were all Local Court cases which are adversarial. As the name implies, the adversarial system comprises two opposing parties, where each fights for their own case, presenting a version of the facts that will be challenged by the other party. "The evidence is presented by adversaries, each one offering evidence favourable to himself and each demanding a fair chance to challenge the reliability of the other's proof" (Lilly, 1978: 3). The presentation of each story is for the benefit of the non speaking participants, the jury, in the case of a trial, or the bench in the case of a hearing, who much like spectators, sit back, listen and form judgement (Drew, 1985, Danet & Bogoch, 1980, Bulow-Moller, 1992). They are the recipients of the information who must either be persuaded into, or dissuaded from, believing a specific story. It is the lawyer's responsibility to ensure that his/her version of facts is the one accepted by the jury or the bench, regardless of its veracity. As Maley and Fahey state: "Truth or reality becomes the story which is accepted by the jury. Obviously, it may or may not correspond to the events in the extra-court context" (1991: 5). As evidence must be presented orally, language becomes all-important in the adversarial courtroom and a tool that successful lawyers need to learn to manipulate adequately as an instrument of power and control. Du Cann goes as far as to say that in the courtroom "…the advocate has only one weapon: words." (1986: 112).

The adversarial courtroom relies primarily on oral evidence, which is presented in the notional form of questions and answers. It must be pointed out at the outset that questions are not always in the interrogative mood and answers are not always in the declarative mood. The pragmatic function of lawyers' questions

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differs according to the intention behind them. Often lawyers' questions act as threats, accusations, insinuations, commands and very rarely as genuine questions (Dunstan, 1980, Walker, 1987). However, for ease of expression, I will refer to all lawyers' turns as questions and to all witnesses' turns as answers. Courtroom questions have a very distinct purpose, which differs from questions asked in everyday conversation. In the courtroom, their main purpose is not to elicit new information, but to elicit information that can help create a convincing case in examination-in-chief[6] and that can discredit the other side's case in cross-examination (Drew, 1992). The question and answer exchange does not represent a typical conversation where each participant is free to ask questions and to respond in any way they like. In the courtroom, the rules of evidence stipulate who can speak, at what time and in what manner. Harris states that "…questions are the accepted means of determining what is talked about in particular cases, the form the discourse takes, and ultimately the structure of the information transfer in a court situation" (1984: 6). The division of roles clearly creates an unequal relationship between the questioner (counsel) and the answerer (witness). Those with the institutional authority to ask the questions are also in a position to set the agenda and control the flow of information, thus becoming the powerful participants in the exchange. On the other hand, the witnesses, who are only permitted to answer relevantly in restricted ways, become the powerless participants. The lay witness is not permitted to make comments of personal opinion, ask questions or refuse to answer. In controlling the information that is presented by the witness, counsel is able to construct a "story" (Bennett & Feldman, 1981) that will benefit his/her case in a way that is relevant to the court and respectful of the rules of evidence. Lawyers themselves often compare their work with storytelling and the stage. James and Blumenfeld state that "In the courtroom, the creation of a live event through storytelling is the key to success." (1998: 17), and Matheo and DeCaro argue that "…courtroom lawyering and acting have a lot in common. The merits of your case often are less important than whether or not the jurors like you, believe your client, and can follow your story" (1999: 54). What these quotes reveal is that there is much more to achieving success in the courtroom than the content of the information presented. Walker states:

> Attorneys are aware of the essential imbalance of power that operates in any … adversary legal interview, and … they employ this power in conscious ways in an effort to influence the outcome of their cases by controlling a witness's line of testimony (1987: 57).

Such control is exerted principally through the strategic use of questions (Stygall, 1994, Harris, 1984, Moekketsi, 1999).

3.1.2   The purpose of examination-in-chief and cross-examination

Examination-in-chief and cross-examination differ in purpose and in the language strategies used by counsel. The purpose of examination-in-chief is to present the interrogating side's version of the facts in a favourable and convincing way. This is usually achieved by asking questions that are non-confrontational and that allow the witness more freedom to speak. Leading questions, which provide more information than they ask, are not allowed in examination-in-chief except when asking non-controversial, uncontested information. The reason for this is that the evidence needs to originate from the witness. The purpose of cross-examination, on the other hand, is to discredit and challenge the evidence of the witness that is being cross-examined, thus weakening the case for the other side, and to attempt to convince the decision maker/s that the cross-examiner's version of facts is the one to be believed (Du Cann, 1986; Wells, 1991). Miller, Ryder and Vigil state that "cross-examination is not about a witness testifying. It is about the lawyer eliciting the desired testimony from the witness" (2001: 109). In an article written as advice to lawyers, cross-examination is portrayed as being the cross-examiner's opportunity to be the witness and tell his/her story (McElhaney, 1997). The types of questions used in cross-examination, therefore, are more accusatory, more aggressive and more coercive, constraining the witness's answers to a limited choice. Leading questions are an important part of cross-examination, as they propose an opposing version of the events to the one presented in evidence-in-chief and present it to the witness as a challenge. Lilly explains that "…the use of leading questions aids the cross examiner in controlling an adverse witness. His inquiries can be narrow and specific, designed to induce the witness to give the desired answer" (Lilly, 1978: 76).

Open questions, which have the potential of eliciting free narratives, are not common in cross-examination, although they are not disallowed by the rules of evidence. Although open questions are also limited in examination-in-chief, they are more likely to occur than in cross-examination. Free narrative from witnesses, elicited by the use of open-ended questions, is much more common in examination-in-chief, and is viewed favourably by juries when assessing the character of witnesses (O'Barr, 1982).

3.1.3   Question form and type

A considerable amount of literature has been written on courtroom questioning, from the very descriptive and prescriptive literature written by lawyers in trial manuals and practitioners' journals, based on anecdotal evidence and experience (Bailey & Rothblatt, 1971, Philbrick, 1949, Wells, 1988, Miller, Ryder &Vigil, 2001,

McElhaney, 1997, James & Blumenfeld, 1998), to the very specific literature describing the results of data based on linguistic research (Cady, 1924, Marquis et al., 1972, Loftus, 1979, Danet & Bogoch, 1980, Harris, 1984, Woodbury, 1984, Walker, 1987, Maley & Fahey, 1991, Matoesian, 1993).

Among other approaches to studying courtroom questioning is the analysis of question type. This entails the classification of every question or lawyer's turn into a characteristic type. The main reason behind analysing the types of questions used in the courtroom has been to ascertain whether the type of question makes a contribution to the overall presentation of evidence, and if it does, how it constrains the answers. According to Loftus: "The form in which a question is put to a witness exerts a strong influence on the quality of the answer" (1979: 90–91). A number of researchers have classified questions into distinct categories. Loftus (1979) and Maley & Fahey (1991), speak of two broad categories of questions; Loftus proposes free report, narrative form questions as one category and controlled narrative questions as the other; and Maley and Fahey divide them into Confirmation Seeking Questions (CSQ) and Information Seeking Questions (ISQ). Danet & Bogoch (1980) and Woodbury (1984) categorise them into smaller, more specific groups, although Woodbury initially speaks of two broad groups, Wh- versus yes/no questions (See Hale, 2001 for a full discussion of these). These studies have shown a number of common results: that different types of questions predominate in each type of examination, with the freer more open questions appearing more often in examination-in-chief (Wh-questions, modal interrogative) and the more coercive, narrow, closed questions (declaratives, declaratives with tags, polar interrogatives) in cross-examination; that different question types tend to carry particular pragmatic functions, with different functions assigned to each type of tag; that declarative questions, with or without tags are the most coercive types, followed by polar interrogative, and forced answer questions, as they limit the answer's choices, while Wh- questions and modal interrogatives are the least coercive, as they invite open narrative responses.

This approach to classifying question types and relating them to the level of coerciveness has been criticised as being too simplistic (Dunstan, 1980; Bulow-Moller, 1992). Dunstan believes questions cannot be analysed in isolation, but in conjunction with their respective answers and in the context in which they are uttered. His major objection is that Danet and Bogoch seem to anticipate the impact of questions on the responses without a thorough analysis of the answers (pp. 65–66). Bulow-Moller (1992) argues that syntactic form alone does not reflect level of coerciveness, that inferences drawn by juries and the bench from the whole line of questioning is of crucial importance, which relates to pragmatic coercion. Harris (1984) suggests that context is important in determining the function of the question. Although the criticisms are valid, the striking differences found between

the types of questions in cross and examination-in-chief cannot be ignored. It cannot be argued that certain types of questions will always elicit the expected types of answers, as I will show in Chapter 6 of this book. However, what can be convincingly argued is that lawyers deliberately employ certain types of questions to achieve their purposes and that as a general rule, they are successful. Du Cann states that lawyers should prepare their cross-examination in advance, including "…the form and substance of some of the questions" (1986: 112–113). It cannot be denied that a polar interrogative, for example, will put pressure on the answerer to simply answer yes or no, and that although at times the answerer may get away with providing a narrative answer to a polar interrogative if the lawyer loses control, most of the time witnesses will not be allowed to stray. Harris concludes that "what does seem clear is that highly conducive forms of questions are prevalent in a courtroom situation and that these are employed both to obtain information and to accuse" (Harris, 1984: 23). Danet's and Bogoch specify that they are only dealing with one theme in the quoted paper, that of analysing the attorneys' linguistic strategies, leaving the other theme, how these strategies are effective in controlling the witnesses' responses, to another discussion (p. 41).

3.1.4 Pragmatic function of questions

I will describe each question type in terms of three major characteristics: level of control, tone, and illocutionary point and force. Level of control refers to the way a question can constrain the respondent by limiting the choice of expected answers. For example, a question in the form of a polar interrogative limits the choice of answers to either a yes or a no, hence exerting a high level of control, whereas a Wh-question places little or no constraints on the type of answer it can elicit and consequently exerts little control. Tone refers to the level of politeness and the level of hostility or friendliness attached to questions. Although this category obviously includes suprasegmental features such as prosody and tone of voice, I will concentrate mainly on question form. Most researchers agree on the types of questions that can be regarded as aggressive and challenging. This is often, but not always, linked to the level of control exerted. Some question types will maintain the lawyer's control over the evidence even when they are friendly in tone. This is usually dependent on whether the question type is used in examination-in-chief or in cross-examination. In examination-in-chief, lawyers often maintain control by winning the cooperation of the witness. A friendly tone will then be prevalent in the interrogation. In cross-examination, counsel often maintain control by antagonising the witness to try to confuse him/her and manipulate the answers in a way that would discredit their evidence-in-chief. The tone of the interrogation in such a setting will be aggressive and confrontational.

The third characteristic, which I mention above but is not explicit in the studies quoted earlier, is the question of illocutionary point versus illocutionary force. I follow Searle's (1990) distinction between point and force. Some speech acts may carry the same illocutionary point (IP) but not the same force (IF). For example, requests and commands have the same IP, that of asking a person to do something, however, one is more forceful than the other. Similarly, two different question types may have the same IP, to obtain a particular answer, however, one may be more forceful than the other. This point is particularly interesting when the English questions are compared to their Spanish interpretations. The difference in the force or strength of the utterance will depend on a number of factors: the particular lexical item used, (for example "I suggest vs. I insist"), the tenor of the situation, the status or position of the speaker in relation to the hearer, and whether the speech act requires extra-linguistic institutional support for their performance (Searle, 1990: 350–354). These three factors all come into play in the courtroom, where subtleties of word choice can impact on the jury's perceptions of events (Loftus, 1979), the relationship between participants is unequal, and the institution of the law provides validity to the different speech acts in use.

3.1.5   Interpreting courtroom questions

There has been some research conducted on the impact of interpreters in courtroom questioning. Berk-Seligson states that "the court interpreter affects the verbal outcome of attorneys' and judges' questions…" and that interpreters "…interfere with the attempts of examiners to get out their questions in the way they want to…" (1990: 25). Rigney (1997, 1999), using examples from a Spanish speaking witness's testimony in the O. J. Simpson trial, presents some interesting results of the interpreter's effect on question type. She found that the interpreter tended to alter "the pragmatics of certain types of English questions when translating them into Spanish" (1997: 14). Her studies demonstrated that English tag and declarative questions were particularly challenging for Spanish interpreters as they would need to resort to "additional linguistic resources" in order to convey the same pragmatic meaning in Spanish (1999: 104). Berk-Seligson also found in a recent study of Spanish court interpreters in the United States that although equivalence of propositional content is generally maintained, they "inadvertently *alter* the pragmatic force of attorney's questions" (1999: 50), systematically weakening the coerciveness of leading questions.

3.2   The study

The study presented in this chapter set out to discover the following: (1) whether the pattern of courtroom questions found in studies conducted in other Common Law countries is also found in Australia, (2) whether the interpreted questions kept the same form as the original English questions, (3) if there were differences between the English and the Spanish questions, what those differences were and possible reasons for them, and (4) the possible effect such changes may have had on the answers. Whereas most other studies took the trial as their database, mine relies on Local Court hearings. In the Australian Adversarial system, the Local Court is the first tier of the hierarchy of state courts and all criminal offences must begin at this level with a Committal Hearing. The purpose of the Committal Hearing is to ascertain whether there is enough prima facie evidence to commit the defendant to trial. Some cases are dealt with summarily and finalised at the Local Court level. In the Civil jurisdiction, most cases are also heard in Local Courts due to the dollar value attached to them. This means that the bulk of legal disputes are heard at the Local Court, making this setting a particularly important one to study. Also it is the only tier in the State system which audio records its hearings. Higher courts use stenographers who only hand record the English discourse. The disappearance of all versions in languages other than English makes the study of the interpreting process impossible.

Although hearings are shorter than trials, and in the case of Spanish speaking witnesses and/or defendants their examination is only one minor part of the hearing, the advantage of my data lies in its diversity. There are seventeen different hearings held in different Local Courts, with different lawyers asking the questions through different Spanish interpreters. I am therefore able to generalise about discourse practices, since they do not only reflect individual preferences of one or two lawyers and interpreters.

3.2.1   The data

This study was conducted with 13 English-Spanish interpreted Local Court hearings held in New South Wales, Australia, during the years 1993 to 1996. Four more cases were later added to the data that were used to carry out the studies presented in subsequent chapters. Each hearing was carefully transcribed, including as much detail as was audibly possible. No particular transcription convention was followed. Once the hearings were fully transcribed, I extracted from each all questions asked by each counsel and translated by each interpreter, not including the questions asked by the magistrates. These amounted to a total of 1957 questions in total, 1028 in English and 929 in Spanish. As the numbers show, some of the English questions were not translated into Spanish because some of the Spanish speaking witnesses

understood some of the questions and answered them before the interpreter had time to interpret. The questions were then divided into cross-examination and examination-in-chief for their analysis with an end result of 631 English and 550 Spanish interpreted cross-examination questions; and 397 English and 379 Spanish interpreted examination-in-chief questions. The term "question" is used to refer to any turn taken by the lawyer in addressing the witness, whether in the interrogative form or otherwise.

All questions were coded for syntactic type, after which all types were quantified in each language and percentages calculated. The types of questions identified were slightly different from the types quoted by other researchers, since I based my coding on the types found in my data. The questions fell into one of three broad grammatical categories: interrogatives, declaratives and imperatives, under which there are a number of subtypes. Table 1 below sets out all the types of questions found in the data.

Table 1. Question type

Interrogatives	Declaratives	Imperatives
a. Modal interrogatives e.g. Can you indicate to the court how far away you were from Mr Petro? (case 11)	a. Positive or negative declaratives e.g. Many people were putting their view across. (case 5)	a. Imperatives with politeness markers e.g. Please tell the Court your full name, address and your occupation. (case 10)
b. Wh- interrogatives e.g. And what did you find when you returned? (case 3)	b. "I put it to you that" declaratives e.g. I put it to you that in fact there were many people discussing this situation. (case 5)	b. Imperatives without politeness markers e.g. Just answer the question
c. Forced choice interrogatives e.g. Was the spot where it was, was the car space vacant or was there another car in its place? (case 3)	c. Reported speech declaratives e.g. Mr Peña, I asked you to explain why there appears to be a lack of receipts from the periods 31 May 1991 to 20 December 1991. (case 10)	
d. Polar interrogatives- positive and negative e.g. Mrs Arnal, was the purse that Rebecca had inside her pillowcase, her purse? (case 7)	d. Positive declarative with rising intonation. e.g. So she invited you to come along to the Annual General Meeting? (case 5)	

Table 1. Continued

Interrogatives	Declaratives	Imperatives
	e. Negative declarative with rising intonation. e.g. You're not sure about that? (case 3)	
	f. Positive declaratives with positive ratification tag. e.g. And in the past that amnesty's been granted. Is that correct? (case 5)	
	g. Positive declaratives with negative ratification tag. e.g. After that meeting, ma'am, uhm everybody stayed around for coffee and biscuits, is that not correct? (case 5)	
	h. Positive declarative with positive tags. e.g. You'd seen it before, had you? (case 7)	
	i. Positive declarative with negative tag. e.g. So when you say that you took four weeks to clean the place and then rented it to a friend, that would be untrue, wouldn't it? (case 10)	
	j. Negative declaratives with positive tag e.g. It didn't worry you going up to the front door enough to stop you from doing that, did it? (case 7)	

As can be seen in Table 1, the declarative form category has the highest number of types of questions, followed by the interrogative and the imperative type. Most of these question types do not need further explanation since they are consistent with the standard types of questions readily found in any English Grammar. There are two, however, under the declarative classification that require some explanation since they are types specific to my data and to the discourse of the courtroom. They are what I labelled "I put it to you that" declaratives and Reported speech declaratives.

The "I put it to you that" declaratives are all statements prefaced by the "I put it to you that" clause. This is a legal formula used by counsel in cross-examination to present a version of facts that contradicts what has been proposed by the witness being examined, and to pre-empt what will be presented in his/her case by his/her own witnesses. Cross-examiners have an obligation to put the conflicting content to their opposing side for comment. These are leading question and therefore do not appear in examination-in-chief. The content is always contentious and they appear towards the end of a question and answer sequence (See Chapter 6). Even if it is not explicitly stated, by using this phrase, the implication is that the witness is not telling the truth and so the proposition presented by the cross-examiner in the form of a "I put it to you that" declarative, is the version to be believed by the jury or the bench. I have separated it from all other declarative forms of questions because it carries a much stronger illocutionary force and the answers that this type incites are often quite different from other declaratives.

The Reported speech declaratives refer to instances when the lawyer has to repeat a question and does so in reported or indirect speech. Although this is more closely related to question content than to question form, the number of occurrences was high enough to warrant a classification. There is a difference between simply repeating a question when the desired relevant answer was not forthcoming, and stating that you are repeating a question, as in "That is not what I asked you, I asked you if…" or "What I asked you was if…" This type of question is an explicit exhibition of power on the part of the lawyer, as the witness is reminded that s/he is only permitted to speak in response to specific questions and reprimanded for not answering relevantly. In Danet & Bogoch's (1980) terms, it is a highly coercive type.

Under the heading of imperatives, I have divided the types into those with a politeness marker and those without, since such markers influence the tone of the interrogation.

3.2.2   Question type according to examination type

As in previous studies, it was found that the type of question used relates to the type of examination. Table 2 below outlines the distribution of question type as they occur in cross-examination and examination-in-chief with their frequencies and percentages, in order of occurrence.

The quantitative results of this study corroborate those of previous studies on question type. Firstly, the most commonly used type of question in both examination-in-chief and cross-examination was the positive polar interrogative, since it allows the lawyer to maintain full control of the evidence presented. This corroborates Rigney's (1997, 1999) results. Secondly, question types differ according to the type of examination. We can clearly see in Table 2 that there is no one-to-one

Table 2. Cross-examination & examination-in-chief question types in order of occurrence

Cross-examination questions	Examination-in-chief questions
1. Positive polar interrogative = 164 (25.99%)	1. Positive polar interrogative= 151 (38%)
2. Positive or negative declarative= 159 (25.19%)	2. Wh- interrogative = 70 (17.63%)
3. Wh- Interrogative = 64 (10.14%) (14.86%)	3. Positive or negative declarative= 59
4. Positive declarative with positive tag= 51(8%)	4. Modal interrogative = 59 (14.86%)
5. "I put it to you" declarative = 47 (7.45%)	5. Positive declarative with rising intonation = 29 (7.3%)
6. Positive declarative with rising intonation = 45 (7.13%)	6. Positive declarative with positive tag= 12 (3%)
7. Positive declarative with negative tag= 39 (6.18%)	7. Forced choice interrogative= 6 (1.5%)
8. Negative declarative with positive tag= 24 (3.8%)	8. Imperative = 6 (1.32%)
9. Modal interrogative = 12 (1.9%)	9. Positive declarative with negative tag= 3 (1.5%)
10. Reported speech declarative = 8 (1.27%)	10. Negative declarative with positive tag= 2 (0.50%)
11. Forced choice interrogative= 7 (1.10%)	
12. Negative declarative with rising intonation = 6 (0.95%)	
13. Positive polar interrogative = 3 (0.47%)	
14. Negative declarative with negative tag= 1 = 0.16%	
15. Imperative = 1 (0.16%)	
Total = 631	Total = 397

correspondence of question type in cross-examination and examination-in-chief. A wider range of question types is used in cross-examination (15 types as opposed to 10). Some of the more aggressive or controlling types of questions either do not appear at all in examination-in-chief or are insignificant: "I put it to you that" declaratives, reported speech declaratives, negative declaratives with rising intonation, negative polar interrogatives, and negative declaratives with negative tags are not used in examination-in-chief at all. Declaratives with tags in general comprise a very small percentage (5%) of the questions in examination-in-chief. On the other hand, some of the types that comprise high percentages in examination-in-chief, either have lower percentages in cross-examination or hardly feature at all. For example, modal interrogatives form 14.86% of examination-in-chief questions and only 1.9% of cross-examination questions. Wh- interrogatives, as in other studies,

feature more prominently in examination-in-chief also, although the difference is not so striking (17.63% vs. 10.14%). When the questions are grouped into two broad categories, Information Seeking Questions (ISQ) and Confirmation Seeking Questions (CSQ), the difference between examination-in-chief and cross-examination becomes more obvious. The great majority of questions in cross-examination (87.85%) were CSQ, providing information rather than seeking it, with only 12.04% being ISQ. In examination-in-chief, 67.98% were CSQ and 32.49%, ISQ. Although CSQ comprise the majority of questions in both examination-in-chief and cross-examination, ISQ were 20.45% more popular in examination-in-chief, and CSQ were 19.87% more popular in cross-examination, a finding that corroborates Maley and Fahey's (1991) results. This is consistent with the rules of evidence that prevail in the courtroom that allow a very limited use of leading questions in examination-in-chief, but encourage their use in cross-examination.

3.2.3 Original counsel questions in English and their Spanish interpreted versions

A quick glance at the percentages of the English questions as compared to the percentages of the same types in the interpreted Spanish versions, (See Tables 3 & 4) indicates that there is no one-to-one correspondence. This shows that the interpreter changed the form of some of the questions when interpreting them into Spanish. This is more prevalent in some types of questions than in others. Tables 3

Table 3. Cross-examination English and interpreted questions

Question Type	Code & English Figures			Interpreted Spanish Figures		
Wh- interrogative	64	=	10.14%	58	=	10.54%
Positive polar interrogative	164	=	25.99%	199	=	36.18%
Negative polar interrogative	3	=	0.47%	19	=	3.45%
Positive declarative with rising intonation	45	=	7.13%	0 N/A		
Negative declarative with rising intonation	6	=	0.95%	0 N/A		
Positive declarative with negative tag	39	=	6.18%	9	=	1.63%
Negative declarative with positive tag	24	=	3.8%	6	=	1.09%
Positive declarative with positive tag	51	=	8%	32	=	5.82%
Declarative	159	=	25.19%	170	=	30.90%
Negative declarative with negative tag	1	=	0.16%	1	=	0.18%
Modal interrogative	12	=	1.9%	5	=	0.90%
Imperative	1	=	0.16%	5	=	0.90%
"I put it to you" declarative	47	=	7.45%	35	=	6.36%
Forced choice interrogative	7	=	1.10%	5	=	0.90%
Reported speech declarative	8	=	1.27%	6	=	1.09%

(631 English questions, 550 Spanish interpreted questions.)

Table 4. Examination-in-chief English and interpreted questions

Question Type	Code & English Figures			Interpreted Spanish Figures		
Wh- interrogative	70	=	17.63%	79	=	20.84%
Positive polar interrogative	151	=	38%	162	=	42.74%
Negative polar interrogative	0			2	=	0.52%
Positive declarative with rising intonation	29	=	7.3%	0 (N/A)		
Negative declarative with rising intonation	0			0 (N/A)		
Positive declarative with negative tag	3	=	0.75%	3	=	0.79%
Negative declarative with positive tag	2	=	0.50%	1	=	0.26%
Positive declarative with positive tag	12	=	3%	11	=	2.9%
Declarative	59	=	14.86%	69	=	18.21 %
Negative declarative with negative tag	0			0		
Modal interrogative	59	=	14.86%	36	=	9.50%
Imperative	6	=	1.5%	9	=	2.37%
"I put it to you that" declaratives	0			0		
Forced choice interrogative	6	=	1.5%	7	=	1.85%
Reported speech declarative	0			0		
Uncoded questions	4					

(397 English questions, 379 interpreted questions)

and 4 show that all declarative questions in English have no counterparts in Spanish. (For the grammatical reasons see Hale, 2001). All Spanish questions are declaratives with rising intonation, hence they were all classified as polar interrogatives, since they expect either an affirmative or a negative answer.

3.2.3.1 *Cross-examination questions through the interpreter*

Since the interpreters' alterations of question form differed according to type of courtroom examination, the analysis of the interpretation of the questions will be covered in two different sections: one on cross-examination and one on examination-in-chief. When types are grouped into broader categories, the differences become more pronounced (See Tables 5 & 6). One major difference, which is to be expected, is found in the interpretation of prosodic declarative questions. A great number of prosodic declarative English questions was interpreted as polar interrogatives in Spanish, which explains the higher percentage of this type of question in the interpreted text (39.64% as opposed to 26.46% in English). The rest were interpreted as simple declaratives, with no rising intonation. This difference means that overall, the English cross-examination questions have a higher percentage of declaratives than interrogatives (59.11% vs. 46.90%). Since declaratives are said to be more coercive than interrogatives, such a difference seems to make the English interrogation more coercive than the Spanish interrogation. As can be seen, the trend is reversed in the Spanish questions, with 46.9% declaratives and 53.09%

interrogatives. Therefore, the lawyer's level of control over the witness may have been altered in the interpretation. This will be ascertained when investigated in conjunction with the witnesses' answers in subsequent chapters.

Table 5. Cross-examination declaratives

English	Spanish
Declarative with tag = 115 (18.23%)	= 48 (8.73%)
Declarative & imperative = 207 (32.8%)	= 210 (38.18%)
Declarative with rising intonation = 51 (8%)	= 0
Total = 373 (59.11%)	Total = 258 (46.9%)

Table 6. Cross-examination interrogatives

English	Spanish
Wh- interrogative = 64 (10.14%)	= 58 (10.55%)
Polar interrogative = 167 (26.46%)	= 218 (39.64%)
Forced choice interrogative = 7 (1.11%)	= 5 (0.9%)
Modal interrogative = 12 (1.9%)	= 5 (0.9%)
Reported speech declarative = 8 (1.27%)	= 6 (1.09%)
Total = 258 (46.90%)	292 (53.09%)

By looking at the figures we can clearly see that there is a very significant difference between the percentage of declaratives with tags in the original English text (18.23%) and the percentage in the Spanish interpreted text (8.73%). The data show that the interpreters tended to simply omit the tag question and interpret such questions as either simple declaratives or as polar interrogatives, which matches Rigney's results on the interpreting of tag questions (1997: 20).

3.2.3.2 *Tag questions*

Tag questions were identified as one of the types that caused interpreters most difficulty. The data show that interpreters omitted the tag 52.12% of the time. This is a significant change, indicating that interpreters interpret tag questions less than fifty percent of the time. There are a number of possibilities for this phenomenon. As Hale & Gibbons (1999) suggest, one possible reason why interpreters tend to omit what they consider to be irrelevant is that they are pressured to offer a quick delivery so as to not waste the court's time. Interpreted testimony when it is interpreted in the consecutive mode is of necessity at least twice as long as monolingual testimonies. Berk-Seligson (1990) also found that interpreters who tried to please the court by making things seemingly easier and saving time, were appreciated more. Another plausible reason for such omissions may be that interpreters do not realise the importance of question form and concentrate on interpreting the propositional content alone, in whatever form they randomly choose at the time.

However, I will argue that there are both grammatical and pragmatic differences across both languages that impose a difficulty on the interpreting of tag questions from English into Spanish.

3.2.3.3 *Tag questions in English*

Tag questions are a type of yes-no question in English which express maximum conduciveness. They are formed by a statement and a tag question appended to the end, with either a negative or a positive orientation. Quirk et al. (1985) mention seven types of tag questions that appear in the English language. I will only refer to the six types that appear in the data. The four main types of tags in English are:

1. a positive statement with a falling tone followed by a negative tag with a rising tone[7] . e.g. He likes reading\ Doesn't he?/
2. a negative statement with a falling tone followed by a positive tag with a rising tone. e.g. He doesn't like reading\ Does he?/
3. a positive statement with a falling tone followed by a negative tag with a falling tone. e.g. He likes reading\ Doesn't he?\
4. a negative statement with a falling tone followed by a tag with a falling tone. e.g. He doesn't like reading\ Does he?\

The difference between these four types is in the assumption presented by the statement and the expectation indicated in the tag.

Both sentences 1 and 2 present a positive and a negative assumption respectively in the statement, and a neutral expectation in the tag. In other words, the tag in rising tone invites verification from the hearer and is a genuine question. Sentences 3 and 4 with tags with the falling intonation have either a positive (3) or a negative assumption (4). Such tags, however, expect confirmation of the statement, having the force of an exclamation rather than of a genuine question. These last two types of tag questions are the type of tag found in cross-examination (Quirk et al., 1985: 810–811).

A fifth and less common type of tag is the constant polarity tag. This type of tag question portrays both a positive statement and a positive question. These are the most pragmatically loaded tags.

5. He likes reading\ Does he?/

> The tag typically has a rising tone, and the statement is characteristically preceded by *oh* or *so*, indicating the speaker's arrival at a conclusion by inference, or by recalling what has already been said. The tone may sometimes be one of sarcastic suspicion… Its effect may be scalding *(Oh, you've had another accident, have you?)*, sarcastic *(So that's your game, is it?)*, or sarcastically contradictory *(So your car is outside, is it?)* (Quirk et al., 1985: 812).

The sixth type of tag that appears in the data is the "invariant tag questions" (Quirk et al., 1985). Unlike the other types of tag, these have the same form regardless of the polarity of the statement. For example, either "you were there that night" and "you weren't there that night" can have appended to it a tag like "Is that correct" or "Isn't that correct". These generally have a rising tone, but a falling tone is sometimes used to indicate more insistence.

6.   They {forgot/didn't forget} to attend the lecture {am I right?/isn't that so?/ don't you think?/ wouldn't you say?/right?/ etc. (Quirk at al., 1985: 814).

3.2.3.4 *Tag questions in Spanish*

English has a wider range of tags than does Spanish. The only tag questions that have a direct equivalent in Spanish are the invariant tag questions. Such tag questions do not appear as a separate entry on question types in any Spanish grammar. They are regarded to be simple yes/no questions. The possible tags in Spanish include among the most common: *¿no es cierto?* (Isn't that right?), *¿cierto?* (Right?) or *¿es cierto?* (Is it right?), *¿no es verdad?* (Isn't that true?), *¿verdad?* (True?) or *¿es verdad?* (Is it true?), *¿No es así?* (Isn't it so?), *¿Es así?* (Is it so?), *¿No es correcto?* (Isn't is correct?), *¿correcto?* (Correct?), *¿es correcto?* (Is it correct?), *¿no?* (no?), or *¿o no?* (or not?). Wierzbicka (1991) comments on the pragmatic differences of tag questions between English and Polish. She states that tags are much more common in English but also that there is a cultural difference behind the types of tags available to both languages. The English tag is "opinion-oriented", whereas the Polish tag is "truth-oriented". She attributes this difference in focus to the inherent different cultural assumptions. "The implicit cultural assumption reflected in English speech seems to be this: everyone has the right to their own feelings, their own wishes, their own opinions" (Wierzbicka, 1991: 36). This observation can also be applied to Spanish, which also has a limited range of tags that are primarily truth oriented.

The reason for the lack of equivalence of all other types of English tags is that Spanish grammar does not allow for the use of auxiliary verbs (Have you?), copula verbs (Are you?) or dummy operators (Do you?) in tag questions. One type of tag that Spanish uses is the ellipted tag *¿no?* and *¿o no?* with a downward intonation. There is no explanation as to the pragmatic use of these tags in the Royal Academy's Spanish grammar, except a small mention that "the use of *no* at the beginning or the end of a sentence tends to indicate that an affirmative answer is expected or insinuated" [*El uso del no al principio o al fin de la oración suele indicar que se espera o insinúa una respuesta afirmativa.*] (Real Academia Española, 1981: 360). This means that interpreters need to make a number of choices when confronted with English tag questions, hence a difficulty in matching not only the form of the question but also the tone of the tag question in English. Table 7 lists all the possible English tag questions and what I consider to be pragmatic Spanish equivalents.

Table 7. Tag question taxonomy as used in the courtroom

English tag questions	Spanish pragmatic equivalent
1. Invariant tag questions – Positive declarative with positive ratification tag, or tag with copula omitted. This tag seeks ratification and expects a positive answer. These are common in examination-in-chief when asking non-contentious information such as personal details. e.g. You called your sister. (Is that) correct/ right?	1. *Usted llamó a su hermana. ¿Verdad?/¿Correcto?* (You called your sister. True?/ Correct?)
2. Invariant tag questions – Positive declarative with negative ratification tag. The content of the declarative is usually not meant to be contentious. The tag seeks confirmation (Maley & Fahey, 1991). These are common in examination-in-chief when asking non-contentious information such as personal details. e.g. You live in a flat. Isn't that correct/right?	2. *Usted vive en un departamento. ¿No es cierto? / ¿No es así?* (You live in a flat. Isn't that right?/so?)
3. Constant polarity tag – Positive declarative with positive auxiliary tag Its tone may indicate sarcastic suspicion, with a scalding, sarcastic or contradictory effect. It can be preceded by "oh" or "so" (Quirk et al., 1985). It allows the questioner to probe (Maley & Fahey, 1991). e.g. You called your sister, did you?	3. *Así que usted llamó a su hermana.* (So you called your sister.) Since there is no equivalent of this type of tag, an initial "así que" (so) or "entonces" (then) gives it the closest force.
4. Checking tag (Falling intonation) – Positive declarative with negative auxiliary tag This tag expresses a stronger assumption and expects confirmation of the statement (Maley & Fahey, 1991, Quirk et al., 1985). It is typically used in cross-examination to challenge the witness's testimony. e.g. You wanted to take advantage of that. Didn't you?	4.a. *Usted se quería aprovechar de eso ¿No?* (Rising intonation) 4.b. *Usted se quería aprovechar de eso. ¿O no?* (Falling intonation — more aggressive tone)

Table 7. Continued

English tag questions	Spanish pragmatic equivalent
5. Checking tag (Falling intonation)	5.a. *La verdad es que usted no tiene el dinero.* (Falling intonation)
– Negative declarative with positive auxiliary tag.	(The truth is you don't have the money)
This tag expresses a stronger assumption and expects confirmation of statement (Maley & Fahey, 1991, Quirk et al., 1985). It is typically used in cross-examination to challenge the witness's testimony. e.g. You haven't got the money. Do you?	A tag in Spanish would not achieve the same pragmatic illocutionary force. The tag is therefore replaced with the introductory phrase "the truth is that"

As Table 7 shows, some difficulties arise in trying to translate the illocutionary force of all the English tag questions, when there are no exact equivalents in Spanish. Invariant tag questions can be translated without any problem, since exact equivalents do exist. Constant polarity tags, which according to Quirk et al. (1985), mostly indicate sarcasm and can be preceded with "Oh" or "So", do not have a direct equivalent in Spanish. However, the illocutionary force can be rendered by adding the *así que* (so) at the beginning of the question and giving it a falling declarative intonation. Checking tags that follow a positive declarative can be translated as invariant tags in Spanish or as declaratives with a *¿no?* or *¿o no?* tag. However, checking tags that follow a negative declarative cannot be translated at all. In order to maintain the pragmatic illocutionary force, the addition of the phrase "The truth is" is necessary.

Each type of tag question as it appears in the data will now be discussed in relation to the interpreters' rendition into Spanish.

3.2.4   Interpreters' renditions of each type of tag question in cross-examination

3.2.4.1 *Invariant tag questions — Positive declaratives with positive ratification tag — "Is that right?" / "Is that correct?"*

The least aggressive tag questions are the invariant tags. These seek confirmation of the statement and usually do not contain contentious information. This is evident in the context where they are used. In examination-in-chief, 10 out of the 15 tag questions are ratification tag questions, used to elicit non-controversial information quickly, such as personal details. In cross-examination they are usually used to reiterate information that has already been presented by the witness during evidence-in-chief, although this is not always the case.

As explained before, invariant tags should cause no problems for the interpreter because they are readily translatable into Spanish. Table 8 shows all instances of this type of tag in cross-examination and their interpretations. As can be seen, this type of question formed 5.86% of all cross-examination questions, which is 34% of all tag questions. The majority of these questions, 70.27%, were translated using the same form and apparently caused no problems to the interpreter. However, 29.73% of them were translated in a different form: 16.12% as simple declaratives, 10.81% as polar interrogatives, and 2.7% as a declarative with a negative tag. In all instances, the interpretation was less coercive and less aggressive in tone than the original English version.

Table 8. Positive declaratives with positive ratification tag

37 Positive declaratives with positive ratification tag "Is that right?"/"Is that correct?" (5.86% of all Cross-ex. qns.)	%
1 × Translated with a negative tag	2.7%
26 × translated with positive tag	70.27%
6 × translated as a simple declarative	16.12%
4 × translated as a y/n qn	10.81%

The following are two examples of this type of question that were translated as positive polar interrogatives.

(1) Question- Yes, you recognise that as a letter you wrote to the defendant regarding the alleged arrears and the rental, is that right?
Interpreter- *Y ¿usted reconoce que esta es la carta que le escribió a la demandada, eh, relacionada con el dinero que le debía, por renta?*
(And, do you recognise that this is a letter that you wrote to the defendant, uh, about the money that she owed, for rent?)

(2) Question- That's because you you still wanted to fight with Mr Petro, is that correct?
Interpreter- *¿Usted todavía quería pelear con él?*
(Did you still want to fight with him?)

Both translated versions are less confrontational than the original in English. In both examples, the information is put to the witness as a fact, as an allegation that is likely to spark contention. The tag question provides the witness with an invitation to respond to the allegation. The Spanish interpretations change the statements of facts into polar interrogatives that do not assume or expect either a positive or a negative response. They appear to be asking rather than stating, as do the original versions. The translated versions can be said to be less coercive, since, as there is no apparent expected answer, the witness is not constrained into giving any one answer, and hence has more freedom of choice.

This type of tag question was also translated as declarative statements, which

are closer to the original in illocutionary force but still not quite the same. Whereas the original questions contain an explicit invitation to respond, the translated version does not. The following are two examples.

(3) Question- And, because you wanted to assault him, is that correct?
   Interpreter- *Porque usted quería agredirlo.*
   (Because you wanted to assault him)

(4) Question- Now, in this bag that you uh, only carry books, is that correct?
   Interpreter- *En esa bolsa usted lleva puro libros.*
   (In that bag you carry just books)

3.2.4.2 *Invariant tag questions — Negative declaratives with positive ratification tag — "Is that right?" / "Is that correct?"*

There were only 6 instances of this type of question, comprising a mere 0.95% of all examination questions, and 6.9% of all tag questions. There was no problem whatsoever in the interpretation of these questions. They were all interpreted in the same way, with the tag *¿es eso correcto?* (Is that correct). Although the small percentage of this question type does not allow us to make reliable generalisations, this result may indicate that interpreters do not omit translating the tag when it causes no interpreting difficulty, but only do so when finding an appropriate pragmatic equivalent becomes more problematic, as is the case with checking tags which will be discussed later in this chapter.

(5) Question- Uh, and when you came back from the city, uhm, you couldn't find your car, is that correct?
   Interpreter- *Y cuando usted regresó de la ciudad no pudo encontrar su coche, ¿es eso correcto?*
   (And when you came back from the city you couldn't find your car, is that correct?)

3.2.4.3 *Constant polarity tag — Positive declaratives with positive auxiliary tag — "You work all night, do you?"*

This type of tag, which was very rare in Woodbury's study (1984), comprised 12.79% of all tag questions used in cross-examination in my study, and were not used at all in examination-in-chief. This type of question is normally used in the data to express surprise or sarcasm on the part of counsel, which is consistent with Quirk et al.'s description of the function of this type of tag question (1985: 812). It usually follows an unexpected answer, or one that provides new information (e.g. 6) or an answer that contradicts the question put to the witness before (e.g. 7).

(6) Answer- *Yo le hablé y le dije "¿yo no te dije a vos que no quiero que hablés con personas que no conocés?"*
   (I talked to her and I said 'haven't I told you that I don't want you to speak to people you don't know?)

Intrepreter- I talked to her and I said "didn't I tell you not to speak to people you don't know?"

Question- Right. You had previously told her not to speak to people she didn't know, had you?

Interpreter- *¿Así que usted claramente le había dicho que no hablara con gente que no conocía?*

(So you had clearly told her not to speak to people she didn't know?)

(7)   Question- And Mr X made these arrangements for you to find your car at Goulburn

Interpreter- *Y el Sr X organizó para que usted encuentre su coche en Goulburn.*

(And Mr X organised it so you could find the car in Goulburn)

Answer- *Antes no, hasta ese día que llegué él preguntó a los relativos, que fueran a al policía a preguntar.*

(Not before, not until that day that I got there he asked his 'relatives' to go to the police and ask)

Interpreter- Not before but when I got there then he called his relatives to tell them to go to the police to ask.

Question- You met him by accident, did you?

Interpreter- *Usted se encontró con él por accidente, ¿verdad?*

(You met him by accident, true?)

This type of tag question can be problematic for the interpreter because an interpretation of the tag as a positive tag in Spanish, using any of the ratification words such as *¿verdad?* (true?), *¿no es así?* (isn't that so?), will not maintain an equivalence of pragmatic force. To say "You saw him by accident, did you?" is not the same as "You saw him by accident, true?". The first one is rectifying a false prior belief by stating what the speaker now understands to be the case. The second one is stating what the speaker believes to be the case and asking for ratification of the same. The best way to translate these into Spanish is by prefacing the question with *así que* (so) or *entonces* (then), depending on the propositional content of the question. Returning to the questions quoted above, "So you met him by accident then" would be a closer approximation to the original intended meaning. When we observe Table 9, it becomes immediately clear that this type of question caused problems for the interpreters.

Table 9. Positive declaratives with positive auxiliary tag

11 SL Positive declaratives with positive auxiliary tag	%
1 × translated as a positive tag *¿verdad?*	9%
7 × as a yes/no question	63.63%
1 × as a question prefaced with *así que*	9%
2 × as a simple declarative	18.18%

There was only one instance where this type of question was translated with the use of an initial *así que* (so), which is the question that appears on example 5. Over half of these questions (63.63%), were translated as polar interrogatives (see e.g. (8)). This change is significant. Polar interrogatives do not state a new acquired piece of information, like the tag question does, they ask for new information. The illocutionary force of these two types is very different. The rest of the instances, these questions were translated as a declarative (see e.g. (9)), which once again does not reflect the original intention of the question.

(8) Question- You'd seen it before, had you?
Interpreter- *¿Usted la había visto antes?*
(Had you seen it before?)

(9) Question- It was just a screen door, was it?
Interpreter — *Era como una mampara.*
(It was like a screen)

3.2.4.4 *Checking tags*

Checking tags include positive declaratives with negative auxiliary tags and negative declaratives with positive auxiliary tags, with rising or falling intonation. All of the instances of this type of tag found in my data had a falling intonation. Other researchers have not mentioned the intonation of the tag in their discussions and have grouped all checking tags together claiming that they are the most aggressive, coercive and controlling type of question.

> Checking tags are used during cross-examination in order to make innuendos, to accuse, and to cast doubt upon previous testimony … The form and content of these questions suggest that the expected answer will incriminate the witness. Lawyers choose checking tags when they wish to pounce on a witness
> (Woodbury, 1984: 223).

Although Woodbury's statement is strong and borders on a value judgement, it is consistent with the purpose behind cross-examination, to challenge and discredit the witness's evidence-in-chief, and with the function of checking tags with falling intonation as explained by Quirk et al. (1985). These tags, when said with a falling intonation, present a strong assumption, and expect an answer that agrees with that assumption. They are not genuine questions. The cross examiner will put to the witness contentious propositions as fact, with checking tags expecting an answer that agrees with the assumption of the statement. If the answer does not agree, then open confrontation ensues. Since the witness will mostly disagree with such assumptions, such contradiction will constitute a battle of wills between counsel and the witness, with the witness often being forced to half-heartedly agree with counsel. This is frequently achieved through the use of modality and repetition as shown in the following illustrative example drawn from a monolingual case:

(10)   Counsel- You remember what you said on the day of the interview, don't you?
       Witness- No, not exactly.
       Counsel- Do you agree that you could have said, "I wanted to call him".
       Witness- Yes, I suppose so.
       Counsel- Now that's not the same as what you just told us a minute ago, is it?
       Witness- No.

This type of question is obviously a very important strategic tool in cross-examination. Although Woodbury found a small frequency of this type in her data, they formed 5.22% of all cross-examination questions and 40.74% of all tag questions in my data. This shows that their use is probably more prominent in Australian courts.

Table 10. Positive declaratives with negative auxiliary tag

20 SL Positive declaratives with negative auxiliary tag (3.16% of all cross-examination questions)	
7 × translated as declarative with an added initial *pero*	35%
5 × translated as simple declarative — tag omitted	25%
4 × translated as negative tag	20%
2 × translated as yes/no interrogative	10%
2 × translated as declarative with positive tag	10%

Table 11. Negative declarative with positive auxiliary tag

13 Negative Declarative with positive auxiliary tag (2.06% of all cross-examination questions)	
5 × translated as declarative with initial *pero*	38.46%
3 × translated as simple declarative	23.07%
3 × translated as yes/no interrogatives	23.07%
2 × translated as positive tag	15.38%

Tables 10 and 11 show the different ways these tag questions were translated by the interpreters. The great variety of versions demonstrates a difficulty in the interpretation of this type of tag question. Campbell & Hale (1999) found in a study on translation text difficulty that the higher the number of different target language choices made by the subjects, the higher the difficulty of the text. As explained earlier, there is no direct equivalent in Spanish for the type of tag discussed in this section, therefore the interpreter has to choose between omitting the tag all together, translating it as an invariant tag such as "is that correct?", translating it as a Spanish ¿no? or ¿o no? or replacing it with a prefacing phrase or a discourse marker. What makes these questions so strong in tone is the expectation implied in the tag, which coerces the witness into answering in a certain way. In an adversarial situation, as explained earlier, the tag has a falling intonation rather than a rising one, which can be the case in other, non-confrontational situations. Thomson and

Martinet agree with Quirk et al. in saying that "…when question tags are used the speaker doesn't normally need information but merely expects agreement. These tags are therefore normally said with a falling intonation, as in statements…." (Thomson & Martinet, 1983: 97)

The following example from cross-examination in Case 11 can illustrate this.

(11)   Counsel – You were yelling and screaming at this stage, **weren't** /\ you?
Interpreter – *Usted estaba gritando y y y y ah hablando en voz alta en ese momento ¿no es cierto?*
(You were screaming and and and uh talking in a loud voice at this moment, isn't that true?)

The tag is stressed, with the verb "weren't" said in a louder voice and the pronoun "you" with a falling intonation, indicating a fact rather than a question. The difficulty in Spanish is that the subject of the statement cannot be repeated in the tag, hence the emphasis cannot lie in the tag, thus potentially losing the accusing tone. The interpreter translated the above example as "You were screaming and and and uh talking in a loud voice at this moment, isn't that true?" in a flat tone. A more forceful and aggressive way of asking this question would be to replace the ratification tag with a "*o* /\ **no**?". Such a negative tag can be stressed with a louder voice and can only be said in a falling intonation. This type of tag is only used in confrontational discourse, whereas all other tags in Spanish are used in friendly conversational contexts. Although this is not a perfectly equivalent option, it is pragmatically closer to the original than any other form. Interestingly enough, none of the interpreters opted for this version at any time, presumably because it is always easier to resort to a more literal interpretation when pressed for time.

The tag was omitted more frequently by the interpreters when it was a positive tag than when it was a negative tag. In positive declaratives with negative tag questions, the tag was translated only 20% of the time. The tags used in Spanish were: *¿no es cierto?* (Isn't it right?), and *¿no es así?* (Isn't it so?). In negative declaratives with positive tags, the tag was translated even less, only 15.38% of the time, making it the least popular option for the interpreters. The tag used for this question type was *¿verdad?* (true?). Interestingly, interpreters opted for a different strategy to attempt to maintain the level of aggressiveness of these checking tag questions, the use of the initial *pero* (but). This was the preferred interpretation for both types of checking tags: 35% of positive declaratives with negative tags, and 38.46% of negative declaratives with positive tags was a declarative statement with an initial *pero* (but) (See e.g. (12)). This is consistent with my suggestion to add a phrase or discourse marker for these types of tags in order to achieve a pragmatic equivalence.

(12) Question- He didn't shout anything of the kind, did he?
      Interpreter- *Pero no le gritó nada por el estilo.*
      (But he didn't shout anything of the kind)

The disjunctive conjunction "but" is used to indicate a contradiction between what the witness had previously said and what the lawyer is putting to him/her.

  This question type was also translated as a simple declarative, with the tag omitted 24.42% of the time (see e.g. (13)), and as a polar interrogative 15.15% of the time (see e.g. (14)). The polarity of the tag was reversed 6% of the time, with a negative tag being translated as a positive tag (see e.g. (14)).

(13) Question- You say, you're making this all up, aren't you?
      Interpreter- *Usted está inventando todo esto.*
      (You are making all this up)
(14) Question- Mr Petro, you don't like Mr Carro, do you?
      Interpreter- *Señor Petro, ¿a usted no le gusta el señor Carro?*
      (Mr Petro, don't you like Mr Carro?)
(15) Question- Well, you remember the roundabout, don't you?
      Interpreter- *Se acuerda de la rotonda, ¿verdad?*
      (You remember the roundabout, true?)

3.2.5 Examination-in-chief questions through the interpreter

As mentioned earlier, the nature of examination-in-chief is very different from that of cross-examination, and this is reflected in the type of questions used, a finding that corroborates all previous studies on question type. In examination-in-chief, declaratives with tags are not a very popular type of question, only 4.28% of all questions fall in this category as compared to 18.23% in cross-examination. All other types of declaratives are not prominent either, amounting to only 16.37% as opposed to 32.8% in cross-examination. Even the instances of these types of questions show that although the form may be coercive, the content tells otherwise. As can be seen, the differences found between the original English questions and their Spanish interpretations is not great. One significant difference lies in the higher percentage of statements in Spanish, 20.58% as opposed to 16.37% in English. However this increase can be attributed to the fact that the prosodic questions were translated at times as simple statements and at times as polar interrogatives, which explains the slight increase in the percentage of this type of question in Spanish.

Table 12. Examination-in-chief declaratives

English	Spanish
Tag questions= 17 (4.28%)	= 15 (3.95%)
Statements = 65 (16.37%)	= 78 (20.58%)
Prosodic declarative questions = 29 (7.3%)	= 0
Total = 111 (27.96%)	Total = 93 (24.54%)

Table 13. Examination-in-chief interrogatives

English	Spanish
Wh- open ended questions = 70 (17.63%)	= 79 (20.84%)
Yes/No questions = 151 (38%)	= 164 (43.27%)
Closed option questions = 6 (1.5%)	= 7 (1.85%)
Modal questions = 59 (14.86%)	= 36 (9.50%)
Total = 286 (72%)	Total= 286 (75.46%)

The most noticeable difference is found in the occurrence of modal interrogatives. Indirect requests formulated in the form of modal interrogatives are common in examination-in-chief. 14.86% of examination-in-chief questions were asked in this form, whereas only 9.50% appear in the Spanish version. Interpreters translated modal interrogatives into one of the following question types: a Wh- question, an imperative, a polar interrogative or a modal interrogative. (See Table 14).

Table 14. Translated question types

Wh- questions	Imperatives	Modal interrogatives	Polar interrogatives
46.2%	34.62%	11.53%	7.7%

Modal interrogatives were translated as Wh- questions 46.2% of the time, being the most popular choice. By doing this, the interpreter omitted a great proportion of the original question, maintaining only the essence of the question. Examples 16 and 17 are representative of this type of omission by the interpreter. In this category, not only does the modal verb "can" go missing, the entire reference to all participants, "you" and "the court" or "us" is also omitted. Two main elements are altered in the interpretation. Firstly, by using the modal interrogative question type, the lawyer is indirectly making a request to the witness. The pragmatic function of such questions is that of a request or a command. Therefore, while maintaining politeness in the use of indirectness, the lawyer establishes his control and authority over the witness by indirectly saying, "tell the court what happened". By turning an indirect request into a direct question, that level of authority disappears. Secondly, a change in tenor occurs (Halliday & Hasan, 1985). Tenor reflects the negotiation of social relationships between participants in the relevant field or

context. In this case, the question makes it explicit that there are three participants in the activity type (Levinson, 1979) of the hearing: the lawyer who asks the question, the witness who is to answer, and the courtroom or "us", to whom the information is directed. In essence, one participant, the lawyer, elicits the evidence from the witness for the benefit of a silent but most important participant, the courtroom. Hence, the relationship between the witness and the courtroom is a mediated and evidently distant one. This insight into the dynamics of courtroom interaction disappears in the interpretation.

(16) Question- Yes, can you tell the court what happened?
      Interpreter- *¿Y luego qué pasó?*
      (And then what happened?)

(17) Question- Not precisely, OK, can you tell us how you remember the screen was when you saw it?
      Interpreter- *¿Cómo estaba esa partición cuando usted la vio? ¿En qué posición estaba?*
      (How was that partition when you saw it? In what position was it?)

The next most popular interpretation choice for this type of question was the use of the imperative, with a 34.62% occurrence. Here the interpreter simply kept the function of the question, by making an indirect command into a direct one, as shown in examples (18) and (19).

(18) Question- Right, well so could you just tell us what damage was done to your car?
      Interpreter- *Diga solamente qué daños se le hizo a su auto.*
      (Just say what damages were done to your car)

(19) Question- Ah Mr ah Mr Ramos, could you please give your full name, address and your occupation to the court?
      Interpreter- *Diga su nombre, ocupación y dirección.*
      (Say your name, occupation and address)

As can be seen in the above two examples, once again both the modal verb and the reference to the court are missing in the interpretation. This time however, the intention of command is maintained with the use of an imperative. However, the fact that Spanish tends to use the imperative more frequently than English (Mir, 1993) does not make such interpretations inappropriate or impolite, but simply more direct.

Modal interrogatives were translated as the equivalent type in Spanish only on three occasions (11.53%), two of which were uttered by the same interpreter, indicating a lack of preference for the maintenance of this feature in the Spanish interpretation. (See examples (20) & (21)). This can be due to a number of reasons. As mentioned before, the use of the imperative is much more frequent and appropriate in this context in Spanish, hence it may be cognitively quicker to access by the

interpreter within the time constraint. Modal interrogatives can lend themselves to confusion by being indirect speech acts. They can be interpreted as indirect requests or as genuine questions on ability or desire. The fact that they are not as common in Spanish as they are in English can add to this possibility. Interpreters, in an attempt to avoid miscommunication, may subconsciously clarify or disambiguate utterances. A third possible reason for any omission of form by retaining substance alone is the misconception that certain discourse features may be irrelevant or superfluous, adding to the memory burden and impinging on the time constraint placed on interpreters. Interpreters will then scan utterances and retain only what they regard as relevant.

(20)   Question- Yes, now, can you tell the court what happened?
Interpreter- *¿Puede decirle a la corte qué pasó?*
(Can you tell the court what happened?)

(21)   Question- Can you look at that quickly please?
Interpreter- *¿Quiere mirarlo rápidamente por favor?*
(Do you want to look at it quickly please?)

The last and possibly most serious alteration to the modal interrogative question type is its conversion to a polar interrogative. Fortunately this change only took place on two occasions (7.7%) by two different interpreters, and cannot be claimed to be a common tendency.

(22)   Question- Can you describe it to the court?
Interpreter- *¿Tú reconoces este documento?*
(Do you recognise this document?)

(23)   Question- Yeah, can you tell the court to the best… to the best of your recollection, to the best of your memory?
Interpreter- *¿Pero algo recuerda usted?*
(But you remember something?)

As examples (22) and (23) show, both original questions are indirect requests for information. The first requests a description of a document and the second a narration of events. Both questions were translated as polar interrogatives, which require a yes or no answer.

3.3   Conclusion

This chapter has dealt with question form and question type in the courtroom. It was highlighted that lawyers use questions strategically to control and manipulate the evidence. The term question was assigned to lawyers' turns in the adjacency pair (Schegloff & Sacks, 1973), even though their function is clearly not always a

question, nor their form interrogative. A number of studies have classified court-room question types, generally dividing them into two major categories: Information Seeking Questions, comprising Wh- questions and modal interrogatives, and Confirmation Seeking Questions, comprising declaratives with and without tags and polar interrogatives. It was argued that question type was highly dependent on whether the questioning was part of cross-examination or examination-in-chief, with the most coercive, controlling and aggressive types predominating in cross-examination, and the freer, less constraining and friendlier types predominating in examination-in-chief.

A quantitative analysis of the question types found in my data, together with their respective Spanish interpretations, were presented. The patterns found on the use of different question types in my data corroborated those of previous studies. In terms of the interpreters' renditions of questions into Spanish, it was found that there was a tendency on the part of the interpreter to omit certain types, with the ones that caused most difficulty being declaratives with tags and modal interrogatives. It was concluded that the main reason for the interpreters' omissions of certain features was a lack of syntactic and semantic equivalence. However, it was proposed that pragmatic equivalence can be achieved by maintaining the same or similar illocutionary force. This was presented through a detailed analysis of all occurrences of declaratives with tags and modal interrogatives with their respective Spanish interpretations.

The use of discourse markers in courtroom questions[*]

4.1 Introduction

As I was transcribing the courtroom questions, I was struck by the recurrent use of a number of discourse markers used by lawyers to preface their questions. I therefore decided to analyse their use and the interpreters' treatment of them. A number of studies have been conducted to analyse the use of these discourse features in conversation that are often overlooked, as Green points out, "…because they do not refer to observable properties or events, but in their own way, they may speak volumes about the person who uses them…" (Green, 1990: 250). They cover a range of syntactic word classes and have been labelled differently by a number of linguists, including particles (Schourup, 1985), fillers, interjections (Svartvik, 1980), hedges (Lakoff, 1975), pragmatic markers (Fraser, 1996), or pragmatic expressions (Erman, 1987). Carranza (1998), in her study of discourse markers in Argentinian Spanish, calls them "expresiones pragmáticas" (pragmatic expressions), claiming that such linguistic features indicate the speaker's attitude towards the utterance and the listener. She adds that due to their lack of propositional content, words such as *bueno*, *che*, *viste*, or *qué sé yo* have been generally ignored in Spanish language research, in spite of their crucial role in determining aspects of tenor and textual coherence (Carranza, 1998: 11–12). Schiffrin (1987) calls them discourse markers, which is the label I have chosen to adopt. They bracket units of talk and are syntactically independent from the sentence, so that they can be detached from the sentence without altering its propositional content. They are usually in initial position and have a tonic stress followed by a pause (Schiffrin, 1987: 328). According to Hölker (1991), these markers, which he calls "pragmatic markers", can be identified in the following way: the truth condition of the utterance is not affected by them, the propositional content of the utterance is not altered, they relate to the speech situation and their function is emotive and connotative rather than denotative or referential (78–79).

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[*] A revised version of this chapter was published as: Hale, S. (1999). Interpreters' treatment of discourse markers in courtroom questions. *Forensic Linguistics, 6, 1,* 57–82.

As my intention is not to provide an exhaustive analysis of every type of discourse marker available to speakers, I have concentrated on those which appear most frequently in my data and which were not systematically translated by the interpreter. Schiffrin (1987) sees discourse markers as devices that facilitate discourse coherence between two people engaged in conversation. The activity type which I have chosen to analyse is very different from everyday conversation, and although achieving coherence between the question and answer sequence is also an important use of these markers in courtroom interaction, in lawyers' questions, my data also seem to indicate that they can serve as devices of argumentation, combativeness and control. Despite the fact that the data show that discourse markers are an important device used by lawyers, interpreters omit them almost systematically. As their absence does not alter the propositional content of the utterance or their grammatical structure, they may seem irrelevant to interpreters and hence disappear in the mental filtering process. However, we will see how the impact of the questions changes as these markers go missing.

I have concentrated on the use of "well", "now" and "you see" prefacing lawyers' questions both in examination-in-chief and in cross-examination which were generally omitted in the interpretation. As Table 15 indicates, "well" appears in 4.3% of all cross-examination questions and in only 1% of examination-in-chief questions; "see" or a variation of it such as "you see", appears in 3.3% of cross-examination questions but does not appear in examination-in-chief at all; and "now" features in cross-examination questions only 2.5% of the time but 8% of the time in examination-in-chief. This presents a clear pattern. The data seem to demonstrate that in cross-examination, which has a combative mood, these discourse markers are used as an assertive device, indicative of superior authority. They preface questions that are either stating a disagreement, or that seek an answer that would suit the lawyer's purposes. "Well" and "see" appear with greater frequency in cross-examination than in examination-in-chief, which seems to indicate that they are stronger devices of argumentation than is "now", which is much more prominent in examination-in-chief. Indeed "see" is not used at all in examination-in-chief, for reasons I will explain later. "Now" in examination-in-chief is used mainly to guide the witness in presenting the story, prefacing questions that seek narrative answers in the form of Wh- or modal interrogatives, or more specific requests in the form of polar interrogatives.

Table 15. The use of discourse markers in courtroom questioning

	Well	See	Now
cross-examination	27 (4.3%)	21 (3.3%)	16 (2.5%)
examination-in-chief	4 (1%)	0	32 (8%)

I will now analyse the use of each of these discourse markers according to examination type and examine the interpreters' treatment of each.

4.2   Uses of "well" and "now" in examination-in-chief

4.2.1 Uses of "well" in examination-in-chief

Table 16 below presents the different uses of "well" when prefacing questions according to a number of researchers. Most of them corroborate each other, and some are complementary.

Table 16. Uses of "well" in questions

Functions	Researcher
1. To preface disagreements, equivalent to "yes but"	Pomerantz (1975)
2. To mark divergence or disagreement	Fraser (1990)
3. To indicate dissatisfaction with the sufficiency of the answer supplied to the previous question	Lakoff (1973) Schiffrin (1987)
4. To request clarification or elaboration	Schiffrin (1987)
5. To elicit information that previous questions in the exchange failed to elicit	Schiffrin (1987)
6. To bring the conversation back to the main topic when the other speaker diverges	Schiffrin (1987)
7. When there was reluctance to comply on the part of the respondent	Schiffrin (1987)

The use of "well" in examination-in-chief is rare. On the few occasions that it appears, it is used mainly as a sign of frustration when the witness is not providing the desired answers, thus showing dissatisfaction with the sufficiency of the answer provided, matching Lakoff's (1973) and Schiffrin's (1987) findings. Schiffrin found that "when a response did not satisfy the particular need for information underlying a request, the request was often rephrased and marked with `well'" and that "such requests fall into a series, where each member of the series is an effort to elicit information in response to the failures of earlier efforts" (1985: 655). Questions prefaced with "well" can be regarded as "positive conducive" (Hudson, 1975), expecting agreement to the proposition presented in the question.

4.2.1.1 *Interpreters' renditions of "well" in examination-in-chief*
Out of 397 examination-in-chief questions that form the data of this study, only four (1%) contain an initial "well", which is omitted every time by the interpreter.

Examples (1) and (2) taken respectively from cases 3 and 11, demonstrate the use of "well" in examination-in-chief and the interpreters' translations.

(1)   Q1- And uh you tell the court that you have no prior convictions?
      Interpreter- *¿Dice usted a la corte de que no ha tenido antes ninguna condena?*
      (Are you saying to the court that you have not had any convictions before?)
      A1- No.
      Interpreter- No.
      Q2- **Well**, is it correct that you have no prior convictions?
      Interpreter- *¿Es correcto decir que usted no ha tenido condenas anteriores?*
      (Is it correct to say that you have not had convictions before?)
      A2- *Sí.*
      (yes)
      Interpreter- Yes.

In example (1), the question prefaced by "well" is positive conducive, as it clearly invites the witness to agree with the rephrased question. The initial question, due to its conflict between a positive and a negative clause in the same interrogative structure, becomes ambiguous. The defendant's "no" answer is consequently also ambiguous: "no" can refer to telling the court or to no prior convictions. At this realisation, the lawyer rephrases the question, prefacing it by "well". This "well" also indicates a "self repair" (Schiffrin, 1987) on the part of the lawyer. The pragmatic meaning behind this discourse marker is something like "no, that's not what I was expecting, let me put it this way". To this second question the answer is "yes". What is essentially the same question in terms of propositional content, elicits two opposing answers when phrased in two different forms. This "well", which is pragmatically significant, is omitted by the interpreter. Let us now look at a hypothetical example of the same exchange without the use of "well":

(1)   a.   Question- And uh you tell the court that you have no prior convictions?
           Answer- No.
           Question- Is it correct that you have no prior convictions?

This exchange lacks coherence. Although the propositional content is the same, there is no link between the first and second questions, and no apparent reason for the second question, which is a repetition of the first. Without the discourse marker, the second question may appear as a reprimand for not having answered the first question correctly or even as an indication of suspicion about the witness's truthfulness. This is the version provided by the interpreter. The Spanish speaking witness is deprived of the extra cues provided by the discourse marker and may be left wondering why that question was asked twice, possibly affecting his composure for the rest of the examination. It must be noted, however, that in this context, "well" is difficult to translate, because it cannot be translated semantically. As per some of the tag questions discussed in Chapter 3, this is another of those instances where a disambiguation of the indirect speech act is necessary. The possible equivalents in this context in Spanish are outlined in Table 17.

Table 17. Possible equivalents of the positive conducive "well"

Spanish discourse markers	English gloss
Pues	Well
Mejor dicho	Better said
O sea	In other words/ I mean

The first option, *pues*, appears in the dictionary as an equivalent of "well", and it would fit this context, however, it is not a discourse feature that is used extensively in all dialects of Spanish, and may not come naturally to some interpreters. The second option, *mejor dicho* literally means "better said", and like *o sea*, can roughly be translated as "in other words" or "I mean" when used to retract from or rectify a previous comment or question. These last two fit well in this context, but are not exact pragmatic equivalents of "well" in other contexts, since they place the blame on the person asking the question.

(2) Q1- Now, at at the time your husband and the defendant were together, can you tell the court, where you were?
Interpreter- *Cuando su esposo y el señor estaban juntos, ¿dónde estaba usted?*
(When your husband and the gentleman were together, where were you?)
A1- *¿Cuando se hirió?*
(When he got injured?)
Interpreter- When he was injured?
Q2- Yes.
Interpreter- *Sí señora.*
(Yes, ma'am)
A2- *Cuando fui a agarrar a mi nena, porque la había dejado atrás.*
(When I went to get my girl, because I'd left her behind)
Interpreter- That's when I went back to after my child whom I left behind.
Q3- **Well**, when you first, when you first, when the defendant first approached you, where were you?
Interpreter- *Cuando él se acercó a usted por primera vez, ¿dónde andaba usted?*
(When he approached you for the first time, where were you?)

In example (2) the discourse marker "well" also appears after a previous question that was unsuccessful in eliciting the desired answer. This time it seems to indicate frustration and possibly impatience on the part of the questioner, who does not seem to make himself understood by the witness. The answer to the initial question is in fact a question which receives an affirmative response from the lawyer. This reversal of roles may also have contributed to a sense of frustration. The interpreter omits the "well" but makes an addition to Q2's "yes" in the form of *sí señora*. The use of *señora* in this context, said in the tone it is said, does not represent politeness, but rather impatience, something to the effect of "of course, that's obvious", which may have maintained the feeling of frustration in the exchange, although this did not substitute "well".

4.2.2 The uses of "now" in examination-in-chief

Schiffrin (1987: 228–246) found a number of uses for the marker "now" in conversation: to emphasise progression in the discourse, to mark comparisons, to preface disagreements, to mark changes in speaker orientation when this is not done grammatically and to negotiate the right to control the flow of conversation. In examination-in-chief, where the lawyer is examining his/her own witness, the data show that "now" is used in a non-confrontational way. It is used to emphasise progression in the witness's testimony by guiding it in the right direction and at times even prompting it with the use of leading questions, which are technically disallowed. By so doing, the lawyer can control the flow of information to ensure that his/her witness does not digress from the relevant facts and presents the evidence in the best possible light. The level of control is either high or moderate, depending on the type of question used: either very specific questions that require yes or no answers, using polar interrogatives, or the more open invitations to provide narratives, using Wh- or modal interrogatives. This is shown in Table 18 below.

Table 18. Different uses of "now" in examination-in-chief

Purpose	Level of control	Question type	Percentage
To rigidly control flow of information.	High	Polar interrogative	57.14%
To mark progression in narrative, to guide the flow of information.	Medium	Wh- / modal interrogative	42.85%

In examination-in-chief, all instances of "now" were followed either by a polar interrogative or by a Wh-question with or without a modal, but never by a declarative.

Example (3) below shows a clear instance of the use of "now" to mark progression. As soon as question 1 is answered satisfactorily by the witness, counsel prefaces his next question with "alright", which acknowledges the answer. This is followed by "now", which precedes a paraphrase of the witness's answer, and the next question about what happened next. We can see that the interpretation omits both these initial markers: "alright" and "now", when they could easily have been interpreted as *bien, ahora*.

> (3) Interpreter- Yes, his relative called to say which condition the car was.
> Question- Alright, **now**, uh, following the information that you received about what condition it was in, what did you decide to do?
> Interpreter- *Después de que recibió la información en cuanto a la condición en que se encontraba el coche ¿qué decisión tomó usted?*

(After you received the information about the condition the car was in, what decision did you make?)

At times counsel are not successful in achieving complete control over the flow of information, and the witness provides irrelevant or unwanted information. Such instances of loss of control over the evidence create noticeable frustration for counsel and provoke questions prefaced by "now" to try to lead the witness back to the desired line of evidence, as shown in example (4).

(4)   Question- **Now**, just pause there, do you remember what month of the year 1992 it was?
Interpreter- *¿Recuerda en qué mes del año 92 fue que sucedió esto?*
(Do you remember what month of the year 92 it was that this happened?)

In example (4) counsel had to stop his own witness from continuing to present the evidence in a particular way to bring him back to the line of evidence the lawyer considered relevant for his case. The command "just pause there" is prefaced by the marker "now", which in a less polite and more informal way could have been replaced by "wait a minute", implying the witness is not proceeding in the right direction. This is a clear example of the lawyer trying to regain control, by inter-rupting the witness's narrative and imposing limits on the information to be presented as evidence. Once again we find that the interpreter omits, not only the discourse marker "now", but also the phrase "just pause there", simply interpreting the question. By doing this, the witness does not hear the lawyer's reprimand and is not aware that he was not answering relevantly.

(5)   Question- Yes, **now**, can you tell the court what happened?
Interpreter- *¿Puede decirle a la corte qué pasó?*
(Can you tell the court what happened?)

Example (5) is representative of a number of occurrences of "now" in examination-in-chief questions in the data. The lawyer acknowledges the answer provided by the witness with a "yes", an "OK", or an "alright" but immediately dismisses it as irrelevant with the marker "now" and either a repetition of the previous question or a newly phrased question. Here the lawyer is implying "yes, I heard what you said but that is not what I asked you". It is worth noting at this point that often the law's perception of relevance does not match that of the lay witness's. It is common for lawyers to become frustrated with their own witnesses who do not give evidence in the desired way. The use of the discourse marker "now" seems to be a good strategy to indirectly reprimand their own witness without being aggressive or impolite. In examination-in-chief counsel need to maintain control by gaining the cooperation of their own witness rather than by coercing or antagonising them, as is the case in cross-examination.

4.2.2.1 *The interpretation of "now" in examination-in-chief*

The discourse marker "now" in examination-in-chief questions was omitted every time by the interpreter. This feature was obviously considered to be disposable by all interpreters. As explained earlier, in a non-confrontational context, the initial marker "now" is not difficult to translate into Spanish with *bien* and *ahora bien* being good pragmatic equivalents. These markers in Spanish are used with the same intention of marking progression or guiding the flow of information. In spite of this ready equivalence, none of the interpreters translated the marker into Spanish. Four times the translated question was initiated by a hesitation marker *eh*, which may indicate an attempt to translate it or some indication of a mental filtering process. Once "now" was translated as *entonces* (so) which carries a very different illocutionary force.

4.3 Uses of "well", "see" and "now" in cross-examination

Before I start the analysis of the bilingual courtroom data, I will present two segments from a monolingual cross-examination that took place in a New South Wales Local Court in July 1985 between a lawyer and a detective, to illustrate the extensive use of these discourse markers in cross-examination.

> (6) Q1- **Now**, what time was that?
> A- It would have been in the afternoon.
> Q2- **Well**, can you estimate the time?
> A- Approximately 1.30, it may have been later.
> Q3- **Now** I think you said that you… (2 more contested questions (4 & 5) fol low)
> A- No he said "I did it"
> Q6- **But** did you take note of that?
> A- No sir, I did not.
> Q7- When did you write that conversation, or note that conversation down in any form detective?
> A- On the day I made my statement, Sir, on the 8th of July.
> Q8- **So** you have made no note between 30th May and 8th July in respect of the conversation you say you had with T?
> A- No Sir.
> Q9- **See**, **I put to you that** what he was talking about there was Indian Hemp.
> A- He may have indicated that Sir because it was alleged to have been at the flat, yes.

In the question/answer sequence presented in example (6), out of nine questions, six commence with a discourse marker. The first marker (Q1) is "now" which is used to mark progression or start a new point. This marker is used again in Q3. The use of "well" in Q2 indicates clearly that the answer given was not sufficient. The

previous question asked for the time, to which the detective provides an imprecise answer "in the afternoon". This answer is followed by a request to be more specific, expressed as "**Well**, can you estimate the time?" which clearly indicates the lawyer's dissatisfaction with the answer. The next discourse marker used is "but", which marks divergence and prefaces a question that follows a negative answer (Q6). The next question starts with the marker "so", used to arrive at a conclusion from what had been presented thus far. When this proposition is rejected by the witness, the lawyer resorts to the stronger "see" followed by an "I put it to you that" clause.

(7) Q1- **Well**, **could** he have said at that point in time, could he have added "Look I'm not saying anything without the presence of a solicitor"?
 A1- No, he didn't say that to my recollection Sir, no.
 Q2- **Well see** did you ever, you say he never said it to you, **I put to you that** he did say it to you.
 A2- I can't recall him saying it to me Sir, no.
 Q3- Did you make a note of that conversation that you had with him at the Palm and Pawn?
 A3- I did not Sir, no.
 Q4- When did you first notate that conversation that you had with C on 30th May, that portion of the conversation?
 A4- On 8th July when I made my statement.
 Q5- And **would** it be reasonable to say Detective that you had been involved in a number of investigations since, between 30th May and 8th July?
 A5- Yes, that's correct.
 Q6- I suppose you **could** not number the investigations you have been involved in since then or between those dates at least.
 A6- No sexual assault matters, no.
 Q7- No, but you cannot number the number of sexual assault matters.
 A7- No I can't.
 Q8- Or matters generally where you have interviewed suspects.
 A8- I cannot, no.
 Q9- **You see**, **could** not your recollection there be lacking in that regard in view of the fact that you made no notation of the conversation on the 30th, no contemporaneous notation on 30th May, in fact made no notation of the conversation at all until 8th July, to be fair?
 A9- That's possible, yes.
 Q10- **So it is possible**, **is it not**, that Carthew said to you "I'm not saying anything without a solicitor present"?
 A10- Sir, my recollection is he never mentioned a solicitor at all.
 Q11- **Well**, but that does not, that's to your recollection, but **could** it have been the case that in fact he did mention that and you have now forgotten it, I mean **that is possible, is it not**?
 A11- **It's possible**, but I don't recollect him saying it.

In example (7), which is a continuation of the same cross-examination, we see how the cross-examiner combines a number of different tactics to achieve his purposes.

These include the use of discourse markers, question type, modality, repetition and carefully chosen lexis, to complement the argument which is presented in the propositional content. The cross-examiner's aim is to demonstrate that the witness's recollection of the facts is lacking because he did not make any notations at the time of the incident. Through the use of the devices outlined above, he attempts, and is successful at achieving, an admission from the witness which supports his proposition. He uses repetition (Q3 & 4, 5–8 and 9–11) to emphasise the fact that there was no notation made, that the detective would have had to have dealt with many investigations apart from the one in question, and that therefore his memory could be lacking. He uses modality to elicit a positive answer from this witness, who is experienced at being cross-examined in his position as a member of the police force, and has been strong and consistent with his negative answers throughout. However, the witness, having admitted that he had not made any notation at the time, cannot deny the possibility that his memory may not serve him well and that the cross-examiner's proposition may be valid (Q9–11), providing the expected "It's possible" as answers 9 and 11. The logical progression of the argument is aided by the use of carefully selected discourse markers.

"Well" and "you see" are used on four occasions, and "so" on one. The first "well" in question 1, is prefacing a disagreement. The answer is still in the negative and so the next question is an "I put it to you that" declarative which is prefaced by "well, you see". "So" is used in question 10, to arrive at the conclusion that, based on the previous answers, the cross-examiner's proposition is possible. The questions that are not prefaced by discourse markers are the ones that do not expect to be rejected (Q3–8). These are questions to which the cross-examiner receives agreeable answers. It is interesting to note the use of the terms "reasonable" and "I suppose" (Q5 & 6) in the questions that seek the witness's cooperation. These are not presenting the cross-examiner's proposition as disputed fact, but seeking agreement from the witness in a way that makes it very difficult to do otherwise. The type of questions used are typical of cross-examination, comprising 6 statements, 2 of which have negative checking tags attached to them, 4 polar interrogatives and only 1 Wh- narrow question. Examples (6) and (7) are illustrative of the strategies used by cross-examiners to achieve their own purposes. The use of the these features does not differ in purpose and frequency in the bilingual courtroom. However, in the bilingual courtroom, my data have shown that these carefully selected devices are consistently omitted by interpreters as if they had no purpose at all.

4.3.1 Uses of "well" in cross-examination

In the bilingual data, all of the types of "well" indicated in Table 16 were evident in the lawyers' questions. As a preface to the cross-examiner's question, "well" was

mostly used to indicate rejection of the witness's/defendant's previous answer and to provoke him/her by proposing something different, which was generally contentious. (See e.gs 8 & 9 below). When used by the cross-examiner then, "well" often tends to act as a sign of contradiction, marking disagreement, as was also illustrated in examples (6) and (7) above. Drew (1992) also found that "well" in cross-examination was used as a disagreement preface by both counsel and witness. In this context questions beginning with "well" can be said to be "negative conducive" (Hudson, 1975), which are questions that anticipate disagreement, unlike their use in examination-in-chief, which was positive conducive. This can be seen clearly in examples (8) and (9), which are representative of the data as a whole.

(8)   Q1- See, your wife didn't want you both to get involved in a fight, is that right?
       [INTERPRETATION OMITTED]
       A1- *Yo creo que no porque es bien difícil que ella quiera esas cosas ¿no?*
       (I don't think so, it's unlikely that she would want that sort of thing, isn't it?)
       Interpreter- I think not it's rather hard that my wife would have wanted that.
       Q2- **Well** you see, you were saying to your wife, let me go, I want to hit this son of a bitch, weren't you?

In example (8) above, we can see that the lawyer is dissatisfied with the witness's answers and starts each question with a discourse marker. Question 1 backfires on the cross-examiner, as she poses a self-evident statement, which is highlighted by the witness in his answer: "I don't think so, it's unlikely that she would want that sort of thing, isn't it?". Such an answer, with the use of a tag question at the end, is sarcastic and to an extent ridicules the cross-examiner. Interestingly, the interpreter omits the witness's use of the tag, and offers an answer that is not completely idiomatic, thus diminishing the force of the answer and making the witness more submissive. The lawyer then shows dissatisfaction with the answer and prefaces the next question with a "well, you see", making it apparent that her line of questioning is not working.

(9)   Q1- You couldn't identify any handle, can you?
       [INTERPRETATION OMITTED]
       A1- *No, porque lo tenía apuñado con la mano derecha y*]
       Interpreter-] No, because he was holding the handle in his right hand.
       Q2- That's because there wasn't any knife, isn't it?
       [INTERPRETATION OMITTED]
       A2- *No entiendo*
       (I don't understand)
       [INTERPRETATION OMITTED]
       Q3- **Well**, you didn't see the handle because there wasn't any knife, isn't that right?

In example (9) the witness rejects the lawyer's contentious suggestion by providing

a different explanation in answer 1. Question 2 is received with an evasive answer "I don't understand", which is not the expected or desired answer. Question 3 is therefore prefaced by a "well", indicating the lawyer's disagreement with the previous answer.

4.3.1.1 *The omission of "well" in the interpreter's renditions*

The discourse marker "well" as a preface to the cross-examiner's questions appeared in 27 questions, but it appeared in the interpretation only 8 times. This demonstrates that the interpreters omitted this discourse marker in their interpretation 70.37% of the time. Whether the omission is deliberate or not is difficult to ascertain, however the omission is significant.

> (10) Q1- **Well**, you were yelling and screaming at this stage, weren't you?
> Interpreter- *Usted estaba gritando y y y ah hablando en voz alta en ese momento, ¿no es cierto?*
> (You were screaming and and and uh speaking in a loud voice at this moment, isn't it right?)
> A1- *Absolutamente* nothing, *no nada.*
> (Absolutely nothing, no nothing)
> Interpreter- Absolutely nothing, no.
> Q2- **See**, you were yelling and screaming at the passenger of the truck.
> Interpreter- *Usted estaba gritándole al pasajero del camión.*
> (You were yelling at the passenger in the truck)
> A2- *Yo no estaba gritando a nadie, no grité nada absolutamente.*
> (I wasn't yelling at anyone, I didn't yell absolutely anything)
> Interpreter- I wasn't yelling to anybody, I I didn't yell at all.

Example (10) above shows an instance of the use of "well" followed by "see". The cross-examiner here puts to the witness a contentious suggestion that is likely to be rejected. This is prefaced by "well" and ended with a negative tag. The proposition is immediately rejected by the witness who says "absolutely nothing, no" at which response the lawyer tries again, this time using "see" and a declarative statement with no tag. Once again the proposition is rejected. The first discourse marker, "well", introduces a disagreement. The cross-examiner is presenting a divergent set of facts to the witness. When that is rejected, the same proposition is reiterated as fact, this time prefaced by the use of "see", which has a stronger force than "well", as will be discussed below. As can be seen in the back translation of the interpreter's rendition, which appears in brackets, at no time were these two discourse markers translated, thus omitting the indirect force behind the questions. The translated version lacks not only indirect force, but also coherence. Whether this had any impact on the witness's perception of the questions is difficult to say, although considering the significance of such devices, it would be safe to assume that it did.

Example (11) below consists of a series of exchanges which commence and end with the same question, hence I have identified it as a single question and answer segment. It is relevant to this section of the analysis because it makes extensive use of the discourse marker "well" in a line of continuous disagreements. I will analyse the segment in detail.

(11)

Original questions and answers with author's translations	Interpreter's renditions and author's back translations
a.1 Q1- Uh do you accept that you filled out a claim, an insurance claim for the car on the 23rd of July?	*a.2* I- *¿Acepta usted de que usted llenó un formulario de reclamo de seguros el 23 de julio?* (Do you accept that you filled out the insurance claim form on 23 of July?)
b.1 A1- *Mm, que lo llené sí, que sea el 23 no estoy seguro.* (Mm, that I filled it out yes, that it was on the 23rd I'm not sure)	*b.2* I- I accept that uh I filled it up but I'm not sure whether it was the 23rd.
c.1 Q2- Uhm, **well** when you filled out the insurance claim, your wife did that on your behalf, is that correct?	*c.2* I- *Cuando usted llenó el formulario de reclamo de seguro su esposa lo hizo por usted, ¿verdad?* (When you filled out the insurance claim form your wife did it for you, right?)
d.1 A2- *Cuando cuando se llenó, no cuando lo llené. Creo que fue ella porque buscaba la ayuda de otra gente que hablaba mejor que, mejor que ella todavía.* (When it was filled out, not when I filled it out. I think it was her because I was looking for help from other people who spoke better than, even better than her.)	*d.2* Uh when it was filled up not when I filled up, uh, I remember that it was her because I was also looking for the help of other people that would speak English better than her even.
e.1 Q3- **Now**, in relation to the day you filled out the insurance claim form, can you be more specific as to when the police told you that your car had been found.	*e.2* I- *En cuanto al día que usted llenó la aplicación, o que se llenó la aplicación,*[8] *¿puede ser más específico en cuanto a la fecha que la policía le dijo de que había encontrado el coche?* (With regard to the day you filled out the application, or that the application was filled, can you be more specific as to the date the police told you that they had found the car?)

f.1
A3-*Tal vez no pueda ser más específico
porque hace mucho tiempo de eso que no no
tengo una secuencia de datos exactos*
[SOMETHING ELSE INAUDIBLE].
(Maybe I can't be more specific because it's
been a long time since that happened and I
don't have an exact sequence of events.)

f.2
I- Uh, perhaps I cannot give you uh, I
cannot really be more specific because
it's been so long ago and I have not in my
mind a precise sequence of events, I
wasn't prepared for this.

g.1
Q4- Right. The insurance claim form, where
did you get that from?

g.2
I- *El formulario de reclamos de la
compañía de seguros, ¿de dónde lo obtuvo?*
(The claim form from the insurance
company, where did you get it from?)

h.1
A4a- *Si mal no recuerdo se llenó cuando el
agente de seguros llegó a mi casa.*
(If I remember correctly it was filled out
when the insurance agent came to my
house.)

h.2
I- If I'm not mistaken it was filled up
when the uh insurance agent came to my
house.

i.1
A4b- *O no sé si lo mandaron por correo y
mi esposa lo llenó. No recuerdo
exactamente.*
(Or I don't know if they sent it by mail and
my wife filled it out. I can't remember
exactly)

i.2
I- Or perhaps it was sent by mail and my
wife filled it up, I don't remember
exactly.

j.1
Q5- Right. **So** did the insurance agent come
around to your house on the23rd?

j.2
I- *¿Entonces el agente de seguros llegó a
su casa el 23?*
(So the insurance agent went to your
house on the 23rd?)

k.1
A5- No

k.2
I- No

l.1
Q6- **But** you filled out the form on the 23rd.

l.2
I- *Pero usted llenó ese formulario el 23.*
(But you filled out that form on the 23rd.)

m.1
A6-*¿No le he dicho que no estoy seguro?
Ha pasado tanto tiempo.*
(Haven't I told you that I'm not sure? It's
been too long.)

m.2
I- I have said I am not sure, it was so long
ago.

n.1
Q7- Right, uh, **well** you accept that you
filled out the form on the 23rd.

n.2
I- *¿Acepta usted que usted llenó el
formulario el 23?*
(Do you accept that you filled out the
form on the 23rd?)

o.1
A7- *No tengo la… yo no sé exactamente la fecha en que lo llenaron.*
(I don't have the… I don't know exactly the date when it was filled out.)

o.2
I- I don't know exactly the day it was filled up.

p. 1
Q8- **Well**, where did you get the form from to fill out?

p. 2
I- *¿Dónde obtuvo el formulario para llenarlo?*
(Where did you get the form from to fill out?)

The cross-examiner commences his line of questioning about an insurance form around which there are certain inconsistencies and uncertainties, with question 1 (a.1). He asks the defendant if he "accepts" two facts: one that he filled out an insurance claim form, and two that he did it on 23rd of July. After this initial question all other questions revolve around the insurance form, the date it was filled out, who it was filled out by, and where it was obtained from, with a particular emphasis on the date being the 23rd of July. In response to the first question, the defendant accepts the first proposition but rejects the second (b.2), initiating a sequence of rejections. Question 2 (c.1) is prefaced with "well" in response to answer 1 which was not in complete agreement with question 1, or did not fully satisfy the question. In question 2 the lawyer picks up on the piece of information agreed to by the defendant, that he filled out a form, and adds another piece of information, that in fact it was the wife who had filled it out: "Uhm, **well** when you filled out the insurance claim, your wife did that on your behalf, is that correct?" (c.1). To this the defendant who indicates insecurity about who in fact filled out the form, responds by emphasising that there should be a passive agent: *Cuando cuando se llenó, no cuando lo llené* (when when it was filled out, not when I filled it out) (d.1), hence avoiding responsibility and again presenting a disagreement to the previous question.

The discourse marker "now" prefaces question 3 (e.1) in an attempt to return to the original question, "**now**, in relation to the day **you** filled out…". With the use of "now", the lawyer seems to dismiss the defendant's previous answer, as there is no acknowledgment of it. Instead the cross-examiner wants to regain control of the flow of the information and steer the discourse back to his agenda. Once again the defendant is asked about the day, which was question one, although he is also asked to be specific about when the police informed him of an event. To this the defendant responds negatively once again, with an evasive "*tal vez no pueda ser más específico*" (maybe I can't be more specific) (f.1). Question 4 (g.1) introduces a new theme: where did the defendant get the form, to which the defendant responds with an answer to the previous question, question 3, which asked "when". Answer 4a is

"*si mal no recuerdo se llenó cuando…*" (if I remember correctly it was filled when…) (h.1), once again showing uncertainty about the date but emphasising the passive voice, so as to be vague about the agent. The defendant goes on to say that he's not sure if the insurance agent brought the form around or if it was received in the mail (i.1). To this, another question is put about the date, returning to the original question 1. Question 5 (j.1) states: "**So** did the insurance agent come around to your house on the 23rd?". Here "so" is used to attempt to finalise the question about the date, which to this stage, has not yet been answered. As Schiffrin (1985) states, markers such as "and" and "so" are more likely to appear at a possible completion point. Once again this question is followed by a negative response, a simple "no" (k.1).

Question 6 (l.1) emphasises the date once more "**but** you filled out the form on the 23rd". This is prefaced by "but", "a turn-initial marker of contrast which often initiates disagreement" (Schiffrin, 1985: 653), as evidenced in the emphatic negative answer: "*No le he dicho que no estoy seguro, ha pasado tanto tiempo*" (m.1) (Haven't I told you that I'm not sure? It's been so long). This is immediately followed by question 7 (n.1) which is prefaced with a "well" and reiterates the date: "**well** you accept that you filled out the form on the 23rd" which obtains another rejection: "*No tengo la, yo no sé exactamente la fecha en que lo llenaron*" (o.1) (I haven't got a, I don't know exactly the date they filled it out), which the interpreter softens by saying "I don't know exactly the day it was filled up" (o.2). This use of "well" fits in with Schiffrin's findings that some "requests were re-issued with *well* when a respondent conveyed reluctance to comply" (1985: 656). The last question of this segment, "**well**, where did you get the form from to fill out?" (p. 1), is also prefaced with "well", however, this last "well" carries a different force to the rest. Here the lawyer seems to show frustration and a sense of failure. It prefaces a Wh-question rather than a polar interrogative as did all the others. This "well" can be interpreted pragmatically as "Ok then, you tell me…" rather than "I am telling you this is the way it was".

The whole exchange is a series of contradictions. Not a single answer agrees with the question. This supports the assumption that the discourse marker "well" in an adversarial context is used to enforce combativeness and confrontation, and is very often surrounded by rejection of the proposition that follows the device. Not a single time, however, does the interpreter translate the discourse marker "well". As it was mentioned previously, the absence of these discourse markers does not change the propositional content of the utterance but can alter its force and its coherence. The original use of discourse markers indicates the links between the questions and the answers, and indirectly tell the witness that the answers are not relevant or sufficient in relation to the questions. These extra cues are not present in the interpretation, and can make the questions sound unjustifiably repetitive, which can lead to frustration

in the witness. Additionally, as Tyler et al. (1988) suggest based on the results of their own research, the absence of a normal distribution of discourse markers in oral speech can make it sound unnatural and even more difficult to comprehend. Noteworthy also is the fact that the answers are translated in a less emphatic and less confrontational way. The interpreter seems to act as a shield, where the message is muted by an unofficial filtering, deflecting the aggression that comes from both sides. I will discuss some of them separately. I will provide my own translation in brackets and compare it with the interpreter's version.

> A1- *Mm, que lo llené sí, que sea el 23 no estoy seguro.*
> (Mm, that I filled it out yes, that it was on the 23rd I'm not sure).
> I- I accept that uh I filled it up but I'm not sure whether it was the 23rd.

The way the defendant phrases his answer is grammatically marked, using cleft sentences, emphasising the Direct Object in theme position rather than the verb. In the original, the emphasis is on "that I filled it out" and "the 23rd", whereas in the interpretation, the emphasis is on "I accept" and "I'm not sure". This shift emphasises a more submissive and conciliatory mood from the witness that is not present in the original, by thematising "acceptance" and "uncertainty". I will disregard the interpreter's grammatical errors or unidiomatic expressions in English, which of course are not present in the original Spanish version.

> A3- *Tal vez no pueda ser más específico porque hace mucho tiempo de eso que no no tengo una secuencia de datos exactos.*
> (Maybe I can't be more specific because it's been a long time since then and I don't have a sequence of the exact details)
> I- Uh, perhaps I cannot give you uh, I cannot really be, more specific because it's been so long ago and I have not in my mind a precise sequence of events, I wasn't prepared for this.

The force behind answer 3 is in the ambiguity of the statement, "*tal vez no pueda ser más específico*" (maybe I can't be more specific). The use of "maybe" denotes defiance in response to the question about specificity, which is an important legal requirement. The defendant is being deliberately vague in his response to a request to be more specific. The interpreter begins to interpret the answer with a "perhaps" but changes it to something more certain "I cannot really be more specific", making the answer itself more specific in form than the original. An important insight into the witness's character goes missing here, since the original answer is more contentious than the translated one.

> A6- *¿No le he dicho que no estoy seguro? ha pasado tanto tiempo.*
> (Haven't I told you that I'm not sure? It's been so long)
> I- I have said I am not sure, it was so long ago.

Again, in answer 6, the interpreter makes a slight alteration to the illocutionary

force of the statement. The original answer, "haven't I told you that I'm not sure? It's been so long", is translated as "I have said I am not sure, it was so long ago". There is a fundamental difference here. The original answer is a direct, personal confrontation with the lawyer, "haven't I told **you**" said in the tone of a question, whereas the interpreter's rendition simply reiterates a previous answer "I have said…" and is softer in tone. The witness takes on a more powerful role by answering the question with another question, an act that would have attracted a reprimand from the lawyer and a command to simply answer the question. The original can be interpreted as "why are you asking me again, haven't you heard what I said earlier", which again is insightful of the witness's character.

It is remarkable to see that in this example both the lawyer and the defendant are aggressive in their style and manner in spite of the interpreter's softening of the tone when interpreting into English and into Spanish. It is difficult to determine whether the presence of an interpreter gives the witness more courage to use stronger language since his words are not directly understood by anyone else in the courtroom. In other words, the defendant may be expressing his annoyance to the interpreter possibly believing that this would be automatically toned down in the process.

We have seen that "well" has an important discourse function in lawyers' questions but that in spite of this, interpreters tend to omit them in their interpretation, with unknown consequences on the answers. In order to ascertain the impact of these discourse markers on the answers, further research is needed in the form of controlled experiments, where the same questions are posed to two different groups, with one set containing discourse markers and the other without. Watts (1989) has shown that native speakers of a language are almost completely unaware of their use of discourse markers which becomes automatic in their speech. Berk-Seligson (1990) comments that because discourse markers such as "well" are usually regarded as meaningless by the average speaker, it is easy for interpreters to omit them in their interpretation. However, as in the case of the omission of tag questions in the interpreter's renditions, as discussed in Chapter 3, one reason for the tendency to omit discourse markers such as "well" may be that the literal translation of them often does not carry the same force. As McCarthy (1994) suggests, discourse features do not always automatically transfer from language one (L1) to language two (L2) which poses the situation where function or illocutionary act is what should be translated, and not form or locutionary act.

"Well" was translated by the interpreters only eight times out of twenty seven (29.6%) in cross-examination, and on four occasions there is hesitation in the form of *eh* which is equivalent to "uh" in English, at the beginning of the interpretation, indicating a translation difficulty. The discourse marker was translated as *entonces* (then) twice, as *bueno, entonces* (well then) twice, and the rest of the time as *pero*

(but). I regard all these alternatives as appropriate, with *pero* being slightly stronger. As Schiffrin states, "'well" marks a more conciliatory move than "but" (1985: 653). However, *bueno, pero* (well but) softens the strength of "but" and maintains the disjunctive nature of "well" when prefacing questions, hence making this another possible option. Testa (1988) mentions that the Italian *ma* (but) is equivalent to the English "well" as a discourse marker, a fact that is plausible in Spanish also. *Bueno* by itself, which is the literal translation of "well", would not carry the same illocutionary force when used to preface questions, since it would simply imply acknowledgment of a previous answer, equivalent to "good", "Ok" or "right".

4.3.2 The uses of "see" in cross-examination

According to McCarthy, "you see" is a marker that has the function to indicate "proclaimed knowledge" (1994: 112). Schiffrin (1987) refers to it as a marker used in explanations. Erman found in a study of pragmatic expressions, that "you see" "typically occurred in explanatory or argumentative discourse in connection with information which was presented as new… When *you see* was used the speaker started by conveying her/his point of view" (1987: 117). Erman further states that when speakers in the study used "you see" they seemed to "try to make the addressee accept her/his ideas and explanations more overtly" (1987: 11). Such a use of the marker "you see" to preface questions precludes its use in examination-in-chief. The principle behind examination-in-chief is that the evidence is presented by the witness as undisputed fact. The witness's lawyer is not permitted to explain or present evidence on behalf of the witness, hence the marker "see" does not appear at all in examination-in-chief in my data. In cross-examination, however, the cross-examiner will attempt to discredit the other party's evidence by presenting his/her version, "proclaiming to know" what really happened which will be in contradiction to what has been presented in examination-in-chief. Therefore, "see" (or "you see") is more contentious and carries a stronger pragmatic force than does "well". The implied meaning behind the questions beginning with "see" often equate with "what you're saying is not right, this is how it happened". What seems to corroborate this assumption is that "you see" is often followed by "I put it to you" or "I suggest" (38% of the time).

(12)   Q- **You see, what I'm putting to you** is that he didn't, as you say, set himself to the left at all, he was in front of you.
Interpreter- *Yo lo que le digo que él ni siquiera se se se torció a la izquierda, él estaba frente a usted.*
(What I say is that he didn't even uh uh uh twist to the left, he was in front of you)

Example (12) has all the elements necessary to convey the contradictory attitude

described above. The cross-examiner starts her turn by using the marker "you see". This sets the mood of the exchange with an illocutionary force that implies "proclaimed knowledge". The next clause is the "I'm putting to you that" clause, which is only used in cross-examination. The lawyer then states the version of facts she wants the magistrate to believe, "that he didn't set himself to the left at all". Here she has contradicted the evidence given previously by the witness, something she makes clear by saying "as you say". Her language is emphatic and confrontational. The phrase "at all" increases the forcefulness of the accusation. She is accusing the witness of lying in a forceful but indirect way.

4.3.2.1 *The interpreter's treatment of "you see"*

80.95% of the time, the marker "you see" was completely omitted by the interpreters. This is a very significant percentage, once again indicating that the illocutionary force may be altered in the interpretation. If we look at the interpreter's version of example (12),

> I- *Yo lo que le digo que él ni siquiera se se se torció a la izquierda, él estaba frente a usted.*
> (What I say is that he didn't even uh uh uh twist to the left, he was in front of you).

three very important elements are missing in the interpreted version: "you see", "as you say" and "at all". As we have seen in previous examples, once again the illocutionary force of the original utterance is altered in the interpreted version as a result of those omissions. The propositional content remains almost unchanged, but the indirect meaning, the implicature (Grice, 1975) changes. The interpreter's version is no longer an accusation but a mere statement. It also includes hesitations which are not present in the original utterance. There is no reason whatsoever for the omission of "as you say" and "at all", since there are direct equivalents in Spanish and their interpretation should not cause any difficulty.

As with all other discourse markers, "you see" is difficult to translate due to the subtle pragmatic meanings it carries, which vary according to context. A semantic, literal translation in Spanish of the verb "to see" would not carry the same illocutionary force in the context of question prefaces, hence it is understandable that interpreters find this feature difficult to interpret. In essence, every instance of "see" as initial marker has a potential different translation in Spanish (see Hale, 1999 for suggested alternatives). Below are some more examples of the omission of "you see" by interpreters.

(13)   Q- You see, what he did is he put one hand on your shoulder.
       Interpreter- *Lo que hizo él fue ponerle una mano en el hombro.*
       (What he did was put a hand on your shoulder)

(14) Q- See, what I'm putting to you is that you were yelling and screaming on the ground, at this stage.
      Interpreter- *Yo le digo a usted que estaba estaba en el suelo pero estaba gritando y… pegando alaridos.*
      (I tell you that you were were on the ground but you were yelling and… screaming)

(15) Q- See, you wanna get him into trouble, don't you?
      Interpreter- *Usted quiere que él se meta en problemas, ¿no es así?*
      (You want him to get into trouble, isn't that so?)

Examples (13)–(15) show three different instances of the use of "you see", each of which was omitted by the interpreter. These could have been translated by the interpreter in a number of different ways, however, there is no one translation that would be adequate to the three questions. A possible translation for the first "you see" in example (13) could be *en realidad* (in fact), for the second one (14), it could be *mire* (look) or *escúcheme bien* (listen to me well), and for the third one, in example (15), *la verdad es que* (the truth is), or a change in syntax, *lo que usted quiere es meterlo en problemas, ¿o no?* (What you want is to get him into trouble, don't you?). None of these alternatives corresponds literally to the verb "to see", with "look" being the closest semantically. Although these are not exact equivalents, they add force to the utterance and make the translations pragmatically closer to the original intention. As House argues:

> In translation, it is always necessary to aim at equivalence of pragmatic meaning, if necessary at the expense of semantic equivalence. Pragmatic meaning thus overrides semantic meaning. We may therefore consider a translation to be primarily a pragmatic reconstruction of its source text (House, 1977: 28).

A "pragmatic reconstruction of the source text" (House, 1977: 28) is a complex and intricate task, difficult to achieve by interpreters when confronted with a number of different choices and limited time to make the correct ones. It is therefore obviously easier to omit such features as "you see" prefacing questions, than to find the pragmatically equivalent option. Nevertheless, 19% of the time, or four times out of twenty-one, the interpreters attempted to translate the initial discourse marker with the options that appear in Table 19 below.

Table 19. Interpretations of "see" found in data

Spanish interpretation	English gloss
Lo que era	What it was (e.g.16)
Señora	Ma'am (e.g. 17)
Lo que le quiero decir	What I want to tell you (e.g. 18)
Pero	But (e.g. 19)

(16)   Q- See, your wife was trying to keep you away from, from the defendant, wasn't she? From you, I I withdraw that, your wife was trying to stop you from doing something to the defendant, wasn't she?

   Interpreter- **Lo que era**, *su esposa estaba tratando de evitar que usted le hiciera daño a él.*

   (What it was, your wife was trying to stop you from hurting him)

(17)   Q- You see, you, and Oscar's wife, had an argument back in February last year, is that right?

   Interpreter- **Señora**, *usted y la esposa de Oscar tuvieron una pelea en febrero del año pasado ¿es así?*

   (Ma'am, you and Oscar's wife had a fight in February last year, is this so?)

(18)   Q- All right, you see, if you… if you open the door from… to come in from the waiting room… what I'm saying is that if you look straight ahead you could see the couch, is that right?

   Interpreter- **Lo que le quiero decir** *es que si si usted viene de la sala de espera donde están esperando los pacientes y abre la puerta, usted lo que ve adelante suyo es la camilla, ¿está de acuerdo, cuando entra?*

   (What I want to tell you is that if if you come to the waiting room where the patients are waiting and open the door, what you see in front of you is the couch, do you agree? When you come in?)

(19)   Q- See? You had an argument with the defendant back in February last year, didn't you?

   Interpreter- **Pero** *en febrero del año pasado usted tomó una discusión con el señor.*

   (But in February last year you had an argument with the gentleman)

None of these four occurrences of "see", which were translated in some way or another, were followed by "I put it to you" in the original utterance. This may indicate that when "I put it to you" is present, interpreters may consider it appropriate to delete the discourse marker and regard "I put it to you" as a strong enough preface to the question. The first option, *lo que era* (what it was), does have a similar implicature to "see" used to indicate proclaimed knowledge. What it is doing is changing an indirect speech act into a direct one. It clearly states "this is what happened" and is probably the closest pragmatic equivalence to the original out of the four options found in the data.

The second option is an interesting one because on the surface it can be regarded as an inaccurate interpretation, however, pragmatically it is very similar in force to "you see". The word *señora* literally means "ma'am" but is often used as a discourse marker prefacing forceful or argumentative utterances. It implies that an explanation or display of superior knowledge is to follow, which could be paraphrased as "let me tell you how it is" or "listen to me, this is how it happened". Of course, prosody is important in this case, and the tone of voice with which the interpreter said this is consistent with the pragmatic meaning of "you see".

Option 3 is appropriate in the context in which it appears, which is not as aggressive as the rest. As the example shows, the solicitor reissues his explanation by

saying "what I'm saying is…". The interpreter simply interpreted one of the two preambles to the request by initiating the question with *lo que quiero decir* (what I mean is). The interpreter omits repetitions and hesitations in the original question and organises his interpreted rendition in a more coherent and concise way, maintaining the original intention.

The fourth interpreted version used is *pero* (but). Schiffrin found in her data that "*but* is used not only when speakers defend their points against challenges, but when they actually issue those challenges, that is, when they initially disagree" (1987: 175). Carranza found that in Spanish *pero* (but) is used to signal a contrast between the propositional content of the previous utterance and the utterance to come (1998: 126). In the case at hand, it is important to analyse the complete question and answer segment from which this example was extracted to understand the use of "see" (See e.g. 20 below).

(20) Q1- **Well**, do you think you might answer the question that I just asked you?
      Interpreter- *¿Puede contestar la pregunta que le acabo de hacer?*
      (Can you answer the question I just asked you?)
      A1- *No entiendo.*
      (I don't understand)
      Interpreter- I don't understand what you're trying to say.
      Q2- **See?** You had an argument with the defendant back in February last year, didn't you?
      Interpreter- *Pero en febrero del año pasado usted tomó una discusión con el señor.*
      (But in February last year you had an argument with the man)
      A2- *Sí, correcto.*
      (Yes, correct)
      Interpreter- Yes, that's correct.

Once again we find the pattern of "well" + "see" that was discussed earlier. In example (20) a question was put to the accused receiving an unsatisfactory answer which leads to another question prefaced with "well": "Well, do you think you might answer the question that I just asked you". This question is interpreted by the interpreter as "can you answer the question I just asked you?", omitting the discourse marker as well as the sarcastic "do you think you might" clause. This question is followed by another negative answer: "I don't understand" which then triggers the use of "see" in the subsequent question. "See" in this instance makes the question coherent with the previous answer. Counsel, in response to a statement of misunderstanding, prefaces her next question with "see" to provide an explanation. The interpreter chose to use *pero* (but), which carries a different value. "But" implies contradiction to a previous utterance, which is not the case in this context. An appropriate translation could have been *lo que le estoy diciendo es* (what I'm telling you is).

4.3.3 The uses of "now" in cross-examination

In cross-examination, although "now" was not found to be used with the same frequency as other markers, my data indicated three main uses: to establish a point that was presented previously in the evidence (e.g. 21); to control the flow of information (e.g. 22); and to present the lawyer's version of facts (e.g. 23), which would be expected to contradict the witness's version and hence preface a disagreement. Except for the first use found in my data, the other two comfortably match Schiffrin's findings, as seen in the examples presented below.

(21) Q- Now, you've told us in your evidence that the police came around to your house uhm some early hours of the morning and late at night, about five times.
Interpreter- *Usted ha dicho en su declaración de que la policía vino a su casa, eh, algunas horas temprano en la mañana y tarde de la noche por cinco veces.*
(You have said in your testimony that the police went to your house, uh, some hours early in the morning and late at night five times)

(22) Q- Now, when you overtook the uh, the truck, were there any cars in front of you?
I- *Cuando usted pasó el camión ¿había algún auto delante suyo?*
(When you passed the truck, was there any car in front of you?)

(23) Q- Now, I put it to Mr Peña, that during the period of 6th March 1992, to 9th July 1992, the defendant did make regular weekly payments of a hundred and forty dollars.
I- *Eh, le digo que desde el período del 6 de marzo del 92 hasta el 9 de julio del 92, la demandada hizo pagos regulares por 140 dólares a la semana.*
(Uh, I tell you that from the period of 6 March 92 to 9 July 92, the defendant made regular payments of 140 dollars a week)

Only 2.5% of all questions in cross-examination were prefaced by "now" as compared to 8% in examination-in-chief. As mentioned before, this marker was not as frequent as the other two in cross-examination, possibly because it can be used in less adversative contexts. From the three uses of "now" in cross-examination as shown above, it can be seen that the third type, when it is used to present the lawyer's version of events, is the most adversative and most consistent with the nature of cross-examination. The data show that in this category "now" is always followed by a declarative statement. Schiffrin (1987: 241) found that "now" often co-occurred with "listen to me", a clear indication of the speaker's desire to control the topic of conversation and regain power. This is very akin to the situation found in cross-examination, where the implicature of these utterances prefaced with "now" is that of "listen to me, this is how it was". The other two uses of "now" in cross-examination, although not as confrontational as the one already discussed, are also markers of control, indicating to the testimony bearers that they are to follow the agenda placed before them.

4.3.3.1 *The interpreter's renditions of "now" in cross-examination questions*
Carranza (1998: 130–31) states that *ahora* (now) is used in Spanish to introduce a change or an addition to a developing narrative and that it gives the speaker a privileged position, the position of "he who knows". She also claims that the marker is used to change the focus to a different topic and to exercise control of the interaction. These uses are consistent with those found in English and, in particular, in this study as part of counsel's questions. As with other markers, however, "now" may be considered superfluous by interpreters since it was omitted every time in cross-examination. When "now" is used in a non-confrontational way, as in categories 1 and 2 (e.gs 21 & 22), this marker is not as difficult to translate as the previous ones. *Ahora*, *bien* or *ahora bien* would be pragmatically equivalent. The third category (e.g. 23) is however more difficult to translate. Although Carranza (1998) states this discourse marker is used to infer superior knowledge and to maintain control, the force in Spanish is not as strong as it is in English. A possible solution would be to use a phrase such as *escúcheme* (listen to me), which carries the confrontational force present in the English utterance. The marker was omitted every time in the interpreted version. Once the word *y* (and) is used to preface the question when "now" is used as category 3, and once the phrase *en cuanto a* (in relation to) replaces "now" when used as category 2. This last option in the context of category 2 is appropriate, since it sets the topic and can be said to be used to control the flow of information. There is only one obvious hesitation in the form of *eh* at the beginning of the interpreter's utterance, when "now" is used in category 3. This may indicate an attempt to translate the discourse marker which was later abandoned by the inability to produce a suitable equivalent.

4.4   Conclusion

This chapter presented the results of the analysis of the use of three discourse markers in lawyers' questions and the way these were treated by the interpreters in their renditions of those questions. The three discourse markers, namely "well", "see" and "now", were chosen as the topic of analysis for two reasons: the high frequency of use as prefaces to lawyers' questions, and their very low occurrence in the interpreted version of the questions. The chapter aimed to explore the different discursive uses these discourse markers have in courtroom questioning, the possible reasons which led the interpreters to omit them in their interpretation, and the possible effect their omission could have on the answers.

The study found that the use of these markers varied according to whether they appeared in examination-in-chief or cross-examination. When found in examination-in-chief, they were mostly used to maintain control of the flow of

information, as well as to mark progression in the story line. When found in cross-examination they were generally used as markers of argumentation and confrontation, mostly initiating disagreements or challenges. "Now" was most prominent in examination-in-chief, whereas "well" and "see" were mostly found in cross-examination. This led to the conclusion that the markers "well" and "see" are more argumentative than "now" in courtroom questioning, with "now" used mainly with counsel's own witnesses. Supporting this suggestion was the fact that "well" and "see" were mostly followed by the most coercive question types (declarative with and without tags), and "now" by less coercive types (polar, Wh- and modal interrogative). It was also suggested that these markers added coherence to the question and answer sequence and that they aided in the comprehension of the purposes behind the questions.

The study found that interpreters omitted these markers almost systematically, with only very few exceptions. Two main reasons were suggested for this: a complete disregard of these features, being judged as superfluous to the message and hence considered disposable (either consciously or unconsciously); and an inherent translation difficulty found in the lack of direct semantic equivalents that would carry the same illocutionary force. A number of pragmatic equivalents were suggested for each type of marker according to the situation where it was used.

The most difficult question to answer is that of the possible effects the omission of these markers would have on the witnesses' answers, since one can only speculate when dealing with authentic data. Nonetheless, some interesting insights can be drawn from the data. It was shown through examples that at times the incorrect translation of a discourse marker changed the implicature of an utterance. Most other instances of complete omissions showed a change in the illocutionary force of the utterance, even if the illocutionary point remained the same. As Searle (1990) explains, often different utterances will have the same illocutionary point, as in commands and requests, but different illocutionary force. Similarly in the case of discourse markers prefacing counsel's questions, their omission by the interpreters will alter the illocutionary force or strength with which the question is asked. It is of course difficult to control the perlocutionary effect of any utterance, but it is logical to assume that a change of force can have a possible change of reaction.

The style of the Spanish speaking witnesses' answers and the interpreters' renditions[*]

5.1 Introduction

5.1.1 Speech style and the evaluation of character

Before we discuss the significance of speech style in the courtroom, we should note that a number of research studies have been conducted based on data drawn from domains other than the courtroom to ascertain whether people judge others based on the manner in which they speak (Giles & Powesland, 1975, Giles, 1979, Edwards, 1979, Bradac, Hemphill, & Tardy, 1981, Street & Hoper, 1982, Bradac & Mulac, 1984, Bradac, 1990, Gibbons et al., 1991). These studies all indicate that there is a strong correlation between the way or the manner in which people speak and the impression they form on their listeners in terms of their assessment of the speaker's social status, personality, intelligence, trustworthiness and competence. I will use the word style to refer to the manner or form in which the propositional content is presented by different speakers, how something is said rather than just what is said. This includes nonfluencies, hesitations, repetitions, fillers and hedges, tone of voice, and dialectal differences, both social and regional. Some studies have shown that noncontent cues can have a more significant impact on listeners than the content itself (Argyle et al., 1970, Argyle et al., 1971, Seligman et al., 1972, Giles and Powesland, 1975). Studies about hesitant and nonfluent speech in English have shown that these styles are perceived less favourably, particularly with regard to competence, than fluent speech (Lay & Burron, 1968, Miller & Hewgill, 1964, Sereno & Hawkins, 1967, McCroskey & Mehrley, 1969). Gibbons et al. (1991) found that power of style has a "straightforward effect" on impressions of competence regardless of the strength of the content of the argument. However, they also found that when judging persuasion, power of style was overridden by strength of argument. Gumperz comments that in natural conversation "… information about interpretative schemata is conveyed both through sentence content and through such matters of form as choice of pronunciation, dialect or speech style" (1989: 22).

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In terms of social dialect, results of studies in western cultures generally show that there is a strong relationship between social class and level of education and the style of language that is viewed favourably or unfavourably by the community. In other words, the speech style of the powerful stratum of society, those who are better educated and belong to a higher social class, will invariably be the "positively sanctioned" (Wodak-Engels, 1984) code, and consequently the better perceived by society. Huspek agrees that the language of the so-called dominant classes, usually referred to as "high" language varieties, is more highly valued than the language of the subordinate classes (1988: 343). Lambert found that in Montreal: "…teachers judge and grade pupils with reference to their styles of language usage, grading down those whose speech contains features that are usually found among children from lower social class backgrounds, and grading up those who display stereotyped 'proper' features" (1980: 419). It was also found that people who speak in standard accents are perceived as more competent than those who speak in a substandard, foreign or regional accent (Giles, 1970, 1971, Bourhis & al., 1975, Tucker & Lambert, 1969, Williams et al, 1976, Labov, 1966, Shuy, 1969, Ryan & Carranza, 1977).

As Fairclough states: "Linguistic phenomena are social in the sense that whenever people speak or listen or write or read, they do so in ways which are determined socially and have social effects" (Fairclough, 1989: 23). However, in his later work, Fairclough presents the caveat that the form-content distinction is not a clear-cut one, and that a rigid separation of both can sometimes be misleading, as meaning and form are intertwined (1992: 89). "There are aspects of content which clearly edge over into matters of form… And, conversely, aspects of form edge over into content…" (1992: 24). Biber (1995) in speaking about the relationship between form and function makes the following insight:

> These relationships are bi-directional, with situational characteristics influencing the choice of linguistic form, while the choice of linguistic features in turn helps to create the situation. Positing a functional association does not entail a one-to-one mapping between form and function. Rather the mapping across form-function-situation often comprises complex many-to-many kinds of relations (p. 10).

Later language-attitude research has paid more attention to issues of context which impinge on speech style. Giles and Sassoon (1983) comment that "the mechanism mediating between accent perception and personality inferences are far more complex than hitherto acknowledged" (p. 305). There is no doubt that form and content are related; the context of the situation, the activity type and the relationship between interlocutors will invariably influence not only the content of the discourse but also its form. Fairclough describes a "discursive event" or simply "discourse" as comprising three simultaneous dimensions: the piece of text itself,

the discursive practice dimension and the social practice dimension, each influencing the other.

> The 'discursive practice' dimension … specifies the nature of the processes of text production and interpretation, for example which types of discourse (including 'discourses' in the more social-theoretical sense) are drawn upon and how they are combined. The 'social practice' dimension attends to issues of concern in social analysis such as the institutional and organizational circumstances of the discursive event and how that shapes the nature of the discursive practice, and the constitutive/constructive effects of discourse… (Fairclough, 1992: 4).

In other words, there are certain discourse types that are used in colloquial conversation among friends which would not be used in an international political negotiation, for example.

Fairclough used the term "discourse types" to include genres and styles (Fairclough, 1992: 5). This implies that one person will resort to different "discourse types" to suit the field, tenor and mode of the discourse (Halliday & Hasan, 1985). However, this chapter has a different focus. It is concerned with the differences in style found in a single context: the courtroom, and in the participants who share the same role and are in the same relationship with the other interlocutors: the witnesses. Some of the stylistic features used by the witnesses may be determined by their own linguistic resources which will usually be connected to their level of education and social class, but some may be determined by other factors, such as uncertainty, untruthfulness of content or even nervousness, regardless of social class or level of education. As Berger and Bradac suggest, features such as hesitations and hedges will be present in the speech of anybody who for one reason or another experiences uncertainty (1982). Nevertheless, regardless of what causes a particular speech style, a convincing body of research results have suggested that different speech styles impact on the evaluation of the speaker (O'Barr, 1982, Bradac, Hemphill, & Tardy, 1981, Street & Hoper, 1982, Bradac & Mulac, 1984), and such is the crucial issue in the adversarial courtroom. In particular, this chapter will attempt to determine whether the original styles of the witnesses' utterances are imitated by the interpreters in their target renditions, and if not, whether such changes can have an impact on the evaluation of credibility and competence of the non-English speaking witness. As Scollon & Wong-Scollon (1990) argue, when we talk we present a view of ourselves to others. This chapter will explore whether the interpreter is able to present the witness's view of him/herself through the interpretation, or whether the listeners receive a view of the interpreter's self instead.

5.1.1.1 *The evaluation of witness character*

> Since trial outcomes usually hinge on assessing the relative likelihood and/or veracity of conflicting information claims, legal decision makers — whether they be the judges and jury members of the traditional trial or the hearing officers and mediators of some of the newer, less formal modes of dispute resolution- cannot escape the responsibility of evaluating witness credibility.
> (Miller & Burgoon, 1982: 169).

Most judicial officers will agree with the above quotation, based on their own personal experience, as evidenced in the statement by Judge Margaret O'Toole from the Compensation Court of New South Wales, Australia: "Demeanour, para-linguistic cues, and register are evaluated by the judicial officer or jury to determine the credit of a witness" (1993: 191). Miller and Boster (1977) said regarding the way witnesses are evaluated in the courtroom, that those forming judgement pay attention to "not only the factual information presented, but also to the way in which it is presented" (p. 28). Studies of speech style in the courtroom, as one of society's powerful institutions, have corroborated anecdotal evidence on this topic by presenting results that indicate a strong correlation between the way witnesses deliver their testimonies and the evaluations they receive from their listeners (Conley et al., 1978, Loftus, 1979, Berk-Seligson, 1990). According to O'Barr, "…form may at times be highly significant, even to the point where a change in form can alter or reverse the impact of a message" (1982: 2).

Wodak-Engels (1984) argues that social class is closely linked to success in the courtroom. In a study carried out in Vienna, Austria, she found that except for repeat offenders who had learned how to perform in the courtroom for their own advantage, middle class defendants performed better and received more favourable verdicts or more lenient sentences than lower middle class and working class defendants. She attributes this to the way they presented their testimonies, which resembled more closely the style of the courtroom and of the judges' speech, as they shared the same social class. This identification with the court and its powerful participants put them in better stead with the law. She states that "… it is important for the defendants in court not only to behave in an adequate way and to answer all of the questions posed by the judge, but also to create 'good' images" (1984: 94). She found that middle class testimonies were more coherent, more complete, better structured and answered legally relevant assumptions: speech that resembled the written mode rather than the spoken mode. Wodak's study demonstrates that speakers of a particular social class and educational background tend to speak in a particular style and those speakers are generally evaluated more or less positively by the powerful members of society.

Conley & O'Barr (1990) found a similar result in their study of small claims courts in North Carolina, USA. They placed defendants into two categories, those

with a relational orientation and those with a rule orientation. Since the law is predominantly rules-oriented, those defendants who matched this orientation were consistently more successful. They found, as did Wodak-Engels (1984), that the distribution of rule and relational orientations depended greatly on issues of class, race and gender: the rules-oriented witnesses tended to belong predominantly to a higher social class, a dominant race and the male gender.

> Thus it may be that the burden of stylistic powerlessness, which falls most heavily on women, minorities, the poor, and the uneducated, is compounded on the discourse level by the tendency among the same groups to organize their legal arguments around concerns that the courts are likely to treat as irrelevant" (Conley & O'Barr, 1990: 81).

However, when dealing with natural data, such as those used by Wodak-Engels (1984) and Conley and O'Barr (1990), where not only the form of the testimonies were different but also their content, it is, as Fairclough (1992) states, difficult, if not impossible, to separate the two. In such situations one must be cautious in attributing attitudes to speech style alone, as such evaluations may have been based on other accompanying factors as well, such as social prejudices. In other words, social powerlessness is reinforced by a matching powerless style.

The distinction between form and content can more effectively be ascertained through experimental studies, where the same content is expressed in different styles. Such experiments have been carried out by a number of researchers, with the use of the "matched-guise" technique (c/f. Lambert, 1967), including those listed in the first paragraph of this chapter. Conley & O'Barr's 1990 study results of rules versus relational discourse level manifestations were consistent with their earlier results of experimental studies (O'Barr & Conley, 1976; Erickson et al., 1978; Conley et al., 1978; Lind & O'Barr, 1979; O'Barr, 1982). Those defendants who demonstrated a relational orientation presented stylistic features of what they called "powerless speech style", whereas the rules-oriented defendants' styles were consistent with the "powerful speech styles" of their previous studies. Lakoff (1975) had indicated that women and men showed different stylistic features in their speech. In their study of witness speech styles in the courtroom in North Carolina, O'Barr and his colleagues at Duke University found that what Lakoff called Women's Language (WL) was not unique to women, but rather to people from a lower socio-economic background. Professional women's speech shared the features of what Lakoff regarded as Men's Language. The higher occurrence of powerless features in women's speech was due to women's general lower social standing at the time. For this reason, the Duke University team renamed these discourse styles as "powerful versus powerless" speech styles. One can safely assume that the distinction found by Lakoff between male and female speech styles would be much reduced now, almost thirty years later, as many more women

enter the professional workforce and are university trained. Therefore the gender-based names would no longer be valid.

The powerless speech style as proposed by O'Barr et al. was characterised by the following features:

> Among the specific features of this style are the abundant use of hedges (prefatory remarks such as "I think" and "It seems like"; appended remarks such as "you know"; and modifiers such as "kinda" and "sort of"; hesitation forms (words and sounds that carry no substantive meaning but only fill possible pauses in speech, such as "um" and "well"); polite forms (for example, the use of "sir", "ma'am", and "please"); question intonation (making a declarative statement with rising intonation so as to convey uncertainty), and intensifiers (for example, "very", "definitely", and "surely") (Conley & O'Barr, 1990: 67).

O'Barr and his team carried out a number of experiments where answers replete with powerless speech features were rewritten in a powerful speech style and both versions presented to mock jurors for their evaluation of the speaker's character and credibility. The following is an example of the type of changes they effected on the answers:

> Q. State whether or not, Mrs. A, you were acquainted with or knew the late Mrs. X.
> A. Quite well.
> Q. What was the nature of your acquaintance with her?
> A. Well, we were, uh, very close friends. Uh, she was even sort of like a mother to me. (O'Barr, 1982: 65–66).

This answer was then transformed to the following:

> Q. State whether or not, Mrs. A, you were acquainted with or knew the late Mrs. X.
> A. Yes, I did.
> Q. What was the nature of your acquaintance with her?
> A. We were close friends. She was like a mother to me (O'Barr, 1982: 66).

The results confirmed that testimony style influenced the jurors' perceptions of the speakers dramatically. Jurors reported that they believed the speakers who used the powerful speech style to be more convincing, more truthful, more competent, more intelligent and more trustworthy. This finding indicates strongly that witnesses' speech styles in the courtroom can significantly affect the perception formed about them by those judging them (O'Barr, 1982: 74).

As part of the same project, the Duke University team observed the differences between narrative and fragmented testimony style, where the first reflected longer, uninterrupted, unprompted complete answers and the second a series of short answers constantly prompted by the lawyer. They found that narrative answers were viewed more favourably by jurors as witnesses were seen to give evidence of

their own free will, without any need for prompting (1982). It is worth noting at this point that witnesses are not always free to offer narrative style answers, as this may be influenced by the type of question asked and the control of the lawyer over the evidence given. This aspect will be discussed in detail in Chapter 6.

Other studies have shown that defendants who spoke in complete sentences and used politeness markers had higher rates of acquittal (Parkinson, 1979, Danet, 1980). The analysis of Filipino-American witnesses has shown that non-native English speakers have difficulty creating a good impression in court due to their inability to manage the appropriate style (Bresnahan, 1979, Naylor, 1979).

The Duke University study has been criticised for overgeneralising the significance of what they name "powerless" features and for ascribing the "powerless" label to a speech style which does not always reflect that person's status in society (Thompson, 2002). One criticism of the features that form the powerless style is the inclusion of tags and other features identified by O'Barr and Conley as powerless, such as discourse markers, as these have been found to be used by lawyers, often as powerful features in their questioning strategy (Innes, 2003). I, however, find no contradiction with this point. What needs to be made clear is that the same features can be used both as powerful and powerless devices depending on where they appear and on their intonation. As described in Chapter 3 of this book, the powerful tag questions used mostly in cross-examination are presented with a downward intonation, as in "You are lying, aren't you\".[9] This tag is a powerful challenging and accusing tag. In contrast, a witness's answer such as "That's right, isn't it?/"[10] with a rising intonation would be typical of a powerless answer, where the answerer shows doubt. A similar illustration can be made with the use of the filler "you know". When used with a downward intonation in an answer such as "You don't intimidate me, you know\", it makes the answer more powerful. However, when used with a rising intonation in an answer such as "Well, I thought I was doing the right thing, you know?/", it makes the answer powerless. Another example can be drawn from the use of the discourse marker "well"; O'Barr et al. include this in the powerless style of witnesses when used as fillers. However, as shown in Chapter 4 of this book, when used to preface lawyers' questions, it acts as a tool of argumentation. As Tannen states "One linguistic form does not have solely one meaning or application" (1993b: 183).

As for the labels "powerful and powerless", I consider them to be just labels, and not necessarily indicative of the status of the speaker, although very often they do correspond. Nevertheless, we can find instances of people who can be considered to be educated, due to their having a university degree, who may speak in what is regarded as a powerless style. This, however, does not negate the results of the research. One must always remember that when generalising the results of research studies, we are concerned with majority results, and that there will always be a certain

minority percentage that will be different. This point is raised in Chapter 6, where we discussed the instances where witnesses are more powerful than the court would expect them to be. Such results, however, do not contradict those presented in Chapter 3, where it was stated that for the majority of the time, it is the lawyers, the powerful participants, who maintain the control of the discourse. It is also worth noting that producing a less competent image does not always go against the defendant. In fora such as the Compensation Court, a less competent defendant may receive a higher amount of damages, as such a person may be considered less likely or capable to retrain in another field; but again, that would be a minority result.

This chapter is concerned with the different speech styles of witnesses and with how they are interpreted by the interpreters. The reasons behind their individual speech styles are secondary in the context of this study. What this chapter is interested in is the fact that different speech styles produce different effects on listeners. The caveat one must use when looking at any research finding is that results need to be interpreted in the context in which they were produced and with the research intention clearly in mind. With all the qualifications stated above, we must stress that the striking results achieved by the Duke University project cannot be ignored. They have in fact corroborated many previous similar studies, as stated in this introduction, and have also been replicated by other studies (including my own presented at the end of this chapter) which achieved very similar results.

All of the studies mentioned above have repercussions for the work of interpreters. Although most of the literature on court interpreting agrees that accuracy equates with maintaining an equivalence of both content and style, for the reasons already presented above, (Benmaman, 1992, Berk-Seligson, 1990, De Jongh, 1991, 1992, Dueñas Gonzalez et al., 1991, O'Tool, 1993, Laster, 1990, Laster & Taylor, 1994, Hale, 1997c, Fraser & Freedgood, 1999) studies have shown that such is not usually the practice, with interpreters generally maintaining the content of the speech but not the style, thus potentially altering the effect on the listeners (Hale, 1996a, 1996b, 1997a, 1997b, 1997c, 1999, Hale & Gibbons, 1999, Rigney, 1999, Berk-Seligson, 1988, 1989a, 1989b, 1990, 1999). Berk-Seligson reports the results of an experiment where a testimony replete with hedges given in Spanish was interpreted into English in two different ways: one maintaining the hedges, the other omitting them. These different interpreted styles were presented to mock jurors for their evaluation. The results were consistent with those of previous studies: those mock jurors who had heard the hedged version rated the witness as less convincing, less trustworthy, less competent and less intelligent than those who heard the unhedged version. Hence, the omission of such features by the interpreter impacted significantly on the jurors' evaluations of the witnesses (1990: 181–182). Fraser and Freedgood (1999) found that interpreters tend to omit what they call "pragmatic features" in their interpretations of courtroom questions and answers

and that "while some of these alterations are relatively trivial, others are serious, and may be critical in influencing the jury's assessment of whether the defendant is guilty or innocent" (1999: 3).

5.2   The style of the Spanish answers and their interpretation into English

The previous two chapters in this book dealt with questioning in the courtroom and the way these were interpreted into Spanish. This chapter will discuss the style in which the Spanish speaking witnesses gave their answers and the interpreters' renditions of those answers into English. The answers were analysed for the following features: the use of hesitations, hedges and fillers, discourse markers, pauses, repetitions and backtracking, and ungrammaticalities and unidiomaticalness. Individual cases were also analysed in terms of relational versus rules-oriented styles.

5.2.1 The data

The data contained a total of 1379 answers (579 in examination-in-chief and 800 in cross-examination), with a total number of 15053 words in the Spanish original answers.

   Table 20 shows the frequency of specific features found in the witnesses' answers in Spanish according to examination type, and the frequency of the same features found in the interpretation. These features are: hesitations, discourse markers, repetitions, backtracking, pauses, ungrammaticalities and fillers and hedges. There is no consistent pattern as to the use of any of these. Repetitions and hesitations are the most frequent features in examination-in-chief, whereas in cross-examination repetitions, fillers and hedges are the most frequent features. All other features share similar frequencies.

Table 20. Features by examination and language (Frequencies)

Feature	Examination-in-chief		Cross-examination	
	Spanish	English (Interpreted)	Spanish (Interpreted)	English
Repetitions	167	45	209	102
Hesitations	111	178	54	231
Fillers/ Hedges	66	25	125	95
Pauses	64	31	61	35
Backtracking	57	48	68	59
Grammatical errors	31	66	53	159
Discourse Markers	21	21	38	5

Table 21 shows the same features by language. Here the variations between the original answers in Spanish and the interpreted English answers can be seen. Interpreters increased the number of hesitations and ungrammaticalities in their renditions but reduced the number of all other features. The features introduced by the interpreters are not attributable to the witness, but to the interpreters themselves. In other words, when the number of features differs from Spanish into English, the interpreted version does not represent a translation of the original speech, but either an addition or an omission. The interpreted answers had 148% more hesitations than the original, and 168% more ungrammaticalities than the originals. However, interpreters reduced the number of repetitions, backtracking, pauses, fillers, hedges and discourse markers in their renditions. The interpreted version of witness testimony had 61% fewer repetitions, 14.4% fewer backtrackings, 47.2% fewer pauses, 37.2% fewer fillers and hedges and 44% fewer discourse markers. These results are interesting, because they repeat the pattern found in the interpretation of questions by the same interpreters, where these extra, seemingly unnecessary, discourse features are consistently omitted in the interpretations.

Table 21. Features by language

Feature	Original Spanish	Interpreted English
Hesitations	165	409 (148%+)
Grammatical errors	84	225 (168%+)
Repetitions	376	147 (61%−)
Backtracking	125	107 (14.4%−)
Pauses	125	66 (47.2%−)
Fillers/ Hedges	191	120 (37.2%−)
Discourse Markers	59	26 (44%−)

5.2.2 Analysis of hesitations

Goldman-Eisler found that pauses and hesitations in speech are produced by the following psycholinguistic processes: "(1) the choosing of words, (2) the recoding of a story, deducing from it a general proposition, (3) the concise formulation of such general propositions, and (4) the quality of thought content as judged by level and scope of generalization attained…" (1968: 70). Zimmermann and Schneider state that hesitations indicate "planning processes" (1987: 123). The data for this study showed that although hesitations were present in the Spanish witnesses' answers, the interpreters' renditions had a much greater number of them. This seems to indicate that more demanding cognitive processes are required of the interpreter than of the original speaker. Whereas the original speaker may need to pause or hesitate to recall the details of a story, to recode a story or to think carefully before committing to an answer, the interpreter may need to pause and hesitate to

decode the original message and to recode it in a different language. Hence, the cognitive processes required by each would seem to be different. Hatim and Mason argue that,

> … the translator uses as input to the translation process information which would normally be the output, and therefore the end of, the reading process. Consequently, processing is likely to be more thorough, more deliberate than that of the ordinary reader… (Hatim & Mason, 1990: 224).

This argument can be equally applied to interpreting, however, the interpreter does not read but listens to the source text, making the comprehension task even more difficult.

Witnesses' hesitations in Spanish were vocalised in the form of *eh*, *ah*, *em* and *am* and are equivalent to the English "uh" and "uhm". There were a total of 165 hesitations in the Spanish answers, comprising 1% of all words. The interpreters' renditions produced 409 hesitations, 148% more than the number of original hesitations. This indicates clearly that most, if not all hesitations that appeared in the interpreters' renditions, were attributable to the interpreters themselves and not to the witnesses. The examples of hesitations were analysed in the following way: those hesitations that were uttered by the Spanish speaking witnesses were analysed for their possible meaning as part of original answers; and those present in the interpreted English versions were analysed to ascertain whether they were direct interpretations of the original or the interpreter's own hesitations.

5.2.2.1 *Witnesses' original hesitations*

On 45 answers, the hesitations that appeared in the original Spanish answers were completely omitted by the interpreters. This finding is consistent with that of Linell, Wadensjö and Jönsson (1992), who found in their study of dialogue interpreting that interpreters would summarise and condense original utterances by omitting features such as hesitations and hedges, thus "producing instead an utterance which has a more coherent and literate outlook" (p. 127). Some of these answers have multiple occurrences of hesitations whereas others have one or two only. On all these instances the interpreters omitted the hesitations completely and simply interpreted the rest of the answer. The following are three examples of this category from three different cases.

(1)

Original answers with author's translations	Interpreter's renditions and author's back translations
a.1 A1- **Eh**, *Karina iba para la escuela, estaba muy **ah** nerviosa.*	*a.2* I- Karina was going to school and was very nervous.

(Uh, Karina was going to school, she was
uh nervous)

b.1	*b.2*
A2- *Eh miraba qué, qué hacía yo, hasta que yo encontré que estaba metiendo adentro de una almohada/* (Uh, she looked to see what, what I was doing until I noticed that she was putting it inside a pillow)	I- And then she was looking at me to see what I was doing and then I saw she was putting her hand inside her pillowcase.

Case 7

(2)

Original answers with author's translations	**Interpreter's renditions and author's back translations**
a.1 A1- *Ah, eh yo venía entrando ahí mi marido me me acosó de que, de que le tenía que dar el divorcio y yo pasé a la cocina y me siguió.* (Uh, uh I was coming in there my husband harassed me to, that I had to give him a divorce and I went to the kitchen and he followed me)	*a.2* I- I was coming in and my husband said I had to grant him a divorce and I went into the kitchen and he followed me.
b.1 A2- *Em, me arrinconó en la en él me arrinconó en una esquina.* (Uhm, he cornered me in the in the he cornered me in the corner)	*b.2* I- He cornered me in the kitchen.
c.1 A3- *Ah y me empezó a me empezó a… a decir que él quería el divorcio.* (Uh, and he started to he started to… to say he wanted a divorce)	*c.2* I- And he started saying that he wanted a divorce.

Case 16

These two examples clearly show a different style between the original and the interpretation. Not only are the hesitations omitted in the interpretation, repetitions and pauses are not kept either, thus arguably making a "powerless" utterance into a much more "powerful" one. Berk-Seligson states that "… if the Spanish speaker sounds hesitant and unsure, the interpreter should sound equally as hesitant and unsure in her English interpretation" (1990: 140). This is clearly not the case in all instances of the data. In example 1 the witness starts each answer with a hesitation, a feature that is omitted in the interpretation. In example 2, the witness says, "Uhm, he cornered me in the in the… he cornered me in the corner" (Answer 2, b.1), which is interpreted as "he cornered me in the kitchen" (b.2). These changes

are significant in light of the findings about the evaluation of speakers' characters and credibility based on stylistic features such as hesitations and repetitions, among others (Bradac, Hemphill & Tardy, 1981, O'Barr, 1982, Street & Hoper, 1982, Bradac & Mulac, 1984).

Although on a number of occasions hesitations appeared both in the original answers and in their interpretations, they did not always match. In other words, the hesitations found in the interpretations were not always a direct interpretation of the original.

(3)

Original answers with author's translations	Interpreter's renditions
a.1 A1- *Bueno, cuando yo me cambié a ahora a Curry St* **eh** *él hace cosa de unos dos meses no más que está* **ah,** *que ha llamado, antes no porque no sabía mi teléfono.* (Well, when I moved to… now to Curry St uh it's been something like two months ago no more that he is uh, that he has called, not before because he didn't know my telephone)	*a.2* I- Since I moved to Curry St he has been ringing **uh**, not before that which happened two months ago because he didn't know the telephone number.

Case 1

In example 3 the witness hesitates first to think of what she is going to say in terms of how long it has been: "uh it's been something like two months" and then as a result of backtracking: "… that he is uh, that he has called". The interpreter however, hesitates before his second clause, when deciding to add information to the original in an attempt to make the utterance clearer. Whereas the original was: "… not before because he didn't have my telephone", the interpreter says: "… uh, not before that which happened two months ago because he didn't know the telephone number". There was no need for the additional information and in any case, it goes against the interpreters' code of ethics to make any such additions.

(4)

Original answers with author's translations	Interpreter's renditions
a.1 A1- **Eh** *y cuando iba para allá pensé que tenía que decirle a mi esposa porque no conocía demasiado y no sabía cuánto iba a tardarme.* (Uh, and when I was on my way I thought I had to go and tell my wife because I didn't know much and I didn't know how long it would take me).	*a.2* I- And **uh** on the way I thought that I should advise my wife because I didn't know the place and I didn't know how long would it take me.

Case 3

Example 4 is one of those instances where the hesitations match, whether deliberately or not is impossible to say. In any case, both the original and the interpreted utterance commence with a hesitation.

(5)

Original answers with author's translations	Interpreter's renditions
a.1	*a.2*
A1- *Ah, bueno él trató de quitarme el teléfono porque yo lo estaba golpeando, y me tomó por atrás tratando de de agarrarme el teléfono entonce' ahí forcejeamo' y la' niña' corrieron y llamaron a la policía.* (Uh, well he tried to take the phone off me because I was banging it, and he grabbed me from behind trying to to grab the phone off me so we struggled and the girls ran and called the police)	I- At that stage my husband tried to get the telephone away from my hand and grabbed me from behind around the neck and we had a bit of **uh uh** wrestle for the telephone and my children got **uh** frightened and went to call the police.

Case 15

In example 5, hesitations appear in both the original and the interpretation, however these do not correspond with the interpreter hesitating three times and the witness only once. It is obvious that the witness hesitates initially while organising her thoughts before commencing her utterance: "Uh, well he tried to take…". The interpreter hesitated twice due to translation problems which he encountered when confronted with the word *forcejear*. This word is a difficult one to interpret and can be interpreted as "struggle", "wrestle" or "grapple", although none of these conveys the exact meaning of the original. The interpreter also hesitates before making the decision to add information: "… my children got uh frightened and went to call the police", when the original simply said "… ran and called the police". Repeatedly interpreters feel the need to disambiguate the original answers by adding information that in their judgement would make the answer clearer. Such behaviour clearly contravenes the strict code of ethics which prescribes accuracy of content and impartiality. By desiring to make an answer clearer, the interpreter is automatically taking sides with the original speaker. Had the interpreter been completely impartial, and played the prescribed passive role of interpreter, such considerations would not arise.

It would be unreasonable to expect interpreters to match each hesitation from the original and include them in the same position, unless the hesitation is present at the commencement of the utterance or the utterance is short enough for the interpreter to remember where they appear. What needs to be maintained is the tone, either a hesitant or a non-hesitant tone. When interpreters receive adequate

university training, they are trained firstly to listen for these features and secondly to take appropriate notes so that they do not need to rely on memory. They are also trained to become aware of their own hesitations and stop themselves from doing so when interpreting, unless it is present in the original.[11]

5.2.2.2 *Interpreters' hesitations*

Eighty answers show hesitations in the interpreted rendition when they were not present in the original. These hesitations are therefore the interpreters' and not the witnesses', although those listening to the interpretation have no way of ascertaining this. Krouglov (1999) found in his study of Russian interpreters in UK police interviews that the interpreters at times added hesitations which he attributes to "… a side effect of either mental concentration or strain that the interpreter experiences" (p. 290). He argues that the addition of hesitations coupled with the addition of the discourse marker "well" by the interpreter may lead the interviewer to misjudge the convincingness and confidence of the interviewee's recollections (pp. 290–1). The hesitations in the interpreter's renditions in my study sometimes occur for no apparent reason. However, in the majority of cases they indicate the following:

1. a translation difficulty
2. a thought process or a doubt
3. a preface to a pause, a backtracking, or a grammatical or pronunciation error

The following examples from different cases illustrate the different circumstances under which interpreters' hesitations appear in their utterances.

(6)

Original answers with author's translations	Interpreter's renditions
a.1	*a.2*
A1- *Entre 98 ó 99.*	I- Around **uh** 89 actually he said 98 99.
(Around 98 or 99)	

Case 3

In example 6, the interpreter hesitates before deciding to correct the original incorrect answer. The interpreter knows the witness must have meant 89 because he was referring to a second hand car and the year 1998 was still in the future. He subsequently changes the answer to reflect the original and maintain accuracy of interpretation.

(7)

Original answers with author's translations	Interpreter's renditions
a.1	*a.2*
A1- *Y… en el principio pensábamos con mi esposa… teníamos una indecisión si regresar a nuestro país o continuar acá.* (Well… at the beginning my wife and I thought… we were undecided about going back to our country or staying here)	I- At the at the beginning we had **uh** we were indecisive with my wife whether to come back to **uh** my country or to remain here.
b.1	*b.2*
A2- *Y… pensábamos que nos habíamos venido por los problemas que había en nuestro país y por ver un futuro mejor para nuestros hijos.* (And… we thought that we had come because of the problems in our country and to find a better future for our children)	I- **Uh**, we thought that we had came here **uh** for **uh** the problems in our because of the problems in our country and to look for a better future for our children.
c.1	*c.2*
A3- *Pero, un día antes, o sea el 19, del 92, decidimos mejor, porque en el banco nos produjo tan poco.* (But, a day before, I mean on the 19th, of 92, we decided it was better to, because the bank was returning so little).	I- But on a few days, one, a few days earlier, on the 19th of 92, because the bank was **uh** producing so little.

Case 3

Example 7 presents a number of translation problems which make the interpreter hesitate. The witness uses the noun *indecisión* in Spanish, which the interpreter almost interprets as a noun: "… we had uh we were", but later changes, after a hesitation, to an adjective "indecisive". The interpreter also hesitates when it comes to the possessive pronoun "our" referring to "our country", possibly due to his inability to remember whether the witness had spoken in the singular or the plural. He again hesitates when another translation difficulty arises, the choice of a preposition. In Spanish, the preposition *por* can be used to mean "for", "by" and "because of". The interpreter first says: "… we had to come here uh for uh the problems in our…" and then corrects himself by saying "because of the problems in our country…". The last hesitation in this answer arises at the end as a result of a problematic word *producir* in Spanish, when referring to bank interests or returns. This makes the interpreter hesitate, although in the end he resorts to the same word in English: "producing".

(8)

Original answers with author's translations	Interpreter's renditions
a.1 A1- *Por el temor de que esto tuviera más grandes consecuencias.* (Because I was afraid this would have more serious consequences)	*a.2* I- Because I thought that this **uh** could **uh** have **uh** more serious consequences.
b.1 A2- *Pero me di cuenta que con esto hasta el momento él cumplió lo que la policía le dijo.* (But I realised that with this, until now, he's complied with what the police said)	*b.2* I- But I noticed that **uh** with this order **uh**… in force in force **uh** then he was complying with what the police asked him to do.
c.1 A3- *Y… y pienso que yo teniendo esta esta protección, él puede continuar, o sea, él puede… cambiar.* (And… and I think that by having this this protection, he could continue, I mean, he could… change.)	*c.2* I- I think with **uh** by having this protection he might… change.

Case 4

The first three hesitations in example 8 preface a stress error. The interpreter mispronounces the word "consequences" (b.1) by placing the stress on the second syllable rather than on the first. The second set of hesitations indicate a thought process, where the interpreter requires longer than the expected time to think of the appropriate translation. The original answer does not specify the object. The interpreter sees a need to specify it by adding the words "this order" and "in force" (b.2), once again attempting to make the answer clearer as seen in previous examples. The interpreter hesitates again before he makes an error of aspect, changing an original past perfect to an imperfective. Whereas the original is "he's complied with" (b.1) the interpreter says, "uh then he was complying with" (b.2). The last hesitation made by this interpreter prefaces a backtracking: "I think with uh by having…" (c.2). Example 8 illustrates the opposite of what was presented in examples 1–3. Here the interpreter changes the style of the answer to a more powerless style.

(9)

Original answers with author's translations	Interpreter's renditions
a.1 A1- *Estos son los recibos que yo utilicé para darle a Terry Wall cuando me pagaba, me cancelaba la renta.*	*a.2* I- Well, these were the receipts I used **uh**, to… show that **uh**… she was paying for the rent…

> (These are the receipts I used to give to Terry
> Wall when she paid me, when she settled the
> rent account)

Case 10

In example 9 the interpreter hesitates when confronted with the term *cancelar*. This is a regional term used in Chile to mean "to settle or pay off" an account. The interpreter, who is not from Chile, had to stop to think of the equivalent in English. A similar situation is reported by Berk-Seligson (1990), where an interpreter stopped the proceedings to ascertain the meaning of this very word.

> Excuse me, sir, the South Americans, I believe, and... and I would like to pursue this, but I... in my past experience they use the verb *cancelar*, "cancel", as "to complete". May I pursue if this is what he means? (Berk-Seligson, 1990: 76).

In my data, interpreters rarely stop the proceedings to seek clarification or for anything at all, although there are some exceptions. Instead, most of their difficulties with the interpreting process are reflected in features such as hesitations.

The results have shown that interpreters tend not to maintain the original hesitations of the Spanish answers but add them as dictated by their own performance deficiencies. There were only very few instances where the hesitation in the original was matched by one in the interpretation, and it would be impossible to affirm whether the interpreter did this deliberately. On most occasions hesitations found in the interpretation are the interpreter's own. These occur when the interpreter encounters a translation problem, such as a lack of equivalence or difficulty of comprehension, before a decision to add information to clarify or rectify the answer, and before a problem of English competence, whether in pronunciation or grammar. However, as a whole, interpreters tended to omit hesitations, hence the total of hesitations found in the interpreted answers is much lower than the number found in the original Spanish answers. This is but one aspect of style that was found to make a difference in the evaluation of people's characters (Miller & Hewgill, 1964, Serreno & Hawkins, 1967, Lay & Burron, 1968, McCroskey & Mehrley, 1969, O'Barr, 1982, Berk-Seligson, 1990). Their omission or addition in the interpreter's rendition may therefore also have an impact on the evaluation of the credibility of the witnesses for whom they are interpreting.

5.2.3 Hedges and fillers

The term "hedge" was first introduced by Lakoff (1972) who used it to refer to those words that make statements vague. Subsequent linguists have continued to use the same term in similar ways. Quirk et al. (1972) described them as "downtoners", Crystal and Davey (1975) as "softeners", Brown and Levinson

(1987) as "weakeners". Zuck and Zuck (1986) refer to hedging as the device used by speakers to reduce the strength of statements. Tannen explains that "by qualifying or modifying a word or statement, hedges measure the word or idea against what is expected" (1993a: 43). Jucker and Smith (1998) state that hedges "reduce the semantic value of the element that they modify" (p. 184). Tannen includes in her list of hedges "such expressions as 'really', 'anyway', 'just', 'obviously', 'even', 'kind of'" (p. 44). Hyland uses the term to refer to "a) a lack of complete commitment to the truth value of an accompanying proposition, or b) a desire not to express that commitment categorically" (1998: 1). Ríos, in writing about vagueness created by hedging comments that "in natural conversation, speakers very seldom deliver bold statements to their listeners: the message they send is frequently modified by different particles which fulfil specific pragmatic functions" (1997: 1). Ríos goes on to explain that the vagueness produced by hedges must be kept in the Target Language when translating, so as to successfully convey the pragmatics of the original (1997: 11).

In this chapter I will use the word "hedge" to refer to any word or phrase that attenuates the force of the utterance by reducing the level of certainty or by deliberately making an utterance more vague. Yule (1997) suggests that people hedge in order to keep the maxim of quality (Grice, 1975). By adding a hedge to a statement, the speaker is not committing him/herself to the truthfulness of the proposition. Hedges include words and phrases such as "sort of", "like", "I'm not sure", "more or less", "I don't remember", "I think", and adverbs which express modality such as "probably", "maybe", and all their equivalents in Spanish. The term "fillers" will be used to refer to words and phrases that are used to fill a pause in the utterance. These can have the same effect as hedges or they can simply indicate a lack of eloquence. Verbal fillers, prosody and tag questions can have the same function as hedges when used to mitigate the force of an utterance (Coates & Cameron, 1988; Holmes, 1995). Examples of fillers are "you know", "I mean", "in fact", "really", "basically", "like", and their equivalents in Spanish. The maintenance of hedges and fillers in the interpretation of the original answers is very important for the evaluation of witness credibility as they modify the force of the utterance and give an indication of the level of commitment to the truthfulness of the statement by the speaker. By being non-committal in their answers, witnesses can avoid taking responsibility for the reliability of their answers and at the same time not be accused of lying.

Hedges and fillers have also been found to belong to the powerless speech style, which is evaluated less favourably. Yet, the data show that their interpretation is not consistent. The interpreted answers showed 37.2% fewer hedges and fillers than the original answers, thus changing the level of certainty and commitment of the answers. Berk-Seligson (1990) found in a verbal matched-guise technique

experiment that listeners judged the English interpretation which retained the original hedges much more negatively than the polished version without hedges, in terms of convincingness, competence, intelligence and trustworthiness.

> Thus, when the witness's testimony was rendered faithfully — that is, the English interpretation included hedges as had his original Spanish testimony — the witness was judged to be significantly less convincing, less competent, less intelligent, and less trustworthy than when his testimony was interpreted in English without the hedges (Berk-Seligson, 1990: 181–2).

Her findings were concordant with Conley et al.'s results (1978). Krouglov found in his study of Russian interpreters that they both added and omitted hedges to and from their interpretation. He concludes that:

> Misinterpretation, deletion or addition of these particles may lead to an inadequate perception of the interviewee, especially in terms of his or her commitment to what is being said, and may therefore somewhat modify the illocutionary force of an interviewee's utterances (1999: 292).

Table 22. Hedges and fillers found in the original answers

Fillers	Modals	Words & phrases indicating vagueness	Words & phrases indicating uncertainty	Modifiers / Intensifiers
– *o sea* (I mean) – *como* (like) – *no más* (just like that) – *y eso* (and that) –*¿no?* (you know, isn't it?)	– *tiene que haber sido* (it must have been) – *debe de ser* (it must be) – *puede ser* (it can be)	– *quizás* (perhaps) – *tal vez* (maybe) – *a lo mejor* (maybe) – *más o menos* (more or less) – *no sabría decirle* (I couldn't tell you)	– *no recuerdo* (I don't remember) – *no sé* (I don't know) – *creo que no* (I don't think so) – *no estoy seguro* (I'm not sure) – *pienso que* (I think) – *creo que* (I believe) – *que yo sepa no* (not that I know of)	–*sinceramente* (honestly) – *la verdad que* (to tell you the truth) – *no realmente* (not really) – *en realidad* (in fact, really)

Table 22 lists the types of fillers and hedges found in the Spanish answers. Fillers were very often followed or preceded by hesitations and pauses, and were generally indicative of the speaker's lack of eloquence or search for words. Modals were used to indicate a lack of commitment to the truth value of an answer. Words and phrases used to indicate vagueness were used in the most evasive answers, where the

witness does not answer the question with either a yes or a no. Slightly different were the answers with hedges that indicate uncertainty. Phrases such as "I don't know" or "I don't remember" tend to absolve the witness of any responsibility, implying a question is beyond his/her power to answer. The last category are those words and phrases that modify uncertain or vague statements, such as *la verdad que no me acuerdo* (to tell you the truth I can't remember). These were classified as hedges because they never modify positive and precise answers. They are used to qualify negative, unexpected answers, as explained by Tannen (1993a). Hedges and fillers were found to be used with a higher frequency in cross-examination than in examination-in-chief, with an average of 10.3% of answers containing these features in cross-examination and only 3.8% in examination-in-chief. This finding was predictable in light of the different natures of cross-examination and examination-in-chief. When controversial, disputed material is put to witnesses, they feel less certain about their own answers or feel they cannot commit themselves to the veracity of their content, hence the higher frequency of fillers and hedges.

5.2.3.1 *Omissions of hedges and fillers in the interpretation*
Examples 10 to 16, both from examination-in-chief and cross-examination, show instances of hedges and fillers in the original answers that were completely omitted in the interpreters' renditions. In every case, the hedge or filler gave the answer a strong sense of uncertainty and vacillation, which was taken away by the interpreter.

(10)

Original answers with author's translations	Interpreter's renditions
a.1 A1- se me extravió. **No sé en realidad.** (I lost it. I really don't know).	*a.2* I- I lost it.

Case 10

(11)

Original answers with author's translations	Interpreter's renditions
a.1 A1- ***No sé, o sea*** *que, que que yo la veía y un poco asustado, yo no la puedo describir, así, como, como era, pero sí sé que era negra y, y, y como verde, así,* ***¿no?*** (I don't know, I mean, that that that I saw it and I was a bit scared, I can't describe it, how, how, how it was, but I know it was black and, and, and like green, like this, you know?)	*a.2* I- Eh, I… cannot describe it fully because at that moment I was frightened, it all happened so suddenly, I do remember the colour though, it was black, sort of greenish black.

Case 11

In example 10 we see an omission of the answer's second clause "I really don't know", which makes the interpreted answer assertive and certain, whereas the original was an open admission of uncertainty. This type of omission appears again in example 11, where the initial "I don't know" is omitted. In example 12 we see a similar type of misinterpretation, where a dubitative "I think" is turned into a certain "I'm sure". This change, however, does not necessarily put the witness in a better light. Although the change would seem to make the answer more assertive, the interpreter adds a level of hesitation by repeating the first phrase "I was, I was…" and introduces ungrammaticality in "I would have remember" which is not present in the original. Hence, whereas in such examples as 10 and 11, the interpreted version improves on the original by making the answer more precise, more coherent and more certain, it is not so much the case in example 12. This leads us to the conclusion that it is the aggregate of changes in the interpretation that alter the tone and tenor of the answer either positively or negatively, and not changes in isolated features. There is a danger that in doing a microanalysis of interpreted discourse one may focus on a particular feature as the sole cause of major pragmatic alterations, instead of treating each feature as one of many factors that contribute cumulatively to global changes of discourse style.

(12)

Original answers with author's translations	Interpreter's renditions
a.1 A1- *Yo estaba muy ocupado en mis tareas y en pagar mis cuentas, pero **yo creo** que una cosa así no podría pasar por alto.* (I was very busy with my work and paying my debts, but I think that I couldn't miss something like this)	*a.2* I- I was, I was very busy in working and paying my debts but if something l like this would have happened **I'm sure** I would have remember.

Case 14

Other omissions are less obvious, but just as significant. Examples 13–16 show the interpreters' disregard for the seemingly unnecessary fillers *¿no?*, *o sea* (I mean), *como* (like), *no más* (that's all) *y eso* (and that) as well as more prominent phrases such as *la verdad es* (the truth is). As in the case of discourse markers discussed in Chapter 4, these small fillers cannot always be translated literally and can be translated differently according to the context. We can see in the back translations that *¿no?*, a very common colloquial feature in Spanish, was translated at times as "you know?", once as "see", and once as a tag "am I?". These features that present the interpreter with a number of choices to achieve a pragmatic equivalent create a difficulty and a tendency to ignore them, thus failing to maintain full accuracy.

(13)

Original answers with author's translations	Interpreter's renditions
a.1 A1- *Sí, que me iba a matar y que si no le daba el divorcio que los niños iban a quedar sin madre si yo no no firmaba los papeles más encima en ese momento iba a morir ¿no? porque tenía el cuchillo en mi garganta.* (Yes, that he was going o to kill me and that if I didn't give him the divorce the kids were gonna be left without a mother if I didn't sign the papers plus on top of that I was gonna die at that very moment, you know? because he had the knife on my throat).	*a.2* I- He said that if I did not sign the papers eh he was going to kill me and uh the the children would be left without a mother and he was holding the knife close to my throat.

Case 16

(14)

Original answers with author's translations	Interpreter's renditions
a.1 A1- *Yo venía de… **la verdad que** yo venía de comprar la carne a Cabramatta y venía de vuelta a la casa y lo encontré a él en Cabramatta y esa fue la la ira de él que venía que yo lo había encontrado que él venía con su girlfriend, **¿no?*** (I was coming from… the truth is that I was coming from buying the meat at Cabramatta and I was coming home and I found him in Cabramatta and that was the the the anger he brought with him that I'd found him with his girlfriend, you know?)	*a.2* I- I had gone to buy meat at Cabramatta, uh before I got home, and I had met him at Cabramatta and he was upset because I'd seen him with his girlfriend.

Case 16

(15)

Original answers with author's translations	Interpreter's renditions
a.1 A1- *Yo solamente le vi la hojita, que, **o sea como, como** brillosa, **no más, y eso**.* (I only saw the little blade, that, I mean, like like it was shiny, that's all, and that)	*a.2* I- I just saw the shiny blade of the knife.

Case 11

Whereas in examples 13 to 15, the fillers in the original help conjure a tone of indeterminacy, possibly fabrication or exaggeration on the part of the speaker, the

same cannot be said for example 16. The difference lies in the rest of the answer. Examples 13–16 present answers by two witnesses with the same unrefined speech style, evidenced by repetitions, exaggeration, incoherence, and phonetic features typical of uneducated speech style. Example 16 below presents an answer that is admittedly informal in register, but more assertive, concise and factual. The fillers are used as confirmation seeking tags as a way of challenging the questioner, just as cross examiners resort to the same device to challenge their witnesses. The interpreted version is presented in a more formal register, stating facts but presenting no challenge.

(16)

Original answers with author's translations	Interpreter's renditions
a.1 A1- *Pues sí, aquí están tengo escrito los daños que tiene, ¿no? Yo no los puedo descifrar porque no soy chapista ¿no?* (Well yes, here it is, I have the damages written down, see? I can't decipher them because I'm not a panel beater, am I?)	*a.2* I- I have them written down here I can't decipher them because I'm not a panel beater.

Case 2

5.2.3.2 *Additions of hedges and fillers in the interpretation*

To the disadvantage of the witness, at times the interpreters added hedges and fillers to the interpreted answer which added a level of uncertainty not present in the original. On occasion, as in example 17, the doubt is purely the interpreter's, in that he is not sure if he is interpreting correctly. In example 17, the interpreter adds, "I think", meaning "I think that's what he meant". This is due to a lack of clarity in the speaker's utterance when he abbreviates the name of a suburb: "Rooty" for "Rooty Hill". Unfortunately, only the interpreter knows that "I think" was not in the original answer. Those listening to the English interpretation can only conclude that the witness is not sure where the vehicle was left, a fact that does not aid his case.

(17)

Original answers with author's translations	Interpreter's renditions
a.1 A1- *El vehículo estuvo siempre en mi posesión hasta que lo perdí en Rooty* (The vehicle was always in my possession until I lost it at Rooty)	*a.2* I- The vehicle was in my possession always until I lost it in Rooty Hill? **I think…**

Case 3

Examples 18–22 are difficult to justify. There is no apparent reason why the interpreter should add hedges such as "actually", "not really", "just", "I think", "I don't think" and "perhaps" to the original answers that were precise and concise.

(18)

Original answers with author's translations	Interpreter's renditions
a.1 A1–*Ocurrió el accidente a unos 4 ó 5 metros antes del cruce de la John St.* (The accident happened about 4 to 5 metres before the intersection of John St.)	*a.2* I- **Actually** the accident happened 4 or 5 metres prior to John's St cross… cross intersection.

Case 2

(19)

Original answers with author's translations	Interpreter's renditions
a.1 A1- *No, no porque él se alejó, se apartó para la izquierda y a mí me dejó la carretera libre.* (No, no, because he moved, he moved to the left and he left me free passage)	*a.2* I- **Not really**, he **just** uh, uhm veered to the left and allowed my lane free.

Case 2

(20)

Original answers with author's translations	Interpreter's renditions
a.1 A1- *Ah sí porque cuando pasó ese día que llegué del Sr. Wagner, él me dijo que tenía que mandar una carta a la aseguradora para informarle que se me había perdido el vehículo.* (Oh yes because when that happened on that day that I came back from Mr Wagner's, he told me that I had to send a letter to the insurer to tell them that I'd lost the car)	*a.2* I- **I think so** because when Mr Wagner came on that day he told me that uh we have to send a letter to the insurance to report of the vehicle.

Case 3

Examples 19 and 21 present very emphatic answers in Spanish, where the witnesses commence with a double "No". This is interpreted as "Not really" in example 19 and as "I don't think so" in example 21, omitting the initial *no* and making the answer much less emphatic. Similarly, in example 20, the original answer is initiated with a "Oh yes" but is interpreted as "I think so". The most striking example of a change in tone however, is found in example 22. The original answer is emphatic and confrontational, using rhetorical questions as an argumentation device: "What do you mean he didn't? He didn't touch it? Because I didn't touch him at all, I don't

know how". The interpreter, however, turns the answer into an admission of possibility "Perhaps, but I didn't touch him".

(21)

Original answers with author's translations	Interpreter's renditions
a.1 A1- *No, no se habló de eso.* (No, that wasn't discussed).	*a.2* I- **I don't think so… I don't think so.**

Case 12

(22)

Original answers with author's translations	Interpreter's renditions
a.1 A1--*¿Cómo no? ¿Él no tocó? Porque yo no le he tocado nada, no sé cómo…* (What do you mean he didn't? He didn't touch it? Because I didn't touch him at all, I don't know how).	*a.2* I- **Perhaps** but I didn't touch him

Case 11

5.2.3.3 *Hedges and fillers maintained in the interpretation*
Hedges and fillers were not always omitted by the interpreters when rendering their English versions. Examples 23–26 are representative of the types of hedges and fillers that were maintained in the interpretations. These were never features such as *¿no?* and *o sea*, but easily translatable words and phrases such as *no me acuerdo* (I don't remember), *me parece* (I think), *realmente* (really). This indicates once again that when readily available equivalents exist, interpreters will usually maintain them in their interpretations.

(23)

Original answers with author's translations	Interpreter's renditions
a.1 A1- **Como de de febrero, no me acuerdo** *el día.* (From about about February, I don't remember the date)	*a.2* I- **Like** since February, **I can't remember** the date.

Case 1

(24)

Original answers with author's translations	Interpreter's renditions
a.1 A1- **Me parece** *que sí pero no estoy segura.* (I think so but I not sure)	*a.2* I- **I think** so but I'm not sure.

Case 5

(25)

Original answers with author's translations	Interpreter's renditions
a.1	*a.2*
A1- *No entiendo* **realmente** *la pregunta.*	I- I don't **really** understand the question.
(I don't really understand the question).	

Case 4

(26)

Original answers with author's translations	Interpreter's renditions
a.1	*a.2*
A1- **Yo creo** *que estaba vacío.*	I- **I believe** it was empty.
(I think it was empty)	
b.1	*b.2*
Disculpe que no le aseguro *pero es mucho*	I- **I apologise for not being able to…**
tiempo.	**uh assure you** but it's a long time.
(I'm sorry I can't tell you for sure, but it's	
been too long).	

Case 3

As with the case of hesitations, we found that interpreters' renditions as a whole contained 37.2% fewer hedges and fillers than the originals. However, on a number of occasions, interpreters added their own hedges and fillers, at times to indicate an uncertainty on the correctness of their own interpretation, at other times for no justifiable reason. When hedges caused no translation difficulty it was generally maintained in the interpretation, however when no ready equivalent was available and hence more processing time was required, the hedges were generally omitted. Whether these features were omitted or added, the style of the answer was invariably altered, with the interpreted version not reflecting an accurate version of the original.

5.2.4 Discourse markers

As Jucker and Ziv comment, "discourse marker is a fuzzy concept" (1998: 2). A number of different authors have used the term to refer to a range of words and phrases that mark the discourse in a semantic or pragmatic way (Svartvik, 1980, Schourup, 1985, Schiffrin, 1987, Erman, 1987). However, there is still no general consensus on a definition of the term or on the basic characteristics of such features. Chapter 4 of this book reviews the literature on discourse markers and adopts Schiffrin's (1987) definition, which will continue to apply in this chapter. The discourse markers analysed in this chapter are the ones found in the original Spanish answers (*bueno, pues, pero, ahora, entonces, digamos, no señor*) and those found in the interpreters' renditions (well, but, actually, so, then, and but). The

results of this study showed that discourse markers were not as frequent in the discourse of Spanish speaking witnesses as they were in the discourse of English speaking questioners. There were only 59 occurrences of discourse markers found in the 1379 Spanish answers, and a very small percentage of them were translated into English by the interpreters (13.5%). Although there are 26 occurrences of discourse markers in the English interpreted answers, only 8 (6 in examination-in-chief, 2 in cross-examination) of these are a direct translation of the original. The remaining 18 (15 in examination-in-chief and 3 in cross-examination) are additions by the interpreters. This pattern is consistent with the findings of the interpreter's treatment of discourse markers in the questions, where there was a high tendency to omit them in their interpretation. Interestingly in the case of the answers, interpreters used discourse markers in their renditions when they were not present in the original. By analysing the type of discourse marker that was omitted or added by the interpreter and the contexts, I will try to ascertain whether there was any rationale behind the different choices or whether the decisions were made at random.

Table 23. Use of discourse markers in witnesses' answers

Discourse marker in original answer + frequency & percentage	Discourse marker found in the interpretation & frequency
Bueno – 35 (Well) – 59.32%	6 (2: "well", 3: hesitation, 1: "yes")
Pues – 8 (Well) – 13.60%	2 (1: "well", 1: "oh")
Pero – 6 (But) – 10.2%	3 ("but")
Ahora (Now) – 4–6.8%	1 ("actually")
Entonces – 3 (So, then) – 5%	3 (2: "so", 1: "then")
Digamos – 2 (Let's say) – 3.4%	2 (1: "but", 1: "well")
No señor – 1 (absolutely not) – 1.7%	1 (No sir)

Table 23 shows the different types of discourse markers found in the Spanish original answers and the way these were interpreted by the interpreter, if at all. *Bueno* was the most frequently used discourse marker in Spanish (59.32%), interpreted as "well" twice and as "yes" once. On three occasions the interpreter hesitated in the place of the discourse marker, but resorted to omitting it. As it is the most commonly used discourse marker, I will only concentrate on analysing *bueno* and simply mention the other types on Table 23. The high frequency of the use of *bueno* is consistent with studies of its use in Spanish discourse (Carranza, 1988, 1998, Fuentes Rodriguez, 1993).

5.2.4.1 *The use of "bueno" in the Spanish original answers*
The use of *bueno* in the Spanish answers differed according to the type of question it followed: whether it was a Polar Interrogative or a Wh-question, and on the

purpose of the answer. Schiffrin (1985) also found that question form in English influences the use of "well" in the answer, and that this discourse marker is predominantly found in answers to Wh- and Polar Interrogatives. The following table shows the seven different uses of *bueno* in the Spanish original answers.

Table 24. Uses of "bueno" in Spanish answers

Following a Wh-question	Following a polar "Yes/No" question
1. Initiates an explanation	4. Expresses uncertainty
2. Initiates a narrative account	5. Initiates an indirect answer where the
3. Used in the middle of a narrative to	listener is expected to infer the answer
mark continuation	6. Initiates a qualifying answer
	7. Initiates a negative answer

A clear pattern can be discerned in the use of *bueno*. When it is used in response to a Wh- question which invites an open, narrative answer, it indicates compliance by initiating a preferred answer, as in Categories 1 and 2. In this case a direct translation of *bueno*, "well", would have been appropriate. Category 3, however, is used differently. This category marks continuation in a narrative and can be compared to "so" or "anyway" in English. Schegloff & Sacks (1973) mention that "well" in conversation is also used as a pre-closing device along with "so" and "okay". The following are examples of these three categories.

Category 1 - Initiates an explanation

(27)

Original answers with author's translations	Interpreter's renditions
a.1	*a.2*
A1- *Eh,* ***bueno****, él tenía que volver el martes*	I- Well he had to come back on
a las 9 de la noche pero regresó como a las dos	Tuesday at 9pm but actually he came
después de haber terminado su trabajo,	back uh at 2am in the morning after he
de noche.	finished his work.
(Uh, well, he was supposed to get back on	
Tuesday at 9pm but he got back at about	
2 after he finished his work, at night)	

Case 4

The above example shows the use of *bueno* to initiate an explanation. The question: "when did he come home?" required a simple answer to indicate the time of arrival, however, the witness felt an explanation was required to make the answer more coherent, by indicating that although he was supposed to return at nine, this time he had to stay back at work and returned much later. In order to include this unsolicited explanation, the witness prefaces her answer with *bueno*. This is one of

the few occasions when the interpreter keeps the initial discourse marker "well" in the interpretation and adds a second one "actually" to add cohesion to the utterance. Hence the interpretation is pragmatically accurate, maintaining the inference that an explanation was necessary, albeit uninvited.

Category 2 – Initiates a narrative

(28)

Original answers with author's translations	Interpreter's renditions
a.1 **A1- *Bueno,* *ahí yo sentí que mi matrimonio* *se… se terminaba todo, y* *bueno,* *yo fui la* *culpable porque con la rabia que tenía ah…* *tomé el teléfono en mi mano derecha y lo* *volteé contra el… el velador.*** **(Well, I felt then that my marriage was… was over, anyhow, it was my fault because I was so furious that uh I took the telephone with my right hand and smashed it against the… the lamp)**	*a.2* I- I was uh in fault, at fault because I was angry, very angry and on my anger I got the telephone on my hand and I banged it against the uh side table.

Case 15

The example under Category 2 is in response to the question: "Yeah, now, tell us what happened when you got home and found your husband packing up his clothes". It shows two uses of *bueno*, the first falling under Category 2 and the second under Category 3 which will be discussed below. Here *bueno* initiates a narrative, at the explicit request of the question. The witness has an open permission to tell a story. This is done by commencing the narration with *bueno*. The interpreted version of this answer greatly changes its tone. In the original the witness speaks with a tone of resignation and finality, using the discourse marker *bueno* to reinforce this. The interpreter not only omits both discourse markers, he also omits the first crucial phrase, changing the answer significantly. Whereas the original was "Well, I felt then that my marriage was… was over, anyhow, it was my fault…", the interpreter's rendition was "I was uh in fault, at fault because…"

Category 3 - Marks continuation in the narration

(29)

Original answers with author's translations	Interpreter's renditions
a.1 A1- *… eh, y vi que él iba corriendo, o sea, así para el lado de nosotros. Y* *bueno, yo seguí mi camino con mi esposa y mi hija…*	*a.2* I- And I saw him running, running towards us. I continued walking with my wife and my daughter…

(… uh, and I saw him running, I mean, towards us. Anyway, I kept walking with my wife and my daughter).

Case 11

The third category of the use of *bueno* is that which marks continuation in the middle of a narration. This is always preceded by the word *y* (and) and can be translated as *anyway* or *anyhow*. This particular use is consistent with Schiffrin's (1985) idea of the use of discourse markers to maintain coherence in the discourse. Here the coherence is kept within the same narrative, rather than between a question and answer sequence. By omitting the discourse marker in the interpretation, the answer noticeably lacks cohesion. It can be argued, on the other hand, that in light of O'Barr's results (1982), the omission of *well* by the interpreter turns the answer from a more powerless style into a more powerful style.

Categories 4–7 are all evident in answers to Polar Interrogatives. All these options express in some way non-compliance to the question. As the answer required by the question is either a yes or a no, any other type of expanded answer can be construed as irrelevant, unwarranted or non-compliant. This is consistent with Owen's (1983) findings that "well" can precede non-compliant answers or cancel presuppositions of prior questions. Carranza (1998) found that *bueno* when initiating answers, marks disagreement to questions that function as accusations or assertions. Schiffrin also found that "well" may be used by speakers to expand on a "minimal token of acknowledgment" as in "well, no. Uh: if you have it, you have it" (1980: 647). My data showed four uses of *bueno* as prefaces to answers to Polar Interrogatives: answers that express uncertainty, indirect answers, qualifying answers and negative answers. Examples of each of these categories appear below.

Category 4 – Answers that express uncertainty

(30)

Original answers with author's translations	Interpreter's renditions
a.1	*a.2*
A1- *Bueno, no recuerdo cómo se llaman aquellas calles…*	I- I don't remember the names of the streets actually…
(Well, I don't remember the names of those streets…)	

Case 2

All the examples that fall under Category 4 contain a phrase other than the discourse marker that indicates uncertainty, such as "I don't know" or "I don't remember". The discourse marker *bueno* prefaces those uncertain statements. In the example above the question was "Had you gone past Shaw St" which required a

yes or a no answer. The witness instead gives an indirect answer that implies "I don't know because I don't know the names of the streets". By initiating the answer with *bueno* the witness is acknowledging that he is unable to answer the question with either a yes or a no. The interpreter omits the discourse marker *bueno* and adds a different discourse marker at the end, "actually". The inference is consequently also changed. Whereas the original answer is coherent with the question, the interpreter's version is not. The interpreter's version would be a coherent answer to a question on whether the witness remembers the names of the streets or not, but not on whether he'd passed a particular street.

Category 5 – Indirect answers

(31)

Original answers with author's translations	Interpreter's renditions
a.1 A1- *Bueno, yo sé que ella… iba porque había adelgazado de peso, ¿no?* **(Well, I know that she… went because she was losing weight, wasn't she?)**	*a.2* I- I know that she went because she was losing weight.

Case 12

Two examples have been provided to illustrate Category 5, which is the most common use of the marker *bueno*. Like Category 4, these are also indirect answers. However, these answers are not uncertain, they are definite and challenging, characterised by either a tag at the end or a question intonation. As witnesses are not permitted to ask questions in the courtroom, these answers, which incorporate a tag question or have the intonation of a question, defy the prescribed witness role. In example 31 the question was: "At any stage in 1993, did your wife tell you that the doctor told her your daughter had an infection?" to which the witness answers: "Well, I know that she… went because she was losing weight, wasn't she?" which is an indirect answer to the question. The speaker uses conversational implicature (Grice, 1975), something which is not allowed in the courtroom, hence the answer is not the expected one. As Schiffrin (1985) explained, "speakers use 'well' more frequently when the coherence options offered by questions are not precisely followed up by the content of the answers" (p. 647). This is clearly the case in example 31. The answer, however, is relevant to the question in an indirect way, its inferred meaning being "no, but I knew because she was losing weight". The use of *bueno* both prefaces the unexpected answer, thus maintaining coherence, and avoids the need for a negative, which would lead to a loss of face on the part of the witness. The use of the tag at the end seeks a positive confirmation to the stated answer. The interpreter omits both these important features, hence missing the desired effect in the interpretation.

(32)

Original answers with author's translations	Interpreter's renditions
a.1	*a.2*
A1- *Bueno, ¿cómo sabía yo si estaba en casa o no si yo nunca estaba en casa?* (Well, how was I to know if she was at home when I was never home?)	I- How did I know if she was at home if I was never home?

Case 14

The inference in the answer in example 32 is again an indirect "no". The question is: "And did you complain about your wife uh going out too much and never being home?". The witness avoids giving a negative answer with the use of *bueno* and the rhetorical question. As with the previous one, he expects agreement from the questioner. The interpreter omits the discourse marker and changes the rhetorical question to a genuine Wh- question.

Category 6 – Qualifying answers

(33)

Original answers with author's translations	Interpreter's renditions
a.1	*a.2*
A- *Bueno, últimamente porque antes yo estaba muy ocupado con mis tareas de trabajo.* (Well, lately, because before I was too busy with my work).	I- Lately because before I was always busy with my work.

Case 14

Qualifying answers are those that imply a positive response but need qualification. The use of *bueno* in this answer is necessary for complete clarity. The question was: "And, it has always been very close". The witness does not want to affirm or deny this statement and so qualifies it with the use of *bueno*. Once again this is omitted by the interpreter, thus rendering the utterance less clear.

Category 7 – Negative answers

(35)

Original answers with author's translations	Interpreter's renditions
a.1	*a.2*
A- *Bueno, yo no le puedo contestar esa pregunta.* (Well, I can't answer that question)	I- I wouldn't be able to answer that question.

Case 5

This category encompasses negative answers that are not necessarily a direct "no" to the question posed. In the example above, the answer is simply a refusal to answer the question, which was: "All the people at the meeting when they said something they believed what they wanted, their point of view". The use of *bueno* mitigates the clash. The interpreter here chooses to include some mitigation by using the conditional "would" instead of the discourse marker "well". However, in making this change, the implicature of the utterance is also altered. Whereas the original "Well, I can't answer that question" does not imply the reason for the inability to respond, the interpreter's version, "I wouldn't be able to answer that question", implies that the speaker is not in a position to answer the question. Such a difference is subtle but significant.

The examples above demonstrate that the omission of the discourse marker *bueno* in the interpreted versions can have a number of consequences. These include: (1) it can change the power of the style, from a more powerless to a more powerful one, (2) it can make a relevant answer seem irrelevant, (3) it can render an answer less coherent, and (4) it can change the tone of the answer.

5.2.4.2 *The addition of discourse markers in the interpretation*

Interestingly, interpreters omitted most of the discourse markers when they appeared in the witness's answers but added them to 18 answers that did not have them in the original. Table 25 shows the types of discourse markers added and their frequency. "Well" was the most popular addition, followed by "actually" and "you see".

Table 25. Added discourse markers in the interpretation

Well	13
Actually	4
You see	1

5.2.4.2.1 *The addition of "well".* Nine of these additions were made by the same interpreter in Case 10. This indicates that this particular interpreter had a tendency to use "well" in her interpretation when it did not appear in the original. Her additions make the utterances less assertive, adding a degree of powerlessness, as explained by O'Barr (1982). One of the additions was purely the interpreter's, as she tries to give an explanation rather than a straight interpretation. The other additions fit well in the utterance, following the categories that appear above in the discussion of the use of *bueno*.

(36)

Original answers with author's translations	Interpreter's renditions
a.1 A- *Yo encontré mi casa vacía el viernes 9 de julio. Ella se fue sin darme aviso.* (I found my house empty on Friday 9th of July. She left without giving me notice)	*a.2* I- Well, I found that my house was empty on a Friday the 9th of July. She left without any previous notice.

Case 10

(37)

Original answers with author's translations	Interpreter's renditions
a.1 A- *Estos son los recibos que utilicé para darle a Terry Wall cuando me pagaba, me cancelaba la renta.* (These are the receipts I used to give to Terry Wall when she paid me, when she settled the rent account)	*a.2* I- Well, these were the receipts I used, uh, to… show that uh… she was paying for the rent.

Case 10

Examples 36 and 37 are both from case 10 and show a very clear instance of the interpreter turning what would be regarded as powerful speech into powerless speech. By adding the initial "well", pauses and hesitations, what in Spanish were very precise, assertive answers, become dubitative and weak in English. Whether such a change is intentional on the part of the interpreter is impossible to say.

(38)

Original answers with author's translations	Interpreter's renditions
a.1 A- *Puta.* (Slut)	*a.2* I- Well, that's the word in Spanish, it means prostitute or slut.

Case 9

Example 38 illustrates an instance where the interpreter changes footing (Goffman, 1981), shifting from the strict invisible interpreter role of mouthpiece only to that of linguistic expert. She thus becomes an obvious third party to the case. This happens for a reason. The question to this answer was "what word did you use?" to which the witness answers *puta*. The interpreter cannot simply translate that into English and say "slut" because the man is relating an experience when he uttered the word in Spanish, not in English. Hence, she starts with "well" to indicate that she will now deviate from her strict role, to explain that *puta* was the word the witness used which in English means "prostitute or slut". When interpreters enter into the exchange to

make comments, clarifications or ask questions, it is difficult to know whether those listening understand that for a short moment it is not the witness speaking through the interpreter any more, but the interpreter him/herself. These instances are rare in my data, as previously mentioned, although they appear to be more common in Berk-Seligson's study (1990).

Example 39 is illustrative of an addition of "well" that does not detract from the original intention but that fits in perfectly in the context, even though it was not present in the original answer. The interpreter replaces the original *y* (and) with an initial "well". One of the uses of "well" in English, when uttered in a rising intonation and by itself, has the function of implying that the speaker has not understood the meaning of the utterance (Hirschberg & Ward, 1985). This type of "well" is pragmatically translated into Spanish as *¿y?*. In the context of example 39, "well" also adequately replaces the Spanish *y*.

(39)

Original answers with author's translations	Interpreter's renditions
a.1	*a.2*
A- *Eh, y… y entonces ¿con qué me hirió el dedo?* (Uh, and, and then what did he hurt my finger with?)	I- Well, how did he cut my finger then?

Case 11

5.2.4.2.2 *Addition of "actually"*. Example 40 falls under the same category of unnecessary additions, as did examples 36 and 37. Although the discourse marker "actually" fits in well in the context, it is added twice by the interpreter unnecessarily.

(40)

Original answers with author's translations	Interpreter's renditions
a.1	*a.2*
A- *No, no puedo describirlo porque fue unos intervalos de de segundos o de… que no me… no me di cuenta. Y yo no sé si al fin salió o se quedó ahí el vehículo.* (No, I can't describe it because it was only intervals of a few seconds or of… that I didn't… I couldn't tell. And I don't know if in the end the vehicle was moved or it stayed there)	I- Ah, actually, I cannot describe it, it was a few seconds uhm, uh, that I I saw it and I actually don't remember whether it stayed at the scene or not.

Case 2

Example 41 resembles example 38 in that once again, the use of the marker prefaces a turn by the interpreter and not an interpretation of the original answer. Here the interpreter also reverts to the third person. Unlike example 38 where the addition

was well justified, here the interpreter is retracting from his previous, incorrect version. He had firstly opted to correct the witness's obvious mistake in mentioning the year, but later decided to remain accurate to the original and retract from his correction.

(41)

Original answers with author's translations	Interpreter's renditions
a.1 A- *Entre 98 ó 99.* (Around 98 or 99).	*a.2* I- Around uh 89, actually he said 98 99.

Case 3

5.2.4.2.3 *Addition of "you see"*. As it has already been mentioned in Chapter 4, McCarthy regards "you see" as a marker which indicates "proclaimed knowledge" (1994: 112) and Schiffrin (1987) as a marker used in explanations. In example 42 below, the interpreter adds the marker "you see" to the interpretation. This addition fits adequately in the context of providing an explanation for the witness not speaking to the policeman himself. Although the witness does not use this marker in the original, she uses "so" to indicate continuation and completion in the narration. The option chosen by the interpreter gives the witness more authority, as "you see" indicates proclaimed knowledge and carries more force.

(42)

Original answers with author's translations	Interpreter's renditions
a.1 A- *Porque a mí me dieron el ah… a mí no me dieron el móvil, el policía mismo, el policía mismo me hizo el el trámite ese porque yo no hablo el inglés, entonces me dijo yo le voy a poner en contacto con él y… y ahí yo hablé con él.* (Because they gave me the uh…they didn't give me the mobile, the policeman himself, the policeman himself did that for me because I don't speak English, so he told me I'll put you in contact with him and… and that's how I spoke to him)	*a.2* I- Because they didn't give me the number of the mobile, you see, the policeman himself, he made the contact with the mobile because I don't speak English and then he said I'll put you in contact with him and that's what he did on the mobile.

Case 16

It can be seen from this last section that, at times, the addition of discourse markers in the interpreted versions help to maintain the pragmatic intention of the original utterance, even if those markers were not present in the same form in the witness's Spanish answers.

5.2.5 *Grammatical errors in the English interpretations*

The presence of grammatical errors in the interpreters' renditions was found to be an evident problem in the data. Whereas the originals contained 84 instances of grammatical errors in Spanish, the English interpretations contained 225 instances, that is a 168% increase. The grammatical errors found in the originals were common native speaker errors denoting poor educational background, whereas the errors made by the interpreters were non-native English speakers' errors, denoting a lack of English language proficiency. These errors were accompanied by poor pronunciation in English which at times hindered comprehension, evidenced by the magistrates' or lawyers' requests for repetition. The impact of such a problem on the witness is not evident from the data. However, previous studies have shown that dysfluencies and foreign accents can have negative impacts on people's evaluations of the speaker (Miller & Hewgill, 1964, Serreno & Hawkins, 1967, Lay & Burron, 1968, McCroskey & Mehrley, 1969, Ryan & Carranza, 1977).

A number of studies have been conducted to obtain native speakers' impressions and reactions of second language learners' speech (Politzer, 1978, Albrechtsen et al., 1980, Piazza, 1980, Anderson-Hsieh et al., 1992). These studies have covered native speakers' reactions to errors of vocabulary, grammar, pronunciation and intonation. The most interesting result from these studies is that non-native speakers' errors can cause irritation, even if comprehension is reasonable. "Irritation is the result of the form of the message intruding upon the interlocutor's perception of the communication" (Ludwig, 1982: 275). Different error types caused the most irritability in different studies; for example, in Politzer's (1978) study of German native speakers' evaluations, vocabulary errors were considered as most irritating, in Olsson's (1973) study of English native speaker judgements, syntactic errors were classified as most irritating, whereas Fayer & Krazinski (1987) found errors of pronunciation to be merely distracting. Albrechtsen et al. (1980) therefore conclude that " 'irritation' is directly predictable from the number of errors… regardless of error type" (p. 394). The results of these studies are significant in the context of interpreting, where the interpreters make a number of different non-native speaker errors, as my data have shown. It is difficult to ascertain whether such errors of grammar and pronunciation are correctly attributed to the interpreter rather than to the witness or whether they serve to portray a negative impression of the witness.

I will categorise below the types of grammatical errors found in the Spanish original answers and those found in the interpreters' renditions.

Table 26. Grammatical errors by case and interpreter

Grammatical errors found in original answers by case	Grammatical errors found in interpreted answers by case	
Case 1 = 0	Case 1 = 2	-Interpreter 1
Case 2 = 5	Case 2 = 14	-Interpreter 2
Case 3 = 18	Case 3 = 53	-Interpreter 1
Case 4 = 1	Case 4 = 0	-Interpreter 2
Case 5 = 2	Case 5 = 5	-Interpreter 3
Case 6 = 0	Case 6 = 0	-Interpreter 4
Case 7 = 0	Case 7 = 2	-Interpreter 4
Case 8 = 0	Case 8 = 1	-Interpreter 4
Case 9 = 2	Case 9 = 0	-Interpreter 5
Case 10 = 5	Case 10 = 29	-Interpreter 6
Case 11 = 19	Case 11 = 10	-Interpreter 4
Case 12 = 0	Case 12 = 5	-Interpreter 2
Case 13 = 4	Case 13 = 2	-Interpreter 1
Case 14 = 15	Case 14 = 72	-Interpreter 7
Case 15 = 1	Case 15 = 11	-Interpreter 1
Case 16 = 13	Case 16 = 6	-Interpreter 8
Case 17 = 1	Case 17 = 1	-Interpreter 8

Table 26 shows the number of grammatical errors by case in the originals and in the interpretations, with the respective interpreters. Some of the interpreters worked in more than one case. From the table we can see that Interpreter 1 made 68 errors in four cases, an average of 17 errors per case; interpreter 2 made 19 errors in three cases, an average of 6 errors per case; interpreter 3 made 5 errors in one case; interpreter 4 made 13 errors in four cases, an average of 3 errors per case; interpreter 5 made no errors at all; interpreter 6 made 29 errors in one case; interpreter 7 made 72 errors in one case and interpreter 8 made 7 errors in two cases, an average of 3.5 per case. Although the cases vary in length, this chart gives us an indication that the majority of grammatical errors were made by three interpreters: 1, with an average of 17 errors per case, 6, with 29 errors in one case and 7 with 72 errors in one case. The other interpreters made less than 5 average errors per case, with one interpreter, number 5, making no grammatical errors at all.

In the table, the cases where the greatest discrepancies between number of errors in the original Spanish and in the English interpretation are found appear in bold type. In five of these cases, the interpreter makes a considerable number of extra grammatical errors (case 2–5: 14, case 3–18: 53, case 10–5: 29, case 14–15: 72). In two cases only there is a high discrepancy between the errors found in the original and the interpretation with the interpretation presenting a smaller number (case 11–19: 10, and case 16–13: 6).

5.2.5.1 *Examples of errors in the original*

Error type 1 – *Dequeísmo*

The data show five main types of errors in the Spanish originals. The first one is what is commonly referred to in Spanish as *dequeísmo*, the superfluous use of the preposition *de* (of) preceding *que* (that) clauses. Spanish speakers usually make this mistake following verbs of expression, perception and thought (Real Academia Española, 1981: 522). This is a very common native speaker error and appears numerous times in the data. The Real Academia refers to this error as being characteristic of *la lengua descuidada* (careless, or sloppy language) (1981: 522), and normally denotes limited education in Spanish. In order for the interpreter to maintain a similar impression in the interpretation, the method of translation by compensation can be used (Baker, 1992). This method is employed when, due to a lack of equivalence, translating the same error would not cause the same effect. Hence, such lack of equivalence needs to be compensated for somewhere else in the discourse. In the case of native speaker errors, a typical English native speaker error, such as the use of "them" as a demonstrative, could be used in the interpretation of another of the witness's utterances. This is difficult to achieve in short exchanges, as in the example below, where there may not be an opportunity to accomplish such a method. The interpreter may have to make the deliberate error somewhere else in the exchange, translating at the discourse level rather than the sentence level.

(43)

Original answers with author's translations	Interpreter's renditions
a.1 A- *Entonces él me dijo **de que** tenía relativos ahí en Goulburn* (So he told me he had relatives there in Goulburn)	*a.2* I- And then he told me that he had some relatives in Goulburn

Case 3

Error type 2 – Transfer from English

Type 2 errors are very difficult to maintain in the interpretation because they arise from involuntary transference from English to Spanish in speakers living in an English speaking country with a basic knowledge of English. Example 44 uses the phrase *abusándome verbalmente*, which literally means "abusing me verbally". In Spanish the word *abusar* (to abuse) means to take advantage of or to ill-treat something or someone (VOX, 1990). The Spanish way of expressing "abusing me verbally" would be to say *me estaba insultando*. However, the common English usage is filtering the Spanish language not only among Spanish speakers in English

speaking countries, but also in Spanish speaking countries under the influence of translated material.

(44)

Original answers with author's translations	Interpreter's renditions
a.1 A- *No porque una amiga de ellas me estaba* ***abusándome verbalmente.*** (No, 'cause one of their friends was abusing me verbally)	*a.2* I- No because one of their friends was verbally abusing me.

Case 5

In example 45, the witness says *mi natural lengua* which the interpreter corrects to "my native tongue". The witness made two mistakes: he used an incorrect word order, as in Spanish the adjective generally follows the verb, and he used an incorrect adjective, *natural* (natural) instead of *nativa* (native) or *materna* (mother).

(45)

Original answers with author's translations	Interpreter's renditions
a.1 A- *…y mis primeras palabras fueron en español porque es mi* ***natural lengua.*** (… and my first words were in Spanish, because it's my native tongue)	*a.2* I- My first words were in Spanish because that's my native tongue.

Case 9

In example 46, the witness is also influenced by English when she says *mi ojo*. In Spanish when one speaks about parts of the body or articles of clothing, the possessive pronoun is redundant. The sense of ownership is present in the indirect object pronoun: ***me duele el ojo*** (the eye hurts me) or in the conjugated verb ***tenía el ojo morado*** (I had the eye red). The grammatically correct way of expressing this phrase is by using the definite article in the form of "the eye". Interestingly, the interpreter, instead of translating literally, as "my eye", which is grammatical in English, changes it to a Spanish construction and says "I had the eye bruised". Whether this was a deliberate choice is impossible to say, nevertheless it was an effective way of maintaining the error of transference in the interpretation. This witness has a number of other features in her speech that denote a very low level of education, including pronunciation and incoherence, which to an extent remain present in the interpretation.

(46)

Original answers with author's translations	Interpreter's renditions
a.1 *A- Ah I reme… recuerdo que cuando me* *pasó esto ah fui a la policía de Cabramatta* *que tenía el ojo grande me lo había dejado* *todo morado y yo dije en en Cabramatta* *fui a hablar por **mi ojo** que lo tenía hinchado* *que me lo me pegó un combo ehm, y no me* *entendieron porque no hablaba inglé', y no no* *pude hablarlo, no pude no me entendieron bien.* (Uh I reme… I remember that when this happened uh I went to the Cabramatta Police Station that my eye was big he'd bruised it and I said at at Cabramatta I went to talk 'cause of my eye that it was swollen that it he punched me uhm, and they didn't understand 'cause I didn't speak English, and I couldn't couldn't speak, I couldn't they didn't fully understand.)	*a.2* *I- I eh went to the, when it happened I* *went to the police in Cabramatta* *because I had **the eye bruised**, this eye* *was swollen and bruised eh because he* had punched me in the eye and I went to the police in Cabramatta but they eh couldn't see me because I was, I don't speak English.

Case 16

Error type 3 – Repetition of verb used in the question

Error type 3 is repeated on a number of occasions by the witness in case 11. It is also a mistake denoting lack of education. She repeats the verb that appeared in the question at the beginning of her answer. The question was *¿qué pasó…?* (what happened), and *¿qué hizo…?* (what did he do?) and her answers were *pasó que…* (it happened that) and *hizo que…* (he did that). A grammatically correct answer would commence with the verb that describes the action, in this case "he was sitting there". The interpreter's renditions are concise and grammatical and in no way reflect the witness's lack of language competence, although, as previously mentioned, it would be very difficult to do.

(47)

Original answers with author's translations	Interpreter's renditions
a.1 **A- *Hizo que*** cuando venía por la biblioteca él estaba esperándo a mi esposo entonces nosotros seguimos el camino, cruzamos la calle a la derecha, en la Bing St. (What he did was, when he was near the library he was waiting for me husband so we kept on walking, we crossed over to the right at Bing St)	*a.2* I- Uh, he was uh opposite the library, and we just continued walking and then we turned towards the right

Case 11

Error type 4 – Incorrect use of impersonal verb *haber*

Error type 4 is as common as error type 1. The verb *haber* as an existential verb in Spanish is impersonal, therefore it does not mark for number. Hence, both plural and singular remain the same, *hubo* (singular) *momento/s* (there was/were moments) (Real Academia Española, 1981: 384–385). The tendency is to make the verb agree with the complement, in this case *momentos*, as there is no subject. In English the rule is reversed. It is grammatical for there to be agreement with the complement. Once again, the interpreter interpreted grammatically in English. The simplest solution here would have been to interpret this ungrammaticality by the same mistake in English, by saying "there was moments", which is also a common native English speaker error.

(48)

Original answers with author's translations	Interpreter's renditions
a.1 A- … *porque* **hubieron momentos** *que… ella no quería ir pero tenía mucho miedo de lo que le pudiera pasar porque estaba muy miedosa.* (… 'cause there was moments that… she didn't want to go but she was very scared of what might happen to her, 'cause she was very scared.)	*a.2* I- There were some times that she was she felt that she didn't want to go but she was afraid of what could happen to her.

Case 14

Error type 5 – Incorrect use of preposition

Error type 5 is the incorrect use of a preposition *estoy separado con él* (I'm separated with him), when the correct preposition should have been *de*. Although prepositions cause some difficulty in the speech of native Spanish speakers, this particular example is not common. One can only assume that the witness extended the use of the preposition in *estoy casado con él* (I'm married to him), which is semantically related.

(49)

Original answers with author's translations	Interpreter's renditions
a.1 **A-** *Yo* **estoy separada con él** *de noviembre del 95, yo no tengo idea lo que a él le pasó después porque yo vivo sola con mis hijos.* (I have been separated to him since November '95, I have no idea what happened to him after that 'cause I live alone with my kids.)	*a.2* I- I have been separated from him from November 95 I do not know what happened to him because I live alone with my children.

Case 16

The interpreter could have used a wrong preposition to maintain the error. However, this type of technique can only be effective when the interpreter has a perfect command of the language and it is clear that the error belongs to the witness and not to the interpreter. Ideally, the interpreter should perform like an actor (Laster & Taylor 1994: 120) where the language behaviour of each participant for whom he/she interprets, determines the language behaviour of the interpreter. In this way the interpreter would take on different roles with their accompanying linguistic characteristics: style, accent, register, grammatical errors and other features. This practice can be compared to literary translation, where the representation of dialect is portrayed graphically in the original and maintained in the translation.

5.2.5.2 *Examples of errors in the interpretation*

Based on the results of previous studies on the effect of ungrammaticality on listeners (Miller & Hewgill, 1964, Serreno & Hawkins, 1967, Lay & Burron, 1968, McCroskey & Mehrley, 1969, Ryan & Carranza, 1977, Politzer, 1978, Albrechtsen et al., 1980, Piazza, 1980, Anderson-Hsieh et al., 1992), one would assume that the presence of grammatical errors in the interpretation when these were inexistent in the original can have disadvantageous consequences for the witnesses. Fortunately, this was not a problem shared by all interpreters to the same degree of gravity. It is hoped that a larger sample of interpreters would produce a less significant number of such errors. The difference between "mistake" and "error" has been linked to Chomsky's (1965) distinction between competence and performance; error relating to a lack of competence, and mistake relating to a lapse of performance (Corder, 1967, 1971, James, 1998). It is difficult to say whether the ungrammaticalities found in the interpreters' utterances were competence failures or simply performance failures caused by pressure. For this reason I have opted to use the term "error" to apply to every instance. Another qualification that is worth making at this point is the classification of all errors under the general term of "ungrammaticality". James (1998) speaks of error analysis as the opposite of epistemology, the analysis of people's linguistic ignorance. He divides learners' linguistic ignorance into four categories: grammaticality, acceptability, correctness & strangeness and infelicities (pp. 62–76). Most of the errors present in the data are strictly grammatical, in other words, deviant from grammatical rules. However, some of the errors can fall into the category of acceptability or infelicity. This means that although the utterance is not strictly ungrammatical, it is unacceptable by native speakers or infelicitous in pragmatic terms. I have classified the interpreters' errors into seven types which will be individually treated below.

Error type 1 – Incorrect verb tense

Type 1 error depicts the incorrect verb tense used by the interpreter. Although the English verb system is relatively uncomplicated compared to the complex Spanish system, this type of error was common. The first example is a simple one where the interpreter uses a present tense instead of a past tense. This error with the verb "to run" is repeated a number of times and by different interpreters. Since the past participle of "run" is also "run", it can be presumed that the interpreters here believed they were using the past instead of the present tense.

(50)

Original answers with author's translations	Interpreter's renditions
a.1	*a.2*
A- *Él se encontró con otros vehículos y quería adelantarme… que casi me… tropieza.* (He found other vehicles and wanted to overtake me… that he almost… hit me)	I- He encountered other vehicles and he wanted to… pass me, so he almost **run**… into me.

Case 2

The second example is a clear transference from Spanish. The interpretation is a literal translation of the original. In Spanish, when the clause is initiated by temporal phrases such as "the first time", or "the last time", the verb remains in the present tense. In English however, the tense needs to be in the past, as in "this is the first time I've done this". In example 51, the interpreter says, "No, it's the first time we know about the price", when a clause such as "it was the first we knew about the price" would have been the grammatical option.

(51)

Original answers with author's translations	Interpreter's renditions
a.1	*a.2*
A- *No, no tenemos nada, es lo primero que sabemos.* (No, we don't have anything, this is the first we've heard.)	I- No **it's the first time we know** about the price.

Case 8

Example 52 is also one of transference from Spanish in terms of aspect. The Spanish sentence uses the imperfect aspect *cancelaba*, which indicates a continuous action. The interpreter, wanting to maintain the same aspect, opted for the continuous past: "was paying", when in fact a simple past tense would have been correct: "when she paid".

(52)

Original answers with author's translations	Interpreter's renditions
a.1	*a.2*
A- … *cuando ella me cancelaba algo.*	I- When she **was paying** for something.
(… when she paid me something.)	

Case 10

Error type 2 – Incorrect syntax

As Spanish is a highly inflected language, word order is much more flexible than English, nevertheless, some thematic structures are more marked than others. In Spanish it is the unmarked choice to front the adjunct of time in a clause, such as in example 53 below, whereas in English, it is less marked to have the adjunct of time in last position (Halliday, 1985). When the adjunct of time is fronted, it is done for emphasis as in "Lately, I've been noticing some changes" as opposed to "I've been noticing some changes lately". The way the interpreter expressed the sentence in English, "since very recently he's been seeing Grace, not before" is strictly not ungrammatical, but unidiomatic and marked, which falls under James' (1998) category of unacceptability. It must be pointed out that the original is unmarked and idiomatic. A version such as the back translation "Only now, he's only just started seeing Grace, he didn't use to see her before" maintains the emphasis of the first phrase, which directly answers the question, and the unmarkedness of the rest of the sentence, which is an elaboration of the first phrase.

(53)

Original answers with author's translations	Interpreter's renditions
a.1	*a.2*
A- *Ahora no más, no no, ahora hace poco*	I- Since very recently he's been seeing
que él está viendo a Grace, antes no la veía.	Grace, not before.
(Only now, he's only just started seeing	
Grace, he didn't use to see her before)	

Case 1

Example 54 is an error of word order. In Spanish, as explained in Chapter 3, questions are formulated intonationally, irrespective of word order, whereas in English, except in marked questions, the position of the verb determines the mood, whether it be declarative, interrogative or imperative. The interpreter in example 54 uses an interrogative structure to express a declarative mood "… I didn't know how long would it take me."

(54)

Original answers with author's translations	Interpreter's renditions
a.1 A- *eh y cuando iba para allá pensé que tenía que decirle a mi esposa porque no conocía demasiado y no sabía cuánto iba a tardarme.* (uh, and when I was driving there I thought I should tell my wife as I didn't know the area well and didn't know how long I'd be)	*a.2* I- and uh on the way I thought that I should advise my wife because I didn't know the place and I didn't know how long **would it take me.**

Case 3

Error type 3 – Incorrect preposition

The use of prepositions is much more complex in English than it is in Spanish and it is a constant cause of error in speakers of English as a second language from a Spanish speaking background. The most common prepositions used in Spanish are *en* (in) and *de* (of). These prepositions are used in Spanish in contexts where in English a wide variety of different prepositions are used. Additionally, prepositional verbs do not exist in Spanish, making subtle differences between "got out of" and "got off" difficult for the Spanish speaker to discern. In example 55, a prepositional verb is used incorrectly: "got off the car", when "got out of the car" should have been used.

(55)

Original answers with author's translations	Interpreter's renditions
a.1 A- *Eh, no, sólo hablé la el que al bajarme del coche él me preguntó eh* — "*¿qué haz hecho?*" *y yo le contesté* — "*yo nada, ¿tú que haz hecho que me has accidentado a mí?*" (Uh, no, I just talked to what when I got out of the car he asked me uh, "what have you done" and I answered him, "me, nothing. What have *you* done, you're the one who caused the accident")	*a.2* I- Yes, that's what we spoke when **I got off the car** and he uh told me he approached me and said, "What did you, what have you done?" and I said, "No, what have you done that you caused eh the accident?"

Case 2

Similarly, another prepositional verb is incorrectly used in example 56: "we took it off the bank", when "took it out" should have been used. Example 57 is a straight transference from Spanish where *en* is used. Hence, instead of saying "at that moment" the interpreter says "in that moment".

(56)

Original answers with author's translations	Interpreter's renditions
a.1	*a.2*
A- Lo sacamos del banco.	I- We **took it off** the bank.
(We took it out of the bank)	

Case 3

(57)

Original answers with author's translations	Interpreter's renditions
a.1	*a.2*
A- *en ese momento el jefe, Enzo.*	I- uh **in that moment** the boss Enzo.
(at that moment Enzo, my boss)	

Case 3

Error type 4 – Incorrect construction

Examples 58 and 59 are literal translations and direct transferences from Spanish, where *que* is incorrectly transferred into English as "that".

(58)

Original answers with author's translations	Interpreter's renditions
a.1	*a.2*
A- *entonces me dijo que sí.*	I- *and he told **that yes.***
(then he said yes)	

Case 3

(59)

Original answers with author's translations	Interpreter's renditions
a.1	*a.2*
A- *y yo le dije que no.*	I- and I said to him **that not**.
(and I said no)	

Case 3

Example 60 is one common to this particular interpreter, the use of "it was" with existential meaning. It is difficult to ascertain the cause of such an error.

(60)

Original answers with author's translations	Interpreter's renditions
a.1	*a.2*
A- *revistas, montañas de revistas.*	I- **it was** piles of magazines.
(magazines, piles of magazines)	

Case 10

Error type 5 – Incorrect verb construction

This error is another example of a direct transference from Spanish, and another indication of the problems caused by literal translation. The interpreter says: "Yes, they put me a collar on the neck". There are two errors here, the first is the use of the pronoun "they", as in Spanish this is used as an impersonal pronoun which in English is expressed with the use of an agentless passive. The second, more serious mistake is the "verb + indirect object pronoun" construction, where in English the verb "to put" calls for a preposition such as "on". A correct interpretation of the original could be "I had a collar put on my neck", or even more colloquially "I had to wear a collar".

(61)

Original answers with author's translations	Interpreter's renditions
a.1 A- *Sí, me han tratado, me han puesto… de momento un collar aquí en el pescuezo hasta llevarme al hospital.* (Yes, I was treated… I had a brace put on here on my neck in the meantime till I got to hospital)	a.2 I- Yes, **they put me a collar** on the neck uh and with that they took me to hospital.

Case 2

Error type 6 – Double subject

The mistake of repeating the subject, the second time in the form of a pronoun, is common among Spanish speakers but difficult to justify, as this is not a transference from Spanish. The interpreter's rendition would have been correct had the pronoun "it" been omitted.

(62)

Original answers with author's translations	Interpreter's renditions
a.1 A- *hubo una parte acá en la que pudo haber un malentendido.* (there was a bit here where there might have been a misunderstanding)	a.2 I- there was something here that it could be uh taken as a misunderstanding.

Case 14

Error type 7 – No subject-verb agreement

Lack of subject-verb agreement is a very basic error in English grammar but unfortunately one common to some interpreters, as illustrated by the example that appears below. Once again, this is difficult to understand, as in Spanish verbs are highly inflected, marking for person, number, aspect and time.

(63)

Original answers with author's translations	Interpreter's renditions
a.1 A -… *que el señor D. nos invitó a mí y a mi señora.* (… that Mr D invited me and my wife)	*a.2* I -… that **Mr D have** invited myself and my wife.

Case 14

Error type 8 – Incorrect use of definite article

This error is the opposite of what was described under error type 2 in the original Spanish answers. Here, the interpreter uses the definite article when a possessive pronoun should have been used. She simply translated from the Spanish literally "…to take off the clothes" instead of "…to take off our clothes".

(64)

Original answers with author's translations	Interpreter's renditions
a.1 A- *Es correcto, nos sacamos la ropa, sí señor* (It's correct, we took our clothes off, that's right)	*a.2* I- This is correct too, after he asked me and Lourdes **to take off the clothes** and pants together and we did.

Case 14

As the examples above have shown, the majority of errors made by the interpreters were caused by direct transferences from Spanish, translating grammatical rules literally from one language to the other. These examples can be used as a simple argument against literal translation for those who insist on it. More significantly, however, they can be used to show the lack of grammatical competence of some practising interpreters, which can portray an inaccurate image of the witnesses for whom they are interpreting. As De Jongh states:

> … in court, the speaker's style and level of language must be maintained by the interpreter. An interpreter who "cleans up" and edits a witness's testimony… is giving the jury an inaccurate verbal portrait of that person. Likewise, if the speech of an articulate, erudite individual is rendered with grammatical errors and slang terms, the interpreter is not interpreting accurately, and such situations could eventually result in a mistrial (1991: 292).

More in depth research about the impact of interpreter-induced grammatical errors should be conducted to ascertain the gravity of such a practice.

5.3 Rules vs. relational-oriented witnesses

In a study of informal court hearings in the USA, where rules of evidence are relaxed and witnesses are given more freedom to present their stories in free narratives, Conley and O'Barr (1990) found that not all litigants benefited from such freedom. Although the rules of evidence did not apply strictly, judges still judged according to the law and to what was legally relevant to each particular case. They found that litigants' presentational styles could be divided into two major categories, those who were rules-oriented and those who were relationally-oriented. The rules-oriented litigants were more successful in their claims, as their testimonies followed a logic that was well understood by the law, whereas the relations-oriented litigants performed poorly, as they used strategies common to every day conversational speech which did not fit in comfortably with the goals and purposes of the court. Rules-oriented litigants generally answered the question directly, in chronological order, providing facts often backed up by material evidence. They assigned roles of blame and responsibility to participants, provided only relevant information and did not make assumptions of any prior knowledge from their listeners about any of the facts. Most importantly, the accounts were presented as breaches of contracts between parties rather than betrayals of relationships. On the other hand, relational litigants did not answer the questions directly, often digressed from the question, provided irrelevant information, made frequent references to personal feelings, opinions and relationships, and assumed prior knowledge from their listeners. They also found that relational litigants' speech contained features common to the powerless speech style, whereas rules-oriented litigants' speech contained features common to the powerful speech style (Conley & O'Barr, 1990: 61–63).

As my data were extracted from NSW Local Courts, which are semi-formal courts where the rules of evidence apply, although not as strictly as in higher courts, there were a considerable number of answers that were narrative in form. I classified as narrative those answers that took more than one interpreted turn, which is normally equivalent to a grammatical sentence. Some cases did not have enough of these narrative chunks in order to analyse their styles. The cases I was able to analyse were numbers 2, 3, 9, 10, 11, 13, 14 and 16. Out of these eight cases, I found that only two witnesses fell under the rules-oriented category with the remaining six being clearly relational witnesses. This indicates that the majority of witnesses in the data were relations oriented and powerless in speech style, in Conley and O'Barr's terms.

The following four examples will be used to illustrate the special characteristics of each style. For ease of reading, I have extracted the interpretations and presented the full narrative text in Spanish in one box, followed by my own translation of the Spanish and the interpreter's rendition in another box. It must be noted, however,

that the original answers were translated sentence by sentence. Text 1 is an excerpt from case 2, a case of a motor vehicle accident; text 2 was extracted from case 10, where the witness is a Spanish speaking landlord claiming rental arrears and compensation for repairs done to his property; text 3 was taken from case 3, a case of an insurance payout for a stolen car; and text 4 is an excerpt from case 9, a dispute between neighbours. All cases except case 3 deal with disputes between two people and could easily lend themselves to relational accounts. However, the witnesses in cases 2 and 10 are rules-oriented witnesses whereas the witnesses in cases 3 and 9 are relational account givers.

Texts 1 and 2 are examples of rules-oriented witnesses. Although both these witnesses speak in a colloquial register and have a number of hesitations, they present the characteristics of the rules-oriented testimony style. They both answer the questions directly and relevantly, they speak chronologically. Although the second example is more coherent and better structured, the first example, which is in a more colloquial style, also presents the course of events without digressions. Neither makes any personal judgements on the party with whom they are in dispute. Throughout the case, the witness in text 1 offers to show the panel beater's quotation as proof of his claims. The witness in text 2 admits to not having receipts of the repairs he claims, but alleges to have eyewitnesses who could be called in to testify. Both these witnesses have very few hesitations and fillers in their speech and, particularly the witness in text 2 always reponds in a very certain and forceful manner.

Text 1 - Case 2 - Rules-oriented witness

Witness 1

1.   *Eh, después de pasar la redonda el vehículo, eh… que me accidentó, iba*
2.   *delante de mí. Luego ese vehículo, eh, se apartó a la derecha. Eh, no deje,*
3.   *a la izquierda,perdón. Luego yo le adelanté. Y cuando yo estaba a la par de*
4.   *él, él se encontró con otros vehículos y quería adelantarme… que casi me…*
5.   *tropieza. Y yo le toqué el pito para advertirle y entonces me dejó pasarle.*
6.   *Y luego, pues él se pasó porque tenía vehículos, que no podía caminar*
7.   *por su línea, se pasó por la mía detrás de mí y iba muy pegadito a mí.*
8.   *Luego yo llegué a como unos eh 100 metros aproximadamente más adelante,*
9.   *que, tuve que frenar… porque me parecía que iba a salir un vehículo de una*
10.   *calle próxima que había allí… tuve miedo y frené. Y luego fue como…*
11.   *tuve que frenar y venía tan cerca de mí, no le dió tiempo a frenar y me*
12.   *golpeó. Y luego eh… nos pusimos del coche, los dos, y y nada más posarnos,*
13.   *él me dijo a mí- "¿qué has hecho". Y… yo le, y yo le contesté, digo yo*
14.   *- no, yo no hice nada. Lo haz hecho tú que me has accidentado-.*
15.   *Y a continuación de esto eh, me puso las manos en el pecho y me tumbó a la*
16.   *carretera. Y luego yo estuve allí tumbado porque me sentía mal hasta*
17.   *que vino la ambulancia, la policía y la ambulancia que me llevó al hospital*
18.   *luego, ya no sé nada más*

My translation

1. Uh, after he passed the roundabout, the vehicle uh… that hit me was in front of
2. me. Then that vehicle, uh, moved to the right. Uh, no, hang on, to the left,
3. I'm sorry. Then I overtook him and when I was next to him he noticed there
4. were other vehicles and he wanted to overtake me… and almost ran into me.
5. And I beeped the horn to warn him and then he let me pass him. And then, as
6. there were vehicles in his lane and he couldn't keep going in his lane, he
7. moved into my lane behind me and he was very close to me. Then I came to
8. about uh 100 metres up ahead approximately and I had to stop… because I
9. thought a car was coming out of the next street… I got worried and stopped.
10. And then it was as I… had to stop and he was so close to me, he didn't have
11. time to stop and he hit me. And then, uh, we got out of the car, both of us,
12. and and we stood there and he said 'what have you done?' and… I said,
13. answered him 'no, I didn't do anything. You have hit me'. And then after
14. this, uh, he put his hands on my chest and threw me onto the road. And
15. then I stayed on the floor there because I wasn't feeling well until the
16. ambulance arrived, the police and the ambulance that took me to hospital, I
17. know nothing else.

Interpreter's version

1. After passing the roundabout the vehicle that caused the accident was in front
2. of me. That vehicle turned… to the right. Actually I'm sorry, I'm sorry, to
3. the, to the left. Then I passed him. And when I was next to him he
4. encountered other vehicles and he wanted to… pass me, so he almost run…
5. into me. I blew my horn… just to tell him and then… to to advise him and…
6. then he allowed me to pass. And as he couldn't proceed along his lane because
7. he had some vehicles in front of him, he he he set himself… behind me on
8. my lane and he was very close… to my vehicle. And so… and as he was so
9. close to me he didn't have time to break and then he hit my car. And then like
10. 100 metres further uh ahead I had to stop suddenly because I thought there
11. was a vehicle coming out of a street on the side, so I stopped. And then we
12. got out of the c… of our respective eh vehicles and he confronted me and told
13. me - "what have you done?". And I answered, "Uh…No I didn't do anything
14. you were the one who caused the accident" And immediately, he put his hands
15. on my chest and he…threw me backwards against the road.
16. And then I was there on the ground because I was feeling unwell and
17. the police came and the ambulance came and they took me to hospital
18. and… then I don't remember much.

With the exception of a few grammatical errors, unidiomatic expressions and changes of register, the interpreter's rendition of text 1 is faithful to the original, maintaining the rules-oriented style. The changes of register occur in the choice of lexis, which are direct transferences from Spanish. For example "encountered" (line 4 of interpreted version) for the verb *encontrar* which is the equivalent of the colloquial "find" or "notice", "allowed me to pass" (line 6 of interpreted version)

for the Spanish *dejar pasar* which is the colloquial "let", and "to advise him" (line 5 of interpreted version) for the Spanish *avisar* which means "to warn".

Text 2 - Case 10 - Rules-oriented witness

Witness

1. *Eh, primero que nada eh en el estado en que dejó mi casa no podía buscar*
2. *un inquilino inmediatamente. Primero reparé mi casa, que me tomó más de*
3. *un mes, y… después conseguí un amigo mío que trabaja en la compañía*
4. *mía que buscaba una casa y yo le ofrecí mi casa.*
5. *No, recibos no tengo pero tengo testigos que me ayudaron a reparar la casa.*
6. *Además tengo un testigo del Real Estate que vio la casa antes de ser*
7. *reparada.*

My translation

1. Uh, first of all uh considering the state she left the house in I couldn't look for
2. a tenant straight away. First I repaired the house, which took me over a month,
3. and then I found a friend who works with me in the same company who was
4. looking for a house and I offered him my house.
5. No, I don't have receipts but I have witnesses who helped me repair the house.
6. Besides, I have a witness from the Real Estate agency who saw the house
7. before it was repaired.

Interpreter's version

1. First…. because of the (e)stage the house was left I couldn't look for eh, a
2. tenant immediately. First I repaired the house and it took more than a month.
3. And then I found a friend of mine who was looking for a house and she
4. worked with me and then I opened my house to her.
5. I don't have receipts but I have witnesses who helped me, uh, repairing the
6. house. And I also have the witness that is the person working in Real Estate
7. who saw the house before I repair it.

Text 2 presents two separate narrative chunks which are answers to two different questions. The interpreter in text 2 also made grammatical errors, errors of pronunciation and some changes of syntax which detracted from the forcefulness of the original. For example, the initial statement is mistranslated, with the original being "first of all uh considering the state she left the house in I couldn't look for a tenant straight away" (line 1 of my translation) and the interpreted version was "First… because of the (e)stage the house was left I couldn't look for eh, a tenant immediately" (line 1 in the interpreter's version), with the word "estage" rather than "state". The second part of the answer in the original presents a logical list of actions: first, the house was fixed, then the house was rented, with a subordinate clause in the middle explaining the length of time it took to repair the house: "First I repaired the house, which took me over a month, and then I found a friend who works with me in the same company who was looking for a house and I offered him

my house" (lines 2–4 of my translation). The interpreter loses this coherence by making the subordinate clause into a separate independent clause: "First I repaired the house and it took more than a month" (line 2 in the interpreter's version), a pattern which is repeated in the second sentence: "And then I found a friend of mine who was looking for a house and she worked with me and then I opened my house to her" (lines 3–4 in the interpreter's version). The change of gender in the friend could have been a genuine mishearing.

Text 3 - Case 3 - Relational

Witness

1. *Días antes, o meses antes yo había ganado en el scratch 25.000 dólares.*
2. *Y… en el principio pensábamos con mi esposa… teníamos una indecisión si*
3. *regresar a nuestro país o continuar acá… y… pensábamos que nos habíamos*
4. *venido por los problemas que había en nuestro país y por ver un futuro*
5. *mejor para nuestros hijos entonces decidimos quedarnos y lo pusimos al*
6. *banco para recaudar, para celebrar los 15 años de mi hija mayor que los*
7. *iba a cumplir en los próximos dos años pero, un día antes, o sea el 19,*
8. *del 92, decidimos mejor, porque en el banco nos produjo tan poco y*
9. *y entonces decidimos tomar el dinero y pagar mejor al mortgage que*
10. *teníamos de la casa porque nosotros estábamos pagando por el dinero*
11. *15.5% con el Home Fund y nos estaba ganando el dinero, no sé cuánto*
12. *pero nos daba sólo como 300 dólares en el año entonces lo tomamos del*
13. *banco.*

My translation

1. A few days before, or months before, I had won $25 000 on the scratchies.
2. And…at first we thought, my wife and I… we were undecided whether to go
3. back to our country or stay here. And… we thought that we'd come here
4. because of the problems in our country and to find a better future for our
5. children, so we decided to stay and we put it in the bank to get the interest, to
6. celebrate our eldest daughter's fifteenth birthday which would be in two
7. years' time, but a day before, I mean on the 19th, of 92, we decided
8. differently, because the bank was giving us very little return we decided to
9. take the money and pay the mortgage we had on our house because we were
10. paying 15.5% interest with Home Fund, and it was getting ahead of us,
11. I don't know how much but it gave us only about 300 dollars a year
12. so we took the money out of the bank.

Interpreter's version

1. Few uh months earlier I had uh won in the scratch 25,000 dollars.At the at the
2. beginning we had uh we were indecisive with my wife whether to come back
3. to uh my country or to remain here. Uh, we thought that we had came here uh
4. for uh the problems in our because of the problems in our country and to look
5. for a better future for our children and then we decided to stay and we put the
6. money in the bank to be able to celebrate the 15 years of age of my eldest
7. daughter which was gonna' be on the next two years. But on a few days,

8.   one, a few days earlier, on the 19th of 92, because the bank was uh
9.   producing so little so we decided to take the money and pay off the mortgage
10. on the house because we were paying to Home Fund 15.5%. And the
11. money was making I don't know how much in the bank but they only gave
12. us about 300 dollars per year.

Texts 3 and 4 are illustrative of relations-oriented witnesses. The obvious character-istics are: firstly, the question is not answered directly, or if it is, it is accompanied by extra, unsolicited, irrelevant information; they both refer to relationships, in the first with his family, which influenced decisions, in the second, with the person in dispute; they assume shared knowledge with the audience; and they expect the audience to make inferences from their implicit comments. Although these par-ticular examples do not contain many of the features of powerless speech, such as hesitations, fillers and the like, they do appear in other answers given by these same witnesses throughout their giving of evidence.

The question to the answer in text 3 was "Well, well, just pause there, uh on the 20th of 1992, what happened in relation to your motor vehicle?" to which the witness gives a lengthy explanation of the background, which is not only highly irrelevant, but also incoherent, jumping from one idea to another without any cohesion. The account begins stating the fact that the witness and his wife had won some money on the scratchies (line 1 of the back translation). It then goes on to explain that the couple were undecided about staying in Australia or returning to their home country (lines 2–3 of my translation). This is followed by a digression about the reasons behind their migration to Australia, including political problems in their country and a better future for their children (lines 3–5 of my translation), which somehow leads to their decision to deposit the money in the bank and to stay in Australia (lines 5–6 of my translation). He then implies that the money in the bank would be used to celebrate his daughter's 15th birthday in two years' time, which seems rather illogical and excessive (lines 6–7 of my translation). The speaker assumes that the audience understands the significance of 15th birthdays in some Spanish speaking countries, which are major "debutante" or "coming out" type celebrations, where families can spend a considerable amount of money. The speaker then makes a passing reference to the day of the incident that is the subject of the case *un día antes, o sea el 19* (a day before, I mean the 19th), although this is also an implicit reference (line 7 of my translation). He then returns to the topic of the money and their decision to withdraw it from the bank and put it on their mortgage (lines 8–10 of my translation), with a specific, irrelevant digression about the interest rate they were paying, the name of their lender, and the amount of money they were earning in interest from the bank (line 10 of my translation). At the end of such a long account, the question remains unanswered.

Except for an implicit reference to the date of the incident, the question was not addressed at all, with a series of subsequent questions required to elicit the desired answer. To the witness, the information given was essential to explain what had happened to his car on the day of the incident; to the court, his account was completely irrelevant. Despite this fact, the interpreter was faithful in interpreting the content of the answer, without editing any information. The interpreter's rendition of text 3 has a number of ungrammaticalities, added hesitations and some problems of pronunciation, which at times make comprehension difficult. In terms of the translation of the content, however, there is very little change, maintaining the relational orientation.

Text 4 - Case 9 - Relational

Witness

1. *Dos o tres minutos. Yo jamás la ataqué ni nada. Yo sólo quiero vivr en paz*
2. *con mis hijos. Siempre me atacó verbalmente, con gestos, moviendo la nariz.*
3. *Yo quisiera que ella fuera y preguntara allí en la calle, en la Housing*
4. *Commission donde ella vive, cuántos complaints tiene con la gente que se ha*
5. *peleado. Yo quisiera que ella sintiera cuando dicen "bloody wog" lo que eso*
6. *es para uno. Lo que quiero es que ella me deje tranquilo. Si no se va ella me*
7. *voy yo. Yo soy una persona educada. Siempre he sido educado. Yo puedo*
8. *probar que soy una persona educada.*

My translation

1. Two or three minutes. I never attacked her or anything. I only want to live
2. in peace with my children. She always attacked us verbally, with gestures,
3. moving her nose. I would like her to go and ask there in the street, at the
4. Housing Commission place where she lives, to see how many complaints
5. people have who have fought with her. I would like her to feel it when
6. someone says "bloody wog" what it feels like. What I want is for her to leave
7. me alone. If she doesn't go I will go. I am a civilised person, I've always
8. been civilised. I can prove that.

Interpreter's version

1. Two or three minutes. I never attacked her or anything like that. I want to live
2. in peace with my children. She always attacked me verbally, and with
3. gestures, touching her nose. I would like you to go and find out how many
4. complaints she's had against her, at the Housing Commission place as well.
5. I'd like you to know what it feels like when somebody calls you "bloody
6. wog". I want her to leave us alone, if she doesn't leave then we will leave.
7. I'm an educated person. I've always been educated. I can prove that.

Text 4 is an excerpt from case 9. The question to this answer is: "How long do you say this incident took?". The witness answers the question directly in the first sentence "Two or three minutes" (line 1 of my translation) but is not content to

finish there and provides a lengthy account of his relationship with the woman with whom he is in dispute, mingled with personal pleas "I only want to live in peace with my children" (lines 1–2 of my translation) and emotional appeals for sympathy "I would like her to feel it when someone says 'bloody wog' what it feels like (lines 5–6 of my translation). He also brings to his account information about incidents the woman allegedly had with other neighbours (lines 3–5 of my translation), which in an every day conversation would be appropriate, but irrelevant in a court case. This witness also expects the listener to make inferences from his comments (lines 7–8 of my translation). By saying "I am a civilised person" he expects the magistrate to infer that he would be incapable of assaulting anyone. Inferences are inappropriate in witnesses' answers, where blame and responsibility must be explicitly assigned to particular participants.

The interpreter for text 4 has no problems with English competence, and although the content is mostly accurate, she improves the cohesion at times by making some slight changes. The witness speaks in the third person when referring to the magistrate. Instead of speaking directly to the magistrate, he speaks to the interpreter and says "I would like her to go…" (line 3 of my translation). The interpreter changes this to the first person to avoid confusion "I would like you to go…" (line 3 in the interpreter's version). She improves the structure of some of the utterances, for example "I'd like you to know what it feels like when somebody calls you 'bloody wog'" (lines 4–5 in the interpreter's version) as opposed to the original "I would like her to feel it when someone says 'bloody wog' what it feels like" (lines 5–6 of my translation). The major error in this interpretation is the literal translation of the word *educado* into "educated"[12], which is not equivalent in this context (lines 6–8 in original, 6–7 of my translation, 6–7 in the interpreter's version). Nevertheless, the relational orientation is also retained in this interpretation.

As the witness's orientation is expressed in terms of content, maintaining the same orientation in the interpretation has proved to cause no problems. The interpreters in my sample maintain accuracy of content, except for minor omissions, additions, and misinterpretations. The difficulties are encountered in maintaining a similarity of style, as it has been described in this chapter.

5.4   Matched-guise experiments

In an attempt to corroborate the hypotheses raised in this chapter, I conducted controlled, matched-guise experiments using original data and manipulated data. The purpose of the experiments was to ascertain the following: (1) whether the original Spanish witnesses' versions in Spanish would achieve the same ratings as the interpreters' interpreted versions in terms of competence, credibility and

intelligence; (2) whether manipulated chunks of powerful and powerless versions of the same text, with and without a foreign accent produced different evaluations of the witness; (3) whether grammatical and ungrammatical versions of the same text made any difference in the evaluation of the three variables; and (4) whether what I called a "polished" version of the original witness's version would elicit a better evaluation from the respondents than a truly accurate rendition. Interestingly, the results were not always as expected. I will describe each experiment and its results below.

5.4.1 Experiment methodology

The "matched-guise technique" is the experimental procedure normally used to elicit people's responses to different speech styles, accents, dialects and languages. The way this is done is by asking the judges to listen to recordings of the same text read in different styles, accents, etc, and evaluate the speaker on a rating scale or a bipolar adjective scale. These experiments are thought to be much more reliable than other methods such as direct attitude questionnaires (Lambert, 1967, Giles & Powesland, 1975).

One of the criticisms levelled at the early matched-guise experiments has been their decontextualisation. Later studies have included in their design a disclosure to their raters of "communicator role" and the "communicator situation" (Bradac, 1990).

> It may be that some forms of language gain meaning *only* in context… On the other hand, other forms of language may have some meaning *apart* from context, which serves primarily to diminish or intensify that meaning — to diminish or intensify judgemental certainty: a non-standard accent denotes low-status and the certainty of this inference is strengthened by corroborating information that the speaker is from a lower socio-economic group (Bradac, 1990: 401).

Edwards (1985) also criticises the artificial conditions of matched-guise experiments which rely on neutral messages and voice qualities alone. The subjects of my experiments were all told they were listening to either Spanish speaking witnesses or their interpreter in Local Court hearings. The texts they heard were authentic data and not artificial neutral messages. Hence the respondents understood the context and the participant roles.

Another criticism has been the fact that language-attitude research has been performed on respondents who did not know the subjects (Bradac, 1990). It is assumed that attitudes toward people change upon closer acquaintance, where language style is no longer very important. Hence, these experiments can only serve to ascertain first impressions. This was also true of my experiments but pertinent

for its purposes, as in a court case, the bench or the jury do not know the witnesses personally and must make decisions based on their testimony alone. As the segments presented to the respondents are short, one factor that cannot be accounted for in these experiments is whether first impressions change with time. In other words, would content of speech overshadow style as the witness testifies for long periods of time, or vice versa.

The experiments were carried out using the original data as well as manipulated data, and presented to law students and language students at the University of Western Sydney (UWS). The reason for using law students is that they would be the closest to magistrates, who are trained lawyers in Australia.

5.4.2 The experiments

5.4.2.1 *Experiment 1 - Evaluation of Spanish speaking witnesses vs. the interpreted versions*

The four chunks from different Spanish speaking witnesses that appear below were selected from the data, recorded onto an audio cassette tape and played to a class of native Spanish speaking students at UWS. They were told they would be listening to four different Spanish speaking witnesses and asked to rank each speaker on the ranking scale provided. The ranking scale was a Likert type scale which asked to rate the speaker according to how credible, competent and intelligent the respondents believed them to be, on a scale from 1 to 5, 1 being the most credible and 5 the least credible.

The interpreters' renditions of the same 4 chunks were selected and recorded onto a separate audio cassette tape. Each segment was played to a class of English speaking students at UWS and told that they were different interpreted versions of Spanish speaking witnesses' testimonies. They were then asked to listen to each version and rank the witnesses on the ranking scale provided.

5.4.2.1.1 *The texts.* The texts that appear below are the texts played in the experiments. The original Spanish texts are followed by my own translation to indicate the differences between the originals and the interpreters' versions.

Witness 1 - Case 11 - Interpreter 4

1. *Ese día nosotros, eh, o sea con mi esposa, dejamos la escuela como a las,*
2. *como a las 12 del día, eh, eh, comenzamos a caminar hacia casa y cuando*
3. *íbamos sobre la, sobre la Queen St, eh, yo vine a, a ver que él me hacía*
4. *señas con la mano eh que era, era a la par de la libre… de la biblioteca*
5. *… la la la librería eh, pero yo siempre seguí mi camino con mi esposa*
6. *y la niña. Eh, después ya llegando a la a la Marion St yo volví atrás por*

7. *la calle eh, y vi que él iba corriendo, o sea, así para el lado de nosotros y,*
8. *bueno yo seguí mi camino con mi esposa y mi hija y cuando sentí él me,*
9. *él me pegó en la espalda atrás y me empujó.*
10. *Cuan.. o sea cuando yo sentí me, me hizo así, me en la, en la espalda.*
11. *Eh, mi esposa se metió en medio y… y estuvo cayendo para… para que*
12. *no, para que no o sea para que no se acercara de mí.*
13. *Em, no porque casi no platicamos nada, él solamente quería acercarse*
14. *a mí, así…*
15. *No, no yo solamente, o sea que, o sea que me quedé parado eh en medio*
16. *de de… de mi esposa y él no más.*
17. *Em, no, solamente quería acercarse a mí, pero mi esposa estaba*
18. *en el medio.*

My translation

1. That day we, uh, I mean with my wife, we left the school at about uh, about
2. 12 midday, uh, uh, we started walking home and when we were on, on Queen
3. St, uh, I came to, to see that he was signalling with his hand, uh that it was
4. uh, it was along the bookshop, I mean the library, but I just kept going on
5. my way with my wife and my daughter, and then almost on Marion St, I
6. went back uh and I saw that he was running, I mean, like this, towards us,
7. and anyway, I kept walking with my wife and my daughter and when I felt
8. that he, that he hit me on my back and he pushed me, I mean, when I felt that
9. he… uh that he did like this, on my, on my back, you know? And my wife got
10. in the middle and uh and she almost fell over, you know? To uh to uh, like…
11. to stop him from getting close to me?

Interpreter's version

1. I- That day we left the school with my wife about 12 noon and we started
2. walking home and as we were going down Queen St I saw him, uh, waving
3. to me with his hand, uh, he was there at the library but I just went on with my
4. wife and my child. As we were getting onto Marion St, I turned around and I
5. saw him running, running towards us, I continued walking with my wife and
6. my daughter, and then I… he hit me on the back, and he pushed me. I felt a
7. blow like this on my back. My wife intervened. She tried to stop him from
8. getting on to me.

Witness 1 was taken from case 11 and was previously identified as a relational witness. His speech is characterised by multiple hesitations, hedges, fillers, repetitions and backtrackings. His register is very informal and portrays an uneducated speech. On the other hand, the interpreter's version omitted almost all hesitations, hedges, fillers, backtrackings and repetitions. The interpreter's version leans towards a more rules-oriented style, as it is more coherently organised than the original. The register is much more formal in grammar and lexis. For example, the interpreter says, "my wife intervened" (line 7) when the witness said "got in the middle"; the interpreter says, "my child" (line 4) instead of "my daughter".

Witness 2 - Case 3 - Interpreter 1

1. *Días antes, o meses antes yo había ganado en el scratch 25.000 dólares*
2. *Y… en el principio pensábamos con mi esposa… teníamos una indecisión si*
3. *regresar a nuestro país o continuar acá y… pensábamos que nos habíamos*
4. *venido por los problemas que había en nuestro país y por ver un futuro*
5. *mejor para nuestros hijos entonces decidimos quedarnos y lo pusimos al*
6. *banco para recaudar, para celebrar los 15 años de mi hija mayor que los*
7. *iba a cumplir en los próximos dos años pero, un día antes, o sea el 19,*
8. *del 92, decidimos mejor, porque en el banco nos produjo tan poco y entonces*
9. *decidimos tomar el dinero y pagar mejor al mortgage que teníamos*
10. *de la casa.*

My translation

1. A few days before, or months before, I had won $25 000 on the scratchies.
2. And… at first we thought, my wife and I…we were undecided whether to go
3. back to our country or stay here. And… we thought that we'd come here
4. because of the problems in our country and to find a better future for our
5. children, so we decided to stay and we put it in the bank to get the interest, to
6. celebrate our eldest daughter's fifteenth birthday which would be in two
7. years' time, but a day before, I mean on the 19th, of 92, we decided
8. differently, because the bank was giving us very little return we decided to
9. take the money and pay the mortgage we had on our house because we were
10. paying 15.5% interest with Home Fund and it was getting ahead of us, I
11. don't know how much but it gave us about 300 dollars a year so we took
12. the money out of the bank.

Interpreter's version

1. I- Few uh months earlier I had uh won in the scratch 25,000 dollars. At the at
2. the beginning we had uh we were indecisive with my wife whether to come
3. back to uh my country or to remain here. Uh, we thought that we had came
4. here uh for uh the problems in our because of the problems in our country and
5. to look for a better future for our children and then we decided to stay and we
6. put the money in the bank to be able to celebrate the 15 years of age of my
7. eldest daughter which was gonna be on the next two years. But on a few
8. days, on, a few days earlier, on the 19th of 92, because the bank was uh
9. producing so little so we decided to take the money and pay off the mortgage
10. on the house because we were paying to Home Fund 15.5%. And the
11. money was making I don't know how much in the bank but they only gave
12. us about 300 dollars per year. We took it off the bank.

Witness 2 was taken from case 3 and had also been identified as a relational witness. His speech contains a considerable number of pauses and backtrackings and at times code-switches to English lexis, such as "mortgage" and "Home Fund". The interpreter's version is not as different from the original as the first chunk was. This interpreter omits all pauses but adds his own hesitations and a few ungrammaticalities. He maintains a number of backtrackings as well, although not all of them. The register used by the interpreter is a mixture of formal and informal. For example, he

uses the structure "was gonna be" but he also says "celebrate the 15 years of age of my eldest daughter".

Witness 3 - Case 10 - Interpreter 6

1. *Eh, cuando ella, cuando vi mi casa… primero mugre por todos lados, basura,*
2. *una cama desmantelada, dos colchones, revistas, montañas de revistas,*
3. *eh, las paredes todas rayadas y rotas. Las puertas rotas, parece que fueron*
4. *pateadas porque una estaba fuera del lugar, una de las piezas estaba*
5. *empapelada completamente con eh, eh, figuras de autos, de revistas de autos*
6. *montones de cosas pegadas en las paredes. El baño estaba lleno de*
7. *humedad. En el patio, estaba el pasto largo sin cortar. Restos de autos.*
8. *Un auto abandonado en frente de mi casa. Cuatro gatitos que quedaron ahí.*
9. *Eh, el "chest" roto, una de las paredes del "chest" rota. Um, la casa totalmente*
10. *con polvo alrededor de la casa, totalmente lleno de polvo, ella nunca limpió*
11. *eso. Eso es lo que recuerdo ahora.*

My translation

1. Uh, when eh, when I saw my house… first filth everywhere, rubbish, a
2. dismantled bed, two mattresses, magazines, piles of magazines, uh, the walls
3. were written all over and damaged. The doors were broken, it seemed as
4. though they had been kicked because they were out of place, one of the
5. bedroom walls was completely covered with uh, uh, posters of cars, of car
6. magazines, lots of things stuck on the walls. The bathroom was mouldy. The
7. backyard — the grass was overgrown, there were car parts, an abandoned
8. car at the front of the house, four kittens had been left there, uh, the chest was
9. broken, one of the chest walls was damaged. Uhm, there was dust
10. everywhere in the house, dust everywhere, she obviously had never cleaned
11. it. That's all I can remember now.

Interpreter's version

1. When I saw my house, first it was dirty all over, and was rubbish. It was
2. uh, a bed uh, all eh, dismantled. And two…. mattresses, it was piles of
3. magazines. And the walls were all scabbled and broken. And the doors were
4. broken and it seemed to me that they were being kicked off because one of
5. them was out of the… its place. Uh, one of the bedrooms, the walls were full
6. of uh, of like posters of cars like from magazines. And the bathroom was uh,
7. with uh mould was moulding. And the…. lawn on the back yard was uh
8. overgrown. And it had uh, like pieces of uh cars. And it was also uh, a car,
9. an abandoned car in front of my house. Four kittens left there. One of the
10. walls of the chest was broken. And the house was full of dust, she never
11. clean it. That's what I remember right now.

Witness 3 was taken from case 10 and had been identified as a rules-oriented witness. His speech is concise and well organised. He only backtracks once, has very few hesitations, no hedges and fillers and only code switches into English lexis once. On the other hand, the interpreter's speech contains multiple hesitations, pauses,

fillers such as "like from magazines" (line 6), pauses and backtrackings. This interpreter also makes many grammatical errors such as "was rubbish" (line 1) instead of "there was rubbish". She also uses incomprehensible words, such as "scabbled" (line 3) for "scribbled".

Witness 4 - Case 14 - Interpreter 7

1. *Bueno, cuando leí la "subpoena" me enteré de las cosas que ella hacía*
2. *dentro de este "room". Ahora me dice que fue forzada fue tratada*
3. *sentimentalmente eh síquicamente. Por supuesto yo no sospeché de nada*
4. *porque siempre confié demasiado, fui demasiado estúpido.*
5. *Primero no, primero porque nunca estaba adentro, siempre estaba*
6. *trabajando afuera, segundo porque tanto mi esposa como la esposa de él*
7. *eran muy amigas y siempre había unnn un ambiente familiar cuando yo*
8. *yo estaba ahí.*
9. *Ella nunca me quiso contar porque se siente vergonzosa, la madre me lo*
10. *contó delante de ella, entonces Eva se vio obligada a continuar*
11. *diciendo lo que la madre había dicho. Si fuera por Eva, ella no me decía*
12. *nada por no lastimarme.*
13. *Cuando iba al refugio yo me quedaba en el camión, la madre venía al*
14. *camión, nos sentábamos los tres, los cuatro ahí en el camión*
15. *conversábamos 15, 20 minutos.*
16. *No, lo que pasó fue de que eran esos momentos, estábamos muy*
17. *confundidos y estábamos buscando, yo estaba buscando la explicación.*

My translation

1. Well, when I read the subpoena I found out the things she did inside that
2. room. Now she says she was "forced", she was emotionally uh
3. psychologically treated. Of course I didn't suspect anything because I always
4. trusted too much, I was too stupid.
5. Not at first, firstly because I was never at home, I was always out working,
6. secondly because both my wife and his wife were good friends and there was
7. always aaa… a family environment when I was there.
8. She never wanted to tell me because she is embarrassed, her mother told me
9. in front of her, so Eva was forced to continue telling what her mother started
10. saying. If it was up to Eva, she wouldn't have told me anything so as not to
11. hurt me.
13. When I went to the refuge I stayed in the truck, her mother would come to
14. the truck, we'd sit together, the three of us, the four of us there in the truck
15. and would talk for 15, 20 minutes.
16. No, what happened was that it was those times, we were very confused and
17. we were searching, I was looking for an explanation.

Interpreter's version

1. When I read the subpoena I heard of the things that were happening, the
2. things that they did to each other in that room. Now she told me that she was
3. that she was forced, that she was used uhm "siquic" uhm through the mind.
4. Psychologically, sorry.

5. Of course I didn't know anything because I trusted and I was stupid.
6. No, first because I was too busy working and second because there was
7. always uh a friendship between G.'s wife and my wife and it was all just like
8. a family environment.
9. She was she uh didn't want to tell me because she was feeling embarrassed,
10. the mother told me in front of her, so Eva was uh forced to continue what
11. the mother had started, but for Eva she wouldn't have tell me anything
12. because she didn't want to hurt me, yeah, in one of the occasions when I
13. used to go to the refuge I used to sit in the truck and Eva mother would come
14. with her and with the three of us we'd sit down in the car and talk.
15. What happen is that at the time we were all confused and I was looking for an
16. explanation.

Witness four was extracted from case 14 and had been identified as another relational witness. His speech contains hedges, pauses, backtrackings and repetitions. He codeswitches to English on two lexical items and has some ungrammaticalities. The interpreter's version omitted the hedges but has some backtrackings and repetitions, although the text is more concise than the original. The interpreter, however, makes a number of grammatical errors, such as "wouldn't have tell" (line 11) and "what happen was" (line 15).

5.4.2.1.2 *The results of the first experiment.* The results of the group who heard the Spanish speaking version were compared with the results of the group who listened to the interpreters' versions. The hypothesis was that if the results were the same,

Table 27. Spanish speaking witnesses vs. interpreted versions

Experiment 1 – Spanish speaking witnesses vs. interpreted versions						
		Spanish original version			English interpretation		
		Mean	S.D	N.	Mean	S. D.	N.
W.1							
	Comp.	3.29	0.61	14	3.1	0.7	10
	Cred.	3.21	0.89	14	2.5	1	10
	Intel.	3.53	0.64	14	3.2	0.8	10
W.2							
	Comp.	3.79	0.89	14	2.94	0.6	10
	Cred.	4	1.11	14	2.54	0.9	10
	Intel.	4.04	0.84	14	2.75	0.5	10
W.3							
	Comp.	2.43	1.02	14	3	1.2	10
	Cred.	2.29	1.14	14	3	1.1	10
	Intel.	2.85	0.77	14	3	0.9	10
W.4							
	Comp.	3.71	0.99	14	3.3	1.2	10
	Cred.	3.71	1.27	14	3.4	1.2	10
	Intel.	3.68	1.14	14	3.4	0.8	10

that would indicate that the groups were guided by content rather than style. If the results were different, that would indicate that style influenced their judgement. Table 27 above shows the mean scores received by each witness when heard in its Spanish original and in the interpreted English versions. The higher the number the less favourable the score, as 1 meant "very credible, very competent, and very intelligent" and 5 "not at all credible, competent and intelligent".

Graph 1 below shows the combined results for the three variables: competence, credibility and intelligence. For three of the witnesses, namely witnesses 1, 2 and 4, the respondents rated the interpreters' versions more positively than the original Spanish version, with witness 2 producing the greatest difference, followed by witnesses 1 and 4. These three witnesses had been identified as relational witnesses and had many of the features characteristic of powerless speech. In the description of the texts and their interpretations above, we saw the differences effected by the interpreters, with some being more marked than others. Interestingly, the interpreter for witness 1 had made the most noticeable changes, yet witness 2 was the most disparate in its evaluation results. This may lead us to believe that factors other than speech style may also have an impact, such as voice quality, intonation and pronunciation (Giles & Powersland, 1975, Gumperz, 1989), features that were not able to be considered in this experiment. Witness 3, on the other hand, the only rules-oriented witness, was evaluated as the most credible, competent and intelligent witness in his original Spanish testimony, with all his scores in the 2 bracket, with 1 representing a perfect score. However, witness 3 was disadvantaged by the interpretation as he was rated less positively by those who listened to the English interpretation of his testimony. His interpreter had made considerable additions of powerless speech style features as discussed above.
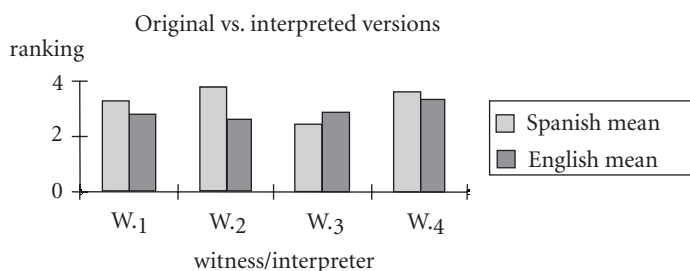
Graph 1. Rankings of 1–5, with 1 representing the most positive and 5 the most negative.

The results were run through an analysis of variance for statistical significance. Although when the three variables were combined the difference across groups was non significant, when each variable was considered in isolation, the difference across groups was shown to be statistically significant for each case ($<.05$). (See Table 28

below). The greatest significance was found in the credibility variable, with a score of $p=0.07$, which is the most important factor in the evaluation of a witness.

Table 28. Interaction effect - Group by speaker

Competence	0.44
Credibility	0.07
Intelligence	0.18

These results demonstrate that interpreted testimony receives a different evaluation of credibility, competence and intelligence than would the original speaker's testimony, even when the content of the testimony is the same. These results corroborate previous claims that judgements such as these are made based not on content alone but on form and style also. Nevertheless, it is still difficult to pin point the exact factors other than propositional content that contribute to such evaluations, as paralinguistic features could possibly make a difference also.

5.4.2.2 *Experiment 2 - Stylistically accurate vs. inaccurate interpretations*
Two interpreted versions of chunk 4 were recorded on two different audio cassette tapes. One version was perfectly accurate, maintaining equivalence of content and form. The other version was accurate in content only, but omitted the seemingly superfluous features, such as discourse markers, and other features typical of powerless speech style. The stylistically accurate version was later called the unpolished version and the inaccurate version, the polished version. A native English speaker with a standard English accent recorded both versions. One version was played to a group of law students (group 1) and the other version to a different group of law students (group 2). Both groups were told they were listening to the interpreted version of a Spanish speaking witness's testimony. Both groups were asked to rank the witnesses on the ranking scale used for the previous experiments. The results of both groups were compared.

5.4.2.2.1 *The texts*

Accurate - unpolished interpreted version

That day we, uh, I mean with my wife, we left the school at about uh, about 12 midday, uh, uh, we started walking home and when we were on, on Queen St, uh, I came to, to see that he was signalling with his hand, uh that it was uh, it was along the bookshop, I mean the library, but I just kept going on my way with my wife and my daughter, and then almost on Marion St, I went back uh and I saw that he was running, I mean, like this, towards us, and anyway, I kept walking with my wife and my daughter and when I felt that he, that he hit me on my back and he pushed me, I mean, when I felt that he… uh that he did like this, on my, on my back, you know? And my wife got in the middle and uh and she almost fell over you know? To uh to uh, like… to stop him from getting close to me?

> **Inaccurate - polished interpreted version**
>
> That day my wife and I left the school at about 12 noon and we started walking home. As we were going down Queen St I saw him signalling with his hand. He was next to the library. But I kept walking with my wife and my child. As we were getting onto Marion St, I turned around and I saw him running towards us. I continued walking with my wife and my daughter, and then he hit me on my back and pushed me. I felt a blow like this on my back. My wife intervened. She tried to stop him from getting on to me.

The accurate, unpolished version of this witness's testimony was accurate in content and in style. Not only did it contain the same features, such as hedges, pauses, hesitations, etc, it inserted them in the same places as the original. The accurate version also attempted to maintain the same register as the original. The only difference between the two was the unavoidable fact that the speakers were different and the languages were different, which resembles an authentic interpreted situation. The inaccurate, polished version attempted to improve the style of the original while maintaining the content. In improving the style not only were the features typical of powerless speech omitted, the register was made more formal, the text was organised in a more concise and coherent manner and without any grammatical errors. Both versions were read by the same speaker which deleted the possible extra variable of differences in voice quality or gender.

5.4.2.2.2 *The results.* The results of this experiment were remarkable. The polished version was rated as being significantly more competent (p = .0000), more credible (p = .0006) and more intelligent (p = .0000). (See Table 29).

Table 29. Polished vs. unpolished versions

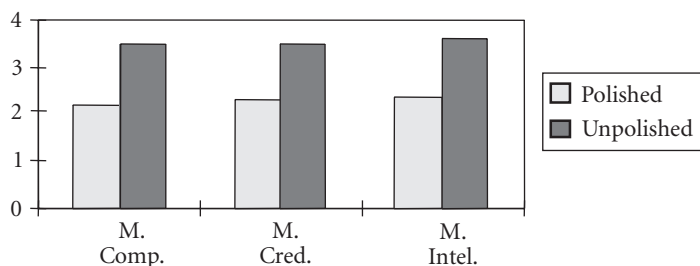| Polished vs. unpolished								
	N.	Competence		Credibility		Intelligence		
		M.	S.D	M.	S. D.	M.	S. D.	
Unpolished	21	3.5	0.93	3.4	0.98	3.6	0.9	
Polished	17	2.2	0.53	2.3	0.85	2.4	0.7	
Significance		0.0000 (S)		0.0006 (S)		0.0000 (S)		

Such a clear result indicates that style of speech makes a marked difference in the evaluation of people's characters, at least in terms of competence, credibility and intelligence. These results also show that such a marked difference is achieved when the text is improved on a number of levels: coherence, conciseness, formal register, omission of hesitations, hedges, fillers, pauses, and repetitions. Graphs 2 and 3 clearly show the difference between the two versions.
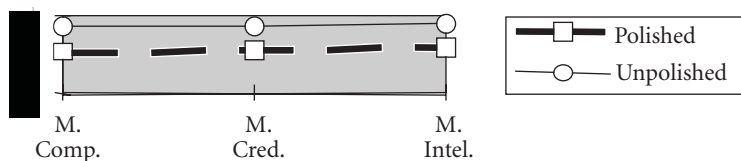
Graph 2. Polished vs. unpolished versions

Ranking from 1 to 5: 1 being the best score and 5 the worst

Graph 3. Polished vs. unpolished versions

Ranking from 1 to 5: 1 being the best score and 5 the worst

These results reinforce this chapter's claims that accuracy of interpretation involves accuracy of content and of style. We have seen that accuracy of content alone elicits different evaluations of the witnesses by those making judgement about their competence, credibility and intelligence. Table 30 below compares the evaluations of the original Spanish testimony with the original interpreter's version and with the manipulated stylistically accurate, unpolished version. It is clear from the figures that the stylistically accurate version renders the closest evaluations to the original Spanish version, even when the respondents are listening to different people. This result is very significant. It demonstrates that an interpreter can place a non-English speaking witness in a very similar position as one who does not need

Table 30. Comparison across different versions

Text 1 (Witness 1)

	Original	Interpreter's	Stylistically accurate (Unpolished)	Stylistically inaccurate (Polished)
Competence	3.29	3.1	3.5	2.2
Credibility	3.21	2.5	3.4	2.3
Intelligence	3.53	3.2	3.6	2.4

an interpreter, as those listening to the interpreter's rendition would evaluate the original testimony in the same way, provided the interpreter's rendition is accurate in both content and style.

5.5   Conclusion

This chapter presented the results of an analysis of the Spanish speaking witnesses' answers and the interpreters' renditions into English. Following the work of O'Barr and his colleagues on powerful versus powerless speech styles, the answers were analysed for features common to powerless speech: the use of hesitations, discourse markers, fillers and hedges, repetition, pauses, and backtracking. As grammatical errors were found to be a feature common in interpreters' renditions, these were also analysed. The results showed that very rarely were powerless speech features maintained in the interpretation as a conscious translation of the original. Most of the time, when they appeared in the interpretations, they were the interpreters' own features and not the witnesses'. As a whole, interpreters had substantially fewer repetitions, backtrackings, pauses, fillers, hedges, and discourse markers than the original Spanish answers, as was found in the case of the interpretation of the questions (Chapters 3 & 4), demonstrating the interpreters' disregard for these seemingly superfluous features. However, the interpreted English answers showed a significantly higher frequency of hesitations and grammatical errors. Hesitations in the interpreters' renditions preceded words or phrases that were problematic to translate, retractions from already made decisions, and problems of pronunciation or grammar. The majority of grammatical errors found in the interpretations were present in the speech of only three interpreters, with the rest making few or no grammatical errors at all.

This chapter also discussed the witnesses' orientations in terms of rules or relations, finding that the majority of witnesses fell into the relational orientation category, rather than the rule orientation, making them less likely to succeed in the courtroom (Conley & O'Barr, 1990). The data showed that interpreters readily maintained an equivalence of the witnesses' orientation in their interpretation, as such is determined by content of information rather than speech style.

This chapter has clearly demonstrated that witnesses' speech styles are constantly being altered by interpreters. Features considered to belong to a powerless speech style, common to the discourse of many of the Spanish speaking witnesses, were normally omitted by the interpreters. However, other features which can also be construed as powerless speech features or detrimental to the evaluation of the witness's character and credibility were often added by the interpreter. There were

incidents where the interpreter omitted repetitions and hedges, for example, but added grammatical errors, a poor pronunciation and a number of hesitations. There were other instances where the interpreted version was noticeably improved. It is therefore difficult to claim that interpreters generally improve the style of the witnesses' answers based on my data, as sometimes the opposite was the case. This greatly depended on the interpreter's competence of both languages as well as on their interpreting skills. It was found that the level of English competence of some interpreters was unjustifiably low, and hence could have a negative impact on the interpretation. What is indisputable, however, is that all interpreters tended to alter the style of the original in their interpretations.

This chapter concluded with the results of controlled experiments. Four chunks of text were selected from the original data with their respective interpreters' versions. These were later manipulated to isolate particular features of speech style. The results of the first experiment showed that there was a significant difference between the evaluations elicited by the original Spanish speakers and by their interpreters' renditions. For three cases the interpreter's versions were rated as more competent, more credible and more intelligent, whereas for one case, it was the opposite. This applied to the witness who had been identified as having a rules orientation. This first result confirmed the hypothesis that interpreters can alter the style of the witnesses' testimonies either to their benefit or to their detriment. A second experiment showed unequivocally that speech style makes a significant impact on the evaluation of a witness's competence, credibility and intelligence. This last experiment used an accurate unpolished version of witness 1's testimony and a polished version of the same. The polished version not only omitted features of powerless speech, but also improved on the text's coherence, conciseness, and changed the register to a more formal one. This seems to indicate that it is a combination of all stylistic features that help improve the speech of a witness. The polished version was rated as significantly more competent, more credible and more intelligent. The accurate, unpolished version received almost exactly the same ratings as had the original Spanish testimony. From these results we can safely conclude that accuracy of interpretation must involve both accuracy of content and of style, as reinforced by the quote below:

> I unfortunately can't escape the the fact that I… I just formed an unfavourable impression of the manner in which uh, Mr uh P. and in particular, more particularly his wife, gave their evidence. I regard it as uh, just unconvincing.
> (Magistrate, case 11)

Power and control in the courtroom

6.1   Introduction

Salancik and Pfeffer defined power as the ability of those who possess it to "bring about the outcomes they desire" (1977: 3). Weber (1968) described it as "the probability that one actor within a social relationship will be in a position to carry out his will despite resistance…" (p.53). Emerson wrote that "the power to control or influence the other resides over the things he values… power resides implicitly in the other's dependence" (1962: 32). Hence, a person's power lies in his/her ability to control his/her own actions, and to control the actions of others, despite resistance. This book deals with the context of the courtroom, where there are clearly powerful and powerless participants. The source of power is institutional and is expressed through language. In this context, Bourdieu's statement can be aptly applied, that "… authority comes to language from outside… Language … *represents* this authority, manifests and symbolizes it" (1991: 109). This chapter will explore the control the powerful and powerless participants share over the linguistic evidence. Even though the powerful participants have legitimised institutional power to control the discourse of the powerless participants (Fowler et al., 1979, Harris, 1984), the data show that such power is not exercised consistently or continuously.

Linguistic control has been said to be one important aspect of exercising power over others (Morris, 1949, Foucault, 1977c, Pondy, 1978, Bourdieu, 1991). Fairclough stated that "… power in discourse is to do with powerful participants controlling and constraining the contributions of non-powerful participants" (Fairclough, 1989: 46). Fowler et al. (1979) summarise the interrelationship between social structures, status, power, control and language, in the quotation that follows:

> A major function of sociolinguistic mechanisms is to play a part in the control of members of subordinate groups by members of dominant groups. This control is effected both by regulation and by constitution: by explicit manipulation and by the creation of an apparent "natural world" in which inequitable relations and processes are presented as given and inevitable. Power differential provides the underlying semantic for the systems of ideas encoded in language structure (Fowler et al., 1979: 2).

Hence, those with the widest discourse choices are assumed to be the most powerful. Merry argues that "critical to the power of any participant is his or her ability to determine the reigning discourse" (1990: 111). The more restricted the possibilities of expression, the less powerful the person is believed to be. This includes issues of who can speak to whom, for how long, in what situations, and on what topics. Wodak states that "persons with power determine the course of the interaction or the issues discussed. Through the choice of words, they can determine the length of the verbal contributions by allowing, continuing, or interrupting these contributions" (Wodak, 1995: 34). Fairclough (1992) argues that the nature of the relationship between participants determines who controls the discourse, with such relationship being conditioned by society. Bourdieu corroborates that "… the use of language, the manner as much as the substance of discourse, depends on the social position of the speaker, which governs the access he can have to the language of the institution, that is, to the official, orthodox and legitimate speech" (1991: 109). Social institutions provide power hierarchies for their participants, with the more powerful participants exercising their power through their control over the less powerful participants (Thompson, 1984, Harris, 1995). However, even though positions of authority provide a legitimated right to power, they do not guarantee the complete and uninterrupted exercise of it. As Pfeffer stated "the vertical, hierarchical dimension of power is important in understanding social life, but it is not the only dimension of power" (1981: 3). Foucault (1977b) viewed power as a shifting possession between participants, where

> Its functioning is that of a network of relations from top to bottom, but also to a certain extent from bottom to top and laterally … and although it is true that its pyramidal organization gives it a "head", it is the apparatus as a whole that produces "power" and distributes individuals in this permanent and continuous field (pp. 176–77).

Powerful participants need the powerless participants and their respect for authority in order for such power to exist. Kress & Fowler (1979) argue that although communication between participants is generally asymmetrical, the relationship comprises a competition or a negotiation for power (1979: 63).

Much has been written about the courtroom as the site of ultimate institutionalised hierarchy of power. According to the rules of evidence, only the lawyers and the bench can ask questions and control the flow of information, whereas the witnesses can only answer questions and not digress from the relevant themes and topics presented to them (Atkinson and Drew, 1979, Merry, 1990, Drew, 1992). Harris states that "the control of the discourse accorded to the participant with both higher status and greater power through his role as questioner is real control and often reinforces his more powerful position within the larger social structure"

(1984: 7). According to Walker (1987), lawyers in the courtroom exert their power mainly through their strategic use of questions which narrows the witness's choice and length of answers, allowing the examiner to phrase the evidence, rather than the respondent. Similarly, the role of questioner gives lawyers the power to control the agenda or the topics that are introduced in the courtroom (Agar, 1985, Sibley & Merry, 1986, Walker, 1987, Maley & Fahey, 1991). A number of other researchers have also maintained that question form is used as a mode of control over the answers (Harris, 1984, Adelswärd et al., 1987, Philips, 1987, 1989, Maley & Fahey, 1991, Conley & O'Barr, 1998). However, as Atkinson & Drew point out (1979), other speech functions also occur within the framework of questions and answers, such as rebuttals, challenges, accusations, justifications and denials. Conley and O'Barr (1998) propose five ways in which lawyers in a trial exert control over witnesses: silence, question form, topic management, evaluative commentary, and challenges to the witness's capacity for knowledge (1998: 22–38).

Kress and Fowler, in their analysis of interviews, explain that:

> The participants are obviously differentiated by their individual purposes, their differences in status, their roles, so that this mode of conversation exhibits an inequality, a skew in the distribution of power. And the language reflects this inequality. The basic fact is that the interviewer has power qua interviewee. He is in control of the mechanics of the interview… (1979: 63).

Such a description can be applied to the courtroom, where the same inequality of roles exists. However, although there is an asymmetrical distribution of speech acts in the courtroom (Harris, 1995) which force the respondents into a powerless position, the degree of control exercised by the powerful participants varies depending on a number of factors. As explained in Chapter 3, counsel exercise more control during cross-examination than examination-in-chief. The data show, however, that even cross-examiners do not always maintain the desired level of control over the respondents. As Fairclough states "… those who exercise power through language must constantly be involved in struggle with others to defend (or lose) their position" (1989: 35). Hutchby (1996), following Foucault (1977a), argues that power should not be seen as a "zero-sum game but as a set of potentials which, while always present, can be variably exercised, resisted, shifted around and struggled over by social agents" (p. 495). Foucault (1980) stresses that power should be located and investigated at its "capillary" points where it is exercised on an individualistic basis at the local level, by representatives of the central organisations. In other words, despite the fact that power is invested in the institutions, its exercise becomes personal and individual and less legal in character. The power struggle between lawyer and witness becomes interpersonal as manifested through the discourse. This can produce outcomes as varying from successful subordination of the witness,

through to challenge and even negation of the lawyer's position. Lawyers are aware that not all respondents will be compliant, hence they often employ strategies of power by rebuking the witness for not answering the question, stressing that the witness's role is only to answer questions relevantly, to be "linguistically obedient" (Moeketsi, 1999: 23), asking them to answer "yes" or "no" only or reiterating the same question. One legal manual on oral depositions states:

> Witnesses occasionally will answer a question with a question. The examiner should not become involved with an explanation of the facts or of the points he is trying to make. He should explain to the witness that it is not appropriate for the examiner to answer questions during the deposition, and then re-ask, or if necessary, rephrase the question (Summit, 1978: 127).

The general rule is for all directive speech acts to originate with the powerful participants in the courtroom. When witnesses want to take control and use such speech acts, they are usually cautioned and told to adhere to their assigned role (Fuller, 1993). The following are some examples from my data where witnesses who used English as a second language, without the aid of an interpreter, tried to disregard the role they were assigned by the court and treat the exchange as a normal conversation. At times the witnesses receive a firm rebuke for their inappropriate action, at times a gentle reminder of their role, and at times the lawyer loses control by following the witness. In example 1, counsel answers the witness's question, whereas in example 3, counsel exerts his power by stating that the witness had already answered the question, whereupon the witness appeals to a higher authority, the magistrate, who politely confirms counsel's position. In example 2, the witness answers with a sarcastic question "Oh really?", expressing derision for counsel's question.

(1) Counsel-   I put to you that that is not necessarily an aggressive action.
    Witness-   Why not?
    Counsel-   That it could be used as punctuation.

(2) Counsel-   But you're aware that one of the people who was there to lend his support to be elected was his wife.
    Witness-   Ye… s.
    Counsel-   And you know she's a woman.
    Witness-   Oh really?

(3) Counsel-   Right.
    Witness-   I I I I want to clarify something.
    Counsel-   You answered the question I think that's sufficient.
    Witness-   Do I have the right?
    Magistrate- No no you don't. Sorry about that.
    Witness-   All right.

These examples show that although their role attributes lawyers power over witnesses, the enactment of such power is not always automatic and lawyers often need to defend it to regain control over the situation. Felstiner and Sarat (1992) found that in lawyer-client interviews power is not intact, it is rather "mobile and volatile, and it circulates such that both lawyer and client can be considered more or less powerful at the same time" (Felstiner & Sarat, 1992: 1447). It can even be argued that the client is more powerful than the lawyer at the stage of the interview, as s/he has the power to discontinue the lawyer's services. In the courtroom the witness has no power to terminate the proceedings but can exercise indirect power by "infiltrating" unwanted information or manipulating the discourse within the bounds allowed to him/her. Obeng found in his study of Akan legal discourse that "participants other than the institutional representatives have strategies for raising or challenging the validity of claims made in the courtroom" (1999: 200). Gibbons also comments, that in the courtroom "the use of technicality may also serve power purposes. However, witnesses may resist and may indeed use tactics of their own" (1999: 158–9). Harris (1989) also speaks of defendant resistance to power and control in the courtroom, despite the powerless position they are placed in. According to Harris defendants use discourse strategies in the form of counter questions and interruptions to resist such power and control (131–132). Matoesian (1993) observes that there are exceptions to the strict "question/answer" sequence in the courtroom, where lawyers control the flow. These exceptions occur when the witness asks questions and when the other side objects to questions, when such objections are sustained by the bench. Nevertheless, Conley and O'Barr (1998) argue that although witnesses often tend to evade the question or resist answering it, that resistance is short lived. Lawyers often manage to regain control by using elements of the evasive answer to ask the next question in a way that the witness is tricked into answering what they did not want to answer originally. They state that "the linguistic resources available to the lawyer are simply too many and those available to the witness too few." (Conley & O'Barr, 1998: 27). Although this is invariably the case in the majority of witness/lawyer interactions, lawyers do not always regain control, and even if they do, they have had to work harder to for it.

6.1.1 Aims of the chapter

This chapter will explore the exercise of power in the interpreted testimony. One of the fears in using interpreters in the courtroom is the loss of counsel control (Laster & Taylor, 1994, Morris, 1995, Fenton, 1997, Berk-Seligson, 1999, Rigney, 1999, Gibbons, 1999). According to Anderson, interpreters, as the only ones with a full comprehension of both languages, enjoy "the advantage of power inherent in all positions which control scarce resources" (1976: 218). Fenton states that:

> When a lawyer has to address an NESB (non-English speaking background) person through an interpreter, some of this power slips away from him and shifts to the interpreter who is now in control of the language, in control of two languages in fact, monopolizing the means of communication (Fenton, 1997: 30).

This chapter will therefore attempt to explore how counsel lose control over the discourse and whether such control is lost due to interpreter intervention, to witness initiative or other means. The chapter will also highlight the issue of role boundaries in interpreted proceedings. It will be shown that the strict roles assigned to lawyer, witness and interpreter are not always adhered to, altering the courtroom's expected discourse practices.

6.2   The results

A macroanalysis of the data has shown that the following factors contribute to the loss of counsel control:

1. Number of questions required to obtain a desired answer.
2. Topics introduced by witnesses.
3. Narrative answers.
4. Questions posed by witnesses.
5. Counsel being left out of the exchange by interpreter and witness holding discussions in Spanish.
6. Counsel resorting to the use of the third person.
7. Interruptions to counsel's questions by the witness, the interpreter, the magistrate and the counsel for the other side, including objections.

The instances listed above are characterised by the use of specific discursive features that manifest either the loss or the assumption of control. Such discursive features are listed in the table below:

Table 31. Discursive features of control and loss of control

Discursive features of control	Discursive feature of loss of control
Use of questions	Use of third person
Use of "assertive" markers such as "no", "why", "but"	Use of "submissive" markers such as "right", "yes", "maybe"
"I put it to you that" clauses	Admissions of loss of control by use of clauses such as "Going back to" "I'll start again" "I'm getting lost"
Use of polar interrogatives	Use of Wh-interrogatives

6.2.1 Macrostructure of examination-in-chief and cross-examination

Based on topic analysis and topic-flow analysis (Valdés, 1986, Shuy, 1990) I analysed all examinations-in-chief and cross-examinations in terms of sequences, topic and number of questions and answers dedicated to each topic, as shown on Table 32 below:

Table 32. Topic analysis

Case, witness & examination type	Sequence	Topic	Q&A
Case 2, Witness 1, Examination-in-chief	1. Identification of personal details (fragmented)	A. Name & spelling	Q-3 A-3
		B. Address	Q-1 A-1
	2. Framing the evidence - setting the scene (fragmented)	A. incident and place	Q-1 A-1
		B. date	Q-1 A-1
		C. destination	Q-1 A-1
		D. location of accident	Q-1 A-1
		E. car details	Q-2 A-2
	3. Elicitation of witness's version of events (narrative)	A. How accident occurred	Q- 2 A-17

A sequence of questions represents a phase in the examination, usually with one theme. For example, sequence 3 in examination-in-chief is the elicitation of the witness's version of events. The topics treated under this sequence of questions normally all relate to the same theme. Topics within a sequence represent specific subdivisions of a theme. For example, in sequence 1, the aim is to elicit personal details, which is achieved through a number of topics, name, address and occupation.

The data for this chapter consisted of 15 examinations-in-chief and 14 cross-examinations, with an average of 8 sequences and 20 topics in examination-in-chief and 10 sequences and 25 topics in cross-examination. With very few exceptions, as in the case of the presentation of previously written statements instead of oral evidence, the basic macrostructure of Local Court hearings is as follows:

Table 33. Examination-in-chief sequences

Examination-in-chief	
Sequence 1	Elicitation of personal details (e.g. name, address, occupation)
Sequence 2	Framing the evidence - setting the scene -
Sequence 3	Elicitation of witness's version of events -
All other sequences	Various

Table 34. Cross-examination sequences

Cross-examination	
Sequence 1	Re-establishment of undisputed information given in evidence-in-chief.
Sequence 2	Clarification of disputed facts
Sequence 3	Presentation of disputed facts and open confrontation.
All other sequences	Various

Sequence 1 in examination-in-chief is the initial elicitation of the witness's personal details. This is done either by way of leading questions or short Wh- questions, inviting Yes/No or short, fragmented answers. Sequence 2 frames the evidence by setting the scene. This is also achieved by way of leading questions, if the magistrate is lenient enough to allow it, or by short Wh- questions. The purpose is to present all relevant facts to set the scene and the background of the case. The questions elicit either Yes/No or short answers. These questions are normally prefaced with clauses such as "I take your mind back to…". Sequence 3 is the core of the evidence-in-chief, the elicitation of the witness's version of events. Counsel here use Wh-questions in the form of clauses such as "Can you tell the court what happened", "Please tell us what happened", "Would you like to describe what happened". The desired answer is a narrative, uninterrupted account of the witness's version of events. Counsel is often forced to interrupt to prompt the witness to steer them into the right direction, hence introducing the fragmented style. The rest of the sequences will depend on how much clarification is needed from the version given by the witness, on how much information was omitted which needs to be presented, and on how much extra irrelevant information is presented by the witness. The final sequences are usually elicitations of responses to charges or allegations.

The sequences in cross-examination are different and match its purpose. Sequence 1 attempts to re-establish undisputed information that was presented during examination-in-chief. By so doing, the cross-examiner begins his questioning with the witness on agreement. This is achieved by way of short leading questions requiring either Yes/No or short answers. The style is fragmented. Sequence 2 will normally comprise a clarification of disputed facts. If there is disagreement on any of the information presented under sequence 1, the cross-examiner will usually re-ask the question prefaced by a clause such as "How do you say

then…" or "How do you now say…". Note that some of the information that is presented as undisputed or as having been uttered by the witness in examination-in-chief, may be deliberate fabrications of the cross-examiner. Sequence 3 will present disputed facts and commence open confrontation. This is usually done by initiating the line of questioning with a series of short answer or Yes/No questions, followed by Declaratives with tags and finally by Declaratives prefaced with the clause "I put it to you that". All other sequences will depend, as in examination-in-chief, on how much disputed information there is and on how many sequences are introduced by the witness and taken up by counsel. These three sequences are consistent across all cases and follow the same discourse patterns. Their relevance to exercise of control will be discussed below.

6.2.2 Number of questions required to obtain a desired answer

Counsel whose questions are answered relevantly and immediately by the witness maintain strict control over the flow of information presented. This is evident in the data when one question elicits only one answer (see example 4 below).

(4) 1. Counsel- Sir, is your full name Carlos Acosta?
2. Interpreter- *¿Es su nombre completo Carlos Acosta?*
3. Witness- *Sí.*
4. Interpreter- Yes.
5. Counsel- Your surname is spelled A-C-O-S-T-A?
6. Interpreter- *¿Su… apellido se… deletrea A-C-O-S-T-A?*
7. Witness- *Sí.*
8. Interpreter- Yes.
9. Counsel- So you live in Enmore. Is that correct?
10. Interpreter- *Vive usted en Enmore. ¿No es cierto?*
11. Witness- *Sí.*
12. Interpreter- Yes.

When counsel are forced to reiterate the same question by either repeating it or rephrasing it, it means that the witness has digressed from the question and introduced what is deemed to be irrelevant to the questioner (see example 5 below). Even in cross-examination, where repetitions of the same question with subtle changes are used as a strategy to elicit the desired answer from the witness (Philbrick, 1949), the fewer the questions required to gain that desired answer, the tighter the control of the cross-examiner. In example 5 below, the lawyer asks a specific question: "So was there any damage to your vehicle?", which is not answered directly and forces counsel to reformulate it as: "Right, well, could you just tell us what damage was done to your car?". The discourse markers "right" and "well", as explained in Chapter 4, clearly demonstrate counsel's frustration at his question not being answered, reinforced by the use of "just".

    (5)   1.   Counsel- So was there any damage to your vehicle?
           2.   Interpreter- *¿Hubo algún daño en su vehículo?*
           3.   Witness- *Sí, tengo un presupuesto de un… par de un panel*
           4.   *beater de un chapista.*
           5.   Interpreter- Sorry.
           6.   Witness- *Tengo un presupuesto, lo llevé a un chapista y*
           7.   *tengo un presupuesto del chapista.*
           8.   Interpreter- Yes I have a a quote from the panel beater. I
           9.   took it to a panel beater and I have quote from him.
          10.   Counsel- Right, well so could you just tell us what damage
          11.   was done to your car?
          12.   Interpreter- *Diga solamente qué daños se le hizo a su auto.*
          13.   Witness- *Ah, ¿en la parte trasera?*
          14.   Interpreter- On the back of the car?
          15.   Witness- *Tengo aquí si lo necesitan, el presupuesto.*
          16.   Interpreter- Here I have the quote if you need it.

The length of the answer can also determine the level of control maintained by the questioner. The longer the witness takes to answer a question, the less control counsel has over its contents. As Lilly states "If counsel were to ask broad, general questions, calling for a lengthy narrative response, the witness could use the opportunity to give additional testimony which could be unfavourable" (1978: 72). These opportunities to give additional testimony are provided throughout the data, both in examination-in-chief and in cross-examination. It must be emphasised that lawyers manage to maintain control for most of the examination, however, some are more successful at it than others. Very few of the lawyers in my data were able to maintain full control throughout the totality of either examination-in-chief or cross-examination. Hence, control shifted from participant to participant and was shared among all of them to different degrees.

Although witnesses are given more freedom to answer in examination-in-chief and encouraged to give narrative answers, they still need to remain within the framework that is considered to be relevant by their own counsel. When witnesses digress, counsel often interrupt to re-ask the same question. This lack of counsel control in examination-in-chief is detrimental to the witness, as his/her counsel's aim is to present the evidence in the best possible light. When the witness needs prompting, his/her credibility suffers. However, the loss of counsel control in cross-examination favours the witness, as the purpose of cross-examination is to discredit the witness and force contradictory information. The more the witness speaks the less the cross-examiner can control the information.

We find that in examination-in-chief, counsel often relinquish control to the witness at sequence 3, the elicitation of the witness's version of events. This freedom given to the witness is only successful when the witness adheres to the question, as

for example in case 2, where counsel surrenders control voluntarily to his witness by asking him to tell the court what happened, to which the witness gives a lengthy account comprising 17 interpreted turns (see Table 32). As the answer was coherent and relevant, counsel has no need to prompt or reiterate the same question. However, this is not the case with all witnesses, as can be seen in Table 35 below:

Table 35. Failed Sequence 3 question in examination-in-chief

Case #	Number of questions required
3	9
4	19
11	3
13	4

In cases 3, 4, 11 (witnesses 1 & 2), and 13, each witness fails to respond relevantly to the open question which tries to elicit their version of events. In case 3, counsel needs to use nine questions to obtain the desired answer. In case 4 the lawyer is forced to re-ask the same question twice and then switch completely from the narrative style to the fragmented style, using short, specific questions. Therefore, it takes counsel a total of 19 questions to elicit the desired answer. Witness 2 in case 11 has a similar problem, with counsel having to ask the "sequence 3 question" three times. In case 13, the witness's inability to answer his questions leads the lawyer to openly state "I'll start again".

The examples below provide the original questions and answers with my translations on the left hand side, and the interpreted questions and answers on the right hand side.

(6) Case 11, witness 1 – examination-in-chief

Original questions and answers with author's translations	Interpreter's renditions and author's back translations
a.1 Q1- Now, can you tell the court what happened when you saw Oscar on this day?	a.2 I- *Eh, puede decirle por favor al tribunal, ese día usted vio a Oscar, y ¿qué pasó ese día?* (Uh, could you please tell the court, on that day you saw Oscar, and what happened on that day?)
b.1 A1- *Ese día nosotros, eh, o sea con mi esposa, dejamos la escuela como a las, como a las doce del día* (On that day we, uh, I mean with my wife, we left school at, at about 12 in the day)	b.2 I- That day we left the school with my wife about 12noon

c.1
A1- *Eh, eh, comenzamos a caminar hacia*
casa
(Uh, uh, we started walking home)

c.2
I- and we started walking home

d.1
A1- *Y cuando íbamos sobre la, sobre la*
Queen St.
(And when we were on, on Queen St)

d.2
I- And as we were going down Queen St

e.1
A1- *Eh, yo vine a, a ver que él me hacía*
señas con la mano
(Uh, I came to, to to see that he was
making signals with his hand)

e.2
I- I saw him, uh, waving to me with
his hand

f.1
A1- *Eh que era, era a la par de la libre…*
de la biblioteca… la la la librería
(Uh that was was next to the book…
the library, the the the bookshop)

f.2
I- Uh, he was there at the library

g.1
A1- *Eh, pero yo siempre seguí mi camino con*
mi esposa y la niña
(Uh, but I just kept going with my wife and
the girl)

g.2
I- But I just went on with my wife and
my child

h.1
Q2- Yes, can you tell the court what
happened?

h.2
I- *¿Y luego qué pasó?*
(And then what happened?)

i.1
A2- *Eh, después ya llegando a la a la*
Marion St.
(Uh, then when we were about to get to
to Marion St)

i.2
I- As we were getting onto Marion St

j.1
A2- *yo volví atrás por la calle*
(I went back on the street)

j.2
I- I turned around

k.1
A2- *Eh, y vi que él iba corriendo, o sea, así*
para el lado de nosotros
(Uh, and I saw he was running, I mean,
like this towards us)

k.2
I- And I saw him running, running
towards us

l.1
A2- *Y, bueno yo seguí mi camino con mi*
esposa y mi hija
(And, anyway, I kept on going with my wife
and my daughter)

l.2
I- I continued walking with my wife
and my daughter.

m.1	*m.2*
A2- *Y cuando sentí él me, él me pegó en la espalda atrás*	I- And then I… he hit me on the back.
(And when I felt that he, he hit me in the back)	
n.1	*n.2*
A2- *Y me empujó*	I- And he pushed me
(And he pushed me)	
o.1	*o.2*
Q3- I'll stop you there. Now,]	I- *Un momentito*
	(Just a moment)

Example 6 is one where counsel is forced to re-ask the same question to elicit from the witness the desired information which relates to the alleged assault. This may be partly due to the interpreter's inaccurate interpretation of the initial question. Whereas question 1 is "Now, can you tell the court what happened when you saw Oscar on this day?" (a1), the interpreted version is "Uh, could you please tell the court, on that day you saw Oscar, and what happened on that day?" (a2). The focus of the interpreted question is slightly different, whereas the original specifically asks "what happened *when* you saw Oscar", the interpretation states that he saw Oscar and then asks the witness to say what happened on the day, hence the witness proceeds to give a full account of the events of the day, not specifically when Oscar was first seen. Interestingly the interpreter is consistent in the change in the second question. Counsel's second question is an obvious repetition of the first question: "Yes, can you tell the court what happened?" (h1), meaning, "yes, ok, we heard what you said, but please now tell us what happened", but the interpreted question is "And then what happened?" (h2), showing no sign of irritation or indication that the question had not been answered, but simply a prompt to give the witness leave to continue with his narrative. This is one example where counsel control was lost due to the interpreter.

(7) Case 13 – examination-in-chief

Original questions and answers with author's translations	Interpreter's renditions and author's back translations
a.1	*a.2*
Q1- Well uh, would you like to briefly give your account of what happened when constable M. came up to you and said something to you.	I- *¿Quiere decirnos usted brevemente qué pasó cuando ella se le acercó y le dijo algo a usted?*
	(Would you like to tell us briefly what happened when she got close to you and told you something?)
b.1	*b.2*
A1- *¿Qué pasó?*	I- What happened?
(What happened?)	

c.1	*c.2*
Q2- Well, no, give me your account	[NO INTERPRETATION]
d.1	*d.2*
A2- *Yo no le he hecho nada.*	I- I haven't done her a thing.
(I didn't do anything to her.)	
e.1	*e.2*
Q3- Yes, well, maybe I should be more	[NO INTERPRETATION]
specific. In view of what she has told the	
court, and you have the benefit of the	
statement of constable X being read over	
to you this morning]	
[INTERRUPTED BY THE MAGISTRATE]	
f.1	*f.2*
Magistrate- Now, this is going to be	[NO INTERPRETATION]
interpreted, so]	
[INTERRUPTED BY COUNSEL]	
g.1	*g.2*
Q4-I'll start again.	[NO INTERPRETATION]
h.1	*h.2*
Magistrate- Start again.	[NO INTERPRETATION]

In example 7 we see that although the interpreter changes the reference to the female Constable M to a pronoun "she", the rest of the question is interpreted accurately. This slight change does not seem to have caused any misunderstandings in the witness, as he later refers to the same female constable. Nevertheless, the question is not answered by the witness. The answer to the first question (a.1), a request to give a brief account of the events, is also a question: "what happened?" (b.1). It is interesting that counsel feels it necessary to make the distinction between what happened and what the witness's account of the events was. Such a tactic is common in cross-examination but not in examination-in-chief. To such a clarification the witness becomes defensive and states that he "didn't do anything to her" (d.1). The third attempt to put the question to the witness more specifically is thwarted by the magistrate who reminds counsel that it will be interpreted, implying it should be shorter (f.1). It can be argued that here too, the interpreter was the cause of counsel's loss of control. In other words, the magistrate feels it necessary to exercise his power over the lawyer to ensure the interpreter has a manageable question to interpret. Had the interpreter not been present, the magistrate would not have interrupted. This is an obvious display of loss of counsel control, where he is forced to state "I'll start again" (g.1), admitting failure in having wasted four turns of his examination.

The two previous examples are illustrative of the times when the same question needs to be repeated in order to obtain the desired answer, with such attempts sometimes failing altogether. During examination-in-chief where witnesses are

given more freedom to speak, counsel may lose control when the witness introduces new information in the course of a narrative answer instead of answering the question relevantly. When this happens, counsel may also use a more subtle strategy in reintroducing the topic once the witness has finished the answer. This makes the digression less obvious for those listening and may aid the cause of the case. In case 11, for example, topic A under sequence 8 does not receive an appropriate answer from witness 2 and is repeated as topic D. On other occasions, although the witness digresses and presents irrelevant information, the question is answered eventually. An example of this can be seen in case 3, where one question elicited a narrative answer comprising 36 turns, with the relevant answer contained in turn 31. On very few occasions was the answer lengthened due to the interpreter's misinterpretation.

In cross-examination we find that counsel are often forced to repeat the same questions throughout the examination. Table 36 below provides one example of this occurrence.

Table 36. Sample topic analysis

Case	Sequence	Topic	Q & A
2	2 - Presenting disputed information	A. Position of truck as alleged by counsel	Q = 1 A = 1
		B. Time of overtake as alleged by witness	Q = 1 A = 1
		C. Return to topic A - Position of truck as alleged by counsel	Q = 2 A = 3
		D. Version of events as alleged by counsel - "I put it to you"	Q = 1 A = 6

In cases 2, 3, 5, 7, 10, 11, 13, 14 and 15, the same topics are repeated a number of times throughout the case, sometimes under the same sequence of questions, sometimes elsewhere in the case, some cases (e.g. case 3), taking up to 15 questions to obtain the relevant answer. At times counsel verbalise their intentions of repeating unanswered questions by prefacing their turns with "going back to…" and stating the previous sequence. Example 8 below is one where sequence 1 is repeated under sequence 3 as the desired answer had not been obtained. The extract clearly shows that despite the prosecutor's insistent attempt to elicit the desired answer by repeatedly asking the same question (a.1, c.1, e.1, g.1, j.1) the witness refuses to submit to the request. This stubborn non-compliance may of course to a degree help the prosecutor's case, but it also indicates an inability to maintain a tight control of the information presented in the examination. It is interesting to note the prosecutor's frustration materialised in a different discourse marker at the beginning of each question.

(8) Case 13 – cross-examination - Sequence 3 - Return to sequence 1 - ability to speak English words used with police.

Original questions and answers with author's translations	Interpreter's renditions and author's back translations
a.1 Q1- How did you say those words?	a.2 I- *¿Cómo dijo esas palabras?* (How did you say those words?)
b.1 A1- *porque mi abuelita le dijo a él que también es su carro de él, por eso que yo le digo a la policía que es carro de él, ¿o es malo?* (Because my grandmother told him it was also his car, that's why I tell the police it's his car, or is that bad?)	b.2 I- Yeah, because my grandmother said it was his car and that's why I told the police it was his car, or is that bad?
c.1 Q3- No, how did you tell the police, how were you able to tell the police officer that it was your friend's car? What did you say?	c.2 I- *¿Cómo pudo decirle a la policía que era el automóvil de su amigo, qué palabras usó?* (How could you say to the police that it was your friend's car, what words did you use?)
d.1 A3- *Él siempre lo maneja* (He always drives it)	d.2 I- because he's always driving it
e.1 Q4- Yeah, alright, the police officer can't speak Spanish, how did you tell her that it was your friend's car? What words did you use?	e.2 I- *La policía no habla español ¿qué palabras usó usted para decirle que era el automóvil de su amigo?* (The police can't speak Spanish, what words did you use to tell her that it was your friend's car?)
f.1 A4- *Le dije en lo que en lo que, no sé, en mi media lengua, como hablo, porque yo no hablo nada, no sé cómo me habrá entendido la policía.* (I told her in, in, I don't know, in my broken English, like I speak, because I don't speak any, I don't know how the police understood me.)	f.2 I- I told her in my, in my broken English because I don't speak English, I don't know if she understood me.
g.1 Q5- Alright well, what did you say?	g.2 I- *¿Pero qué dijo usted?* (But what did you say?)
h.1 A5a- *¿Qué dije?* (What did I say?)	h.2 I- What did I say?

i.1
A5b- *Que era el carro de mi amigo*
(That it was my friend's car)

i.2
I- that it was my friend's car

j.1
Q6- yeah, alright, tell us, this court today, how you told the police officer "it's my friend's car"

j.2
I- *Eh, ¿puede decirle a la corte cómo le dijo a la policía "es el automóvil de mi amigo"?*
(Uh, could you tell the court how you told the police "it's my friend's car"?)

k.1
A6a- *No puedo, no puedo decirlo*
I can't, I can't say it

k.2
I- I can't, I can't say it

l.1
A6b- *Por más que me esfuerce no puedo, porque le digo y le vuelvo a repetir, nunca he ido al colegio y nunca he estudiado el inglés.*
(No matter how hard I try I can't, because I tell you and I'll repeat again, I never went to school and I never studied English)

l.2
I- Eh, even if you're trying to force me to say it I cannot say it because as I told you I've never studied English

To a degree the interpretation may have lengthened the exchange, starting from the first question (a.2). Although the question is accurately interpreted, the Spanish version carries an ambiguity. The word *cómo* initiating questions can also be interpreted to mean "how could you have said those words?" or even "why did you say those words?". The witness's answer indicates that he understood the question in this way, as a rebuke for having lied, hence his explanation about the car virtually belonging to his friend (b.1). Such ambiguity is hidden to the English speaking courtroom. Nevertheless the prosecutor in asking the second question disambiguates it by saying "how were you able to tell…" (c.1), and "what words did you use" (d.1). Once again the Spanish version remains ambiguous, in that *cómo pudo decirle* (c.2) also means "how could you have told him". However, the second part of the question "what words did you use?" should have disambiguated the intention. The witness continues with his line of answering regardless, insisting that the friend always drives it (d.1). It is not until the third question (c.1) that the witness understands what is being asked, after the prosecutor further clarifies the request by stating that the police cannot speak Spanish. The witness admits that he used his broken English but does not report the words he used (i.1). He even re-asks the question himself "What did I say?" (h.1) to which he receives no answer. The witness only says the contents of what he said in Spanish but refuses to repeat the words he used in English, as he had previously said at the beginning of cross-examination that he could not speak a word of English. His last answer is misinterpreted by the interpreter who must have confused the word *esforzar* (to try, to make an effort) with *forzar* (force). The witness says *por más que me esfuerce no puedo,*

porque le digo y le vuelvo a repetir, nunca he ido al colegio y nunca he estudiado el inglés (l.1) "No matter how hard I try I can't, because I tell you and I'll repeat again, I never went to school and I never studied English". The interpreter's rendition was "Eh, even if you're trying to force me to say it I cannot say it because as I told you I've never studied English" (l.2). The lawyer's loss of control here is evident. This may have been caused partly by the interpreter's misinterpretations and partly by the witness's uncooperativeness.

6.2.3 Topics introduced by the witnesses

Topic control has been identified as a sign of power (Owsley & Scotton, 1984; Brooke, 1988; Harris, S., 1990; Bogoch, 1994). Maintaining control of the evidence implies controlling who speaks, for how long and what about. As previous researchers have observed (Atkinson and Drew,1979; Woodbury, 1984; Agar, 1985; Walker, 1987; Philips,1987; Maley & Fahey, 1991) this is mainly achieved in the courtroom by allowing only the powerful participants to ask the correct types of questions that would elicit the desired answers. Chapter 2 reviewed the literature which suggests that open ended, Wh-questions are the least coercive types of questions which invite narrative answers and hence give more freedom to the witness. In this way witnesses have more control over the contents of their own evidence. Closed Choice questions, Yes/No questions and Declarative questions are more coercive and are used to control the answers tightly. Such questions are used with more frequency in cross-examination (Danet & Bogoch, 1980; Woodbury, 1984; Walker, 1987; Hale, 2001). Chapter 2 of this book corroborated previous findings about the tendency to use different types of questions according to examination type, with the objectives to control the evidence tightly in cross-examination or to allow more freedom in examination-in-chief. In this chapter we find that those tactics are not always effective, that a Yes/No question does not always elicit a yes or no answer and an open Wh- question does not always elicit a relevant narrative answer, sometimes even eliciting a simple "yes". It is these deviations from the expected norm that cause counsel to lose control of the evidence and to struggle to regain their court-assigned power.

In example 9 we see how a Yes/No question, posited in examination-in-chief, elicits a long narrative answer that introduces a number of topics for which the lawyer was unprepared. The initial question (a.1) which required a simple yes, produced an 8 turn answer (b.1- i.1), where the defendant tells the court about the mistreatment he received from the police. The defendant in this case has an obvious disregard for any courtroom rule and is determined to take control of the evidence, to the extent that he even interrupts the interpreter while interpreting his own answers (b.2). It was the magistrate who interrupted to regain control after the

defendant produced a threat to the constable who was seemingly laughing while he was giving evidence (j.1). At this point the magistrate asks counsel if he wants to pursue any of the information provided by the defendant (k.1), to which counsel openly admits loss of control by saying: "I don't wanna pursue any of it really, I'm getting a bit lost, Your Worship, uh in view of the instructions that I have uh" (l.1).

(9) Case 13 – examination-in-chief

Original questions and answers with author's translations	Interpreter's renditions and author's translations
a.1 Q1- Did you did you ask for a drink of water then?	*a.2* I- *¿Usted le pidió un vaso de agua ahí?* (Did you ask him for a glass of water there?)
b.1 A1a- *¿Dónde? ¿en la estación de policía?* *Sí le pedí un vaso de agua y me lo* *negaron, me lo trajeron como a la media* *hora, me me moría de sed.* (Where? At the police station? Yes, I asked him for a glass of water and they refused to give it to me, they gave it to me about half an hour later, I I was dying of thirst.)	*b.2* I- I was I asked for one at the police station]
c.1 A1b- *me tuvieron sin comer* (they left me with nothing to eat)	*c.2* I- they brought it to me half an hour later, I was dying of thirst, and they left me there without anything to eat
d.1 A1c- *en la oficina me pegaron* (I was beaten up in the office)	*d.2* I- and there they hit me, they bashed me
e.1 A1.d- *me pegaron, me tiraron al suelo en* *el carpet y me comenzó a patear, cuando* *quería orinar me tiraron contra el ascensor* (they beat me up, they threw me on the floor on the carpet, and he started to kick me, when I wanted to go to the toilet they threw me against the lift)	*e.2* I- they threw me on the carpet and he he kicked me and then when I wanted to urinate he eh bashed me against the elevator
f.1 A1.e- *y cuando yo iba a ir a la otra* *estación, me dijo ahí te vas a encontrar* *con un hombre malo que te va a pegar* (and when I was going to the other police station he said when you get there you'll find a nasty man who will beat you up)	*f.2* I- and then when I was going to the other police station he said you'll find a very bad man there he's gonna punch you

g.1 A1.f- *y un policía me metió una cachetada* *cuando estaba tirado en el carpet* (and a policeman slapped me when I was lying on the carpet.)	g.2 I- and a policeman slapped me when I was lying down on the carpet.
h.1 A1.g- [TO A POLICE WOMAN IN THE BACKGROUND WHO IS LAUGHING] *Que no se ría porque ella no ha visto nada* (Tell her not to laugh because she didn't see anything.)	h.2 I- And don't laugh about it, she shouldn't laugh about it she hasn't seen a thing
i.1 A1.h- *porque ella no estaba en ese momento* (because she wasn't there then)	i.2 I- she wasn't there when that happened
j.1 Magistrate- Just wait for the next question.	j.2 I- *Espere un momentito que le va a hacer* *otra pregunta.* (Wait a moment, he's going to ask you another question)
k.1 Magistrate- Do you want to pursue this or would you like to ask another question? [TO THE LAWYER].	k.2 [NO INTERPRETATION]
l.1 Counsel- I don't wanna pursue any of it really, I'm getting a bit lost Your Worship, uh in view of the instructions that I have uh…	l.2 [NO INTERPRETATION]

In contrast to the above example, in example 10, counsel asks an open question, inviting the witness to provide an account of the events, which only receives a "Mm" and a "yes" as responses to two consecutive attempts. Here once again, the magistrate needs to intervene to gain control for the counsel.

(10)   Case 11 – examination-in-chief

Original questions and answers with author's translations	Interpreter's renditions and author's translations
a.1 Q1- Now, can you tell the court what happened near Marion St and Queen St Auburn?	a.2 I- *¿Puede decir a la corte qué pasó* *cerca de la Marion St y Queen St en Auburn?* (Can you tell the court what happened close to Marion St and Queen St in Auburn?)
b.1 A1- Mm.	b.2 I-Mm, I can.

c.1
Q2- Yes, now, can you tell the court what
happened?

c.2
I- *¿Puede decirle a la corte qué pasó?*
(Can you tell the court what happened?)

d.1
A- *Sí.*
(Yes)

d.2
I- Yes.

e.1
Magistrate- [LAUGHS] Would would she do
so, please?

The reason for the misunderstanding of the question in example 10 by the witness may have been a slightly cross cultural pragmatic difference in the illocutionary force of the modal verb. In some dialects of Spanish, requests are very rarely produced with the use of modals such as the one used in example 10. The use of the imperative is much more common.

Examples 11 and 12 are taken from cross-examination where tighter control is expected and where new topics should not be introduced by the witness. Nevertheless, in these two examples we see how the witnesses can introduce new topics. In example 11 the question was a Yes/No question. The answer, although prefaced by a "no" continues with an explanation which introduces new information (b.1). This new information is taken up by counsel who is forced to continue his line of questioning along those lines; a change that was not planned.

(11) Case 5 – cross-examination

Original questions and answers with author's translations	Interpreter's renditions and author's translations
a.1 Q1- And during that time you you talked to Mr H. and Mr C.	*a.2* I- *¿Durante ese momento usted habló con el Sr H. y el Sr C.?* (During that time you talked to Mr H. and Mr C?)
b.1 A1- *No porque una amiga de ellos me estaba abusándome verbalmente.* (No because a friend of theirs was abusing me verbally.)	*b.2* I- No because one of their friends was verbally abusing me.
c.1 Q2- You didn't say this before.	*c.2* I- *Usted no había dicho antes.* (You hadn't said this before.)
d.1 Q3- Who is this person?	

In example 12 we see how the witness asks for permission to add to his previous answer (a.1), and before permission is granted, he proceeds to give a long narrative

of his complaints about the treatment of his property by his tenants (a.1–d.1). Although the new introduced information is not taken up by counsel in his next turn, the witness is not interrupted and is allowed to say what he wants. This shows another example of a change to the norm that was not planned by counsel.

(12) Case 10 – cross-examination

Original questions and answers with author's translations	Interpreter's renditions and author's translations
a.1 Witness- *¿Puedo decir…? ¿Puedo decir…? Si puedo agregar de que el muchacho John, prácticamente estaba estudiando en mi casa, fue el que me rompió un ropero, lo destrozó, lo tiró afuera al patio]* (Can I say…? Can I say…? If I could add that the boy John, practically studied at my house, it was he who broke the wardrobe, he destroyed it, he threw it outside, in the backyard.)	a.2 Interpreter- But I could add that the she was destroying my house because she broke a wardrobe and she threw it on the backyard] [INTERRUPTED BY THE WITNES]
b.1 W- [*y su novio en el patio plantó un árbol sin el consentimiento mío.* (And her boyfriend planted a tree in the backyard without my consent)	b.2 I- And she uh dig a hole in the backyard to plant a tree without asking permission.
c.1 W- *El niño usó la puerta del ropero para hacer una línea de tránsito fue esto que después yo encontré debajo de la casa.* (The boy used the wardrobe door to make himself a little car track, that is what I found later under the house.)	c.2 I- And the the boy was uh using the wardrobe door to put uh like a line of a little train, toys, and uh, later on I found it under the house.
d.1 W- *Eso fue durante los primeros 6 meses.* (That was in the first 6 months.)	d.2 I- And uh, that happened during the 6 first months.

Although more narrative answers would be expected in examination-in-chief for the reasons already discussed, the data showed that the percentage of this type of answer was almost the same in examination-in-chief and cross-examination, with 14.85% in examination-in-chief and 14.25% in cross-examination. This indicates that even though more constraining and coercive types of questions are used in cross-examination, they do not always elicit the desired type of answer and witnesses still manage to add information that is not wanted by the examiner, as shown in examples 11 and 12.

6.2.4 Questions posed by the witnesses

Mishler stated that "…to ask a question in response to a question is an act of counter-control…" (1975: 106). He states, however, that counter-questions are acceptable only when posed by a person of higher authority or at least equal authority. Although in the courtroom counter-questions are posed by the witnesses/defendants who are not equal in authority, I argue that the same principle applies, where witnesses/defendants challenge the questioner's authority (Labov & Fanshel, 1977, Harris, 1989) and attempt, sometimes succeeding, to take control of at least thematic sequences in the evidence.

The data showed slightly more witness questions in cross-examination than in examination-in-chief (6.75% versus 5.87%), although this was equalised by the interpretation: only 4.5% of the interpreted answers in both types of examinations were questions, as shown on Table 37. This means that some of the witness's questions were converted into Declarative answers or omitted altogether by the interpreters, hence taking away some potential witness control. Krouglov also found interpreters omitting questions posed by the non-English speaker in police interviews (1999: 287).

Table 37. Witness questions according to examination type

Type	Examination-in-chief		Cross-examination	
Question	5.87% (Sp.)	4.5% (Eng.)	6.75% (Sp.)	4.5% (Eng.)

The questions asked by the witness fell into the following categories:

Table 38. Witness question types

Category	Examination-in-chief	Cross-examination
1. Questions requesting clarification	13	18
2. Questions requesting a repetition	1	4
3. "I don't understand" questions	3	3
4. "What do you mean?" questions	4	5
5. Challenging or rhetorical questions	4	12
6. Questions seeking permission to speak	4	1
7. Questions requesting information	1	0
8. Questions to ensure witness's own answer was understood	1	0

The majority of witness questions fell in the first category and were those that requested clarification from counsel in order to enable the witness to answer appropriately. Although this may indicate an inability on the part of counsel to formulate the question clearly or a problem of interpretation, it may also indicate

poor comprehension or concentration on the part of the witness, or a way of evading a difficult question. The same can be said for categories 2 and 3. Categories 4 and 5, which were used more frequently in cross-examination, are both challenging, with category 5 being more challenging than category 4. These answers question the content, veracity or relevance of counsel's questions. Category 6 questions are used by witnesses when they feel they need to add more information, information that to them is essential but may be irrelevant to the court. Interestingly, this occurs in examination-in-chief more than in cross-examination. The other two categories are not significant, as they only appear once.

6.2.4.1 *Questions asking for clarification*

On a number of occasions the witness commences an answer with a question but does not wait for an answer, as in example 13, where the witness simply goes on to answer the question. It is difficult to know, as I am basing my study on audio recordings only, if the interpreter answered the questions with a facial expression on these occasions, or whether the initial question is simply a way for the witness to organise his thoughts. We can see that in example 13, the initial question is not interpreted. The interpreter starts interpreting the relevant part of the answer, which is cut by the witness who interrupted the interpreter to continue his answer.

(13) Case 13 – Examination-in-chief

Original answers with author's translations	Interpreter's renditions
¿Dónde? ¿En la estación de policía? Sí le pedí un vaso de agua y me lo negaron, me lo trajeron como a la media hora, me me moría de sed. (Where? At the police station? Yes, I asked him for a glass of water and they refused to give it to me, they gave it to me about half an hour later, I I was dying of thirst)	I was I asked for one at the police station] [INTERRUPTED BY THE WITNESS]

Examples 14–16 are genuine requests for clarification which are provided by the lawyers in their next turn.

(14) Case 11 – Examination-in-chief

Original answers with author's translations	Interpreter's renditions
¿Cuando se hirió? (When he got hurt?)	When he was injured?

(15) Case 3 – Cross-examination

Original answers with author's translations	Interpreter's renditions
¿Que me preguntó quién? (Who asked me?)	I was asked by whom?

(16) Case 10 – Cross-examination

Original answers with author's translations	Interpreter's renditions
¿El baño, dónde? (The bathroom, where?)	What do you mean? where?

6.2.4.2 *Questions asking for a repetition*

Example 17 is interesting because the interpreter here asks for a repetition of the witness's answer (a.2), possibly having been confused by the witness's code switching into English. Instead of repeating the answer, the witness asks for the question to be repeated (b.1), after which he provides a different answer. It is possible that the witness felt his answer was inappropriate at the interpreter's request for it to be repeated, hence his different subsequent answer. In any event, the original answer was never heard by the English speaking courtroom.

(17) Case 10 – Cross-examination

Original answers with author's translations	Interpreter's renditions
a.1 *Yo estaba viviendo without my wife, y no sé a qué son se refiere.* (I was living without my wife, and I don't know what son he's referring to.)	*a.2* Sorry, could I ask him to repeat it again, because I missed it.
b.1 *¿Cuál es la pregunta exacta?* (What is the exact question?)	*b.2* What is the question exactly?

In example 18 the witness's first answer was "yes" after which he retracts to ask for a repetition as he was not sure he really understood the question. The interpreter here omits the initial "yes", which could have been used strategically by the prosecutor, as well as the repetition. She simply requests a repetition of the question and at that point is interrupted by the prosecutor.

(18) Case 12 – Cross-examination

Original answers with author's translations	Interpreter's renditions
Sí…¿Cómo? ¿Cómo?¿Cómo?… Si me repite otra… vez la pregunta la pregunta, la verdad que no…] (Yes… sorry sorry what?… Would you repeat it again, the question, the question, I really didn't.)	Would you repeat the question]

6.2.4.3 *"I don't understand" questions*

We find some interesting variations in the interpretations of examples 19–22. At times the interpreter omits information and at times s/he adds some. In example

19, the interpreter adds the request for a repetition of the questions which was absent in the witness's answer. The tone of the witness's answer changes in the interpreted version. Whereas the witness admits lack of understanding by saying "Uh, pardon? I don't understand", the interpreter's rendition omits the initial question "pardon?" and specifically states "I don't understand your question". There is a difference between saying "I don't understand" and "I don't understand your question", the first puts the onus for lack of comprehension on the witness whereas the second puts it on the lawyer, implying that the lawyer's question was confusing, hence the misunderstanding. The request for a repetition shifts the control to the witness, as he is now demanding something from the lawyer, whereas in reality this was not the case.

(19)   Case 10 – Examination-in-chief

Original answers with author's translations	Interpreter's renditions
Eh ¿cómo? No entiendo. (Uh, pardon? I don't understand.)	I don't understand your question, could you repeat it?

Examples 20 and 21 are very similar to example 19, with the addition of "your question" in the interpretation and the omission of the initial confusion "Me? When? How? I mean…" in example 20 and "I don't understand why, I mean…" in example 21.

(20)   Case 11 – Examination-in-chief

Original answers with author's translations	Interpreter's renditions
¿Yo, cuándo, cómo? O sea, no entiendo. (Me? When? How? I mean, I don't understand.)	I'm sorry, I don't understand your question, what I did or what?

(21) Case 11 – Cross-examination

Original answers with author's translations	Interpreter's renditions
No entiendo por qué, o sea, ¿cómo esa pregunta entre las dos esposas, cómo es esa pregunta? (I don't understand why, I mean, how's that question between the two wives, how is that question?)	Would you mind repeating the question about our two wives?

Example 22 however, shows the opposite, with the interpreter omitting the initial "what do you mean by access?" and simply interpreting "I don't understand."

(22)   Case 1 – Examination-in-chief

Original answers with author's translations	Interpreter's renditions
¿Cómo acceso? No entiendo. (What do you mean by access? I don't understand.)	I don't understand.

6.2.4.4 *Challenging questions*

In examples 23–27 the interpreter consistently makes the witnesses' answers less challenging by either omitting the question or changing the markedness of the word order. In all examples but number 24, the challenging question is omitted. The witnesses in these examples are questioning information put to them by the lawyers with which they strongly disagree. The emphasis present in the Spanish answer in example 23, where the witness asks twice "what do you mean he didn't?" and then twice says that he said many things, goes missing in the single clause interpreted answer "He said many things".

(23) Case 5 – Examination-in-chief

Original answers with author's translations	Interpreter's renditions
Ah, ¿cómo no?, ¿cómo no?, si él eh dijo muchas cosas, habló mucho. (Uh, what do you mean he didn't? what do you mean he didn't?, he uh said many things, he talked a lot.)	Interpreter- He said many things.

Examples 24–27 are from cross-examinations. The interpretation of example 24 is ungrammatical and changes the word order. However, the question remains, to which the lawyer reiterates the same question using the "I put it to you that" clause, instead of answering the witness's question. This time, reverting to the third person, thus addressing the interpreter rather than the witness. This use of the third person will be explored later in this chapter to further illustrate that the introduction of the interpreter as an obvious intermediary demonstrates a noticeable loss of counsel control.

(24) Case 10 – Cross-examination

Original answers & questions with author's translations	Interpreter's renditions
Answer -*¿Falso por qué?* (False why?)	Why is it untruth?
Question- I'm asking Mr X, I'm putting to Mr X that that would be untrue.	

The changes made by the interpreters in examples 25–27 are very significant. In example 25, the witness uses the initial question as a form of rebuke, implying "why are you asking me again, haven't you heard what I told you before?", which the interpreter changes to a simple statement of fact "I have said I am not sure…".

(25) Case 3 – Cross-examination

Original answers & questions with author's translations	Interpreter's renditions
Answer- *¿No le he dicho que no estoy seguro?, ha pasado tanto tiempo.* (Haven't I told you that I'm not sure? It's been so long.)	I have said I am not sure, it was so long ago.
Question- Right, uh, well you accept that you filled out the form on the 23rd.	

Similarly in example 26, the witness's answer "what do you mean he didn't?" implies a desire to interact with the lawyer in the normal conversational way. The witness demands an answer. The interpreter however, translates the speech act into a statement of fact, changing a negative question into a positive statement "Yes he did".

(26) Case 11 – Cross-examination

Original answers with author's translations	Interpreter's renditions
¿Cómo no? (What do you mean he didn't?)	Yes he did.

Example 27 is probably the most radical change of all, where a question which challenges the lawyer's information "What do you mean he didn't?" is changed to an admission of a possibility "Perhaps but I didn't touch him".

(27) Case 11 – Cross-examination

Original answers with author's translations	Interpreter's renditions
¿Cómo no? ¿Él no tocó? porque yo no le he tocado nada, no sé cómo… (What do you mean he didn't? He didn't touch it? Because I didn't touch him at all, I don't know how…)	Perhaps but I didn't touch him.

All of these are examples of the interpreters' omissions of the questions in the original Spanish answers. The interpreter seems to be acting as a watchdog for the courtroom, to ensure that the witnesses adhere to the strict role assigned to them. By omitting the witness's questions or converting them into declarative answers, the interpreter is changing the speech acts to those appropriate to the role of witness, the powerless participants who are not permitted to ask questions. The rules allow questions to originate with the powerful participants only. In these instances, interpreters are therefore assisting lawyers to maintain control over the witness's evidence. Ironically, the interpreter, by taking steps to ensure that the witnesses adhere to their court assigned role, is him/herself not adhering to his/her court assigned role. The interpreter is consequently taking on a powerful role unbeknown to the court, and hence unchallenged by anyone. This appears to

demonstrate a struggle, on the part of the interpreter, to find an acceptable role to play in the courtroom. It could be argued that the interpreter's court assigned role of "non-person" (Goffman, 1959) is often in conflict with the interpreter's own assigned role of "mediator". The role of "non-person" is usually held by people such as servants, who are present but not active participants of the main event. Interpreters play a major role in interpreted proceedings but are expected to be as invisible as possible, never taking a principal role. They become a "non-person" because they are representing other people's ideas instead of their own. However, interpreters are active performers, verbalising the script of those for whom they become mouthpieces, presenting a front for someone else. Whether this front accurately reflects that intended by the original speaker depends on how much they see themselves as taking the role of "go-between" or "mediator" (Goffman, 1959). The interpreter is a necessary go-between and is expected to mediate between two cultures and two languages when transforming messages from source to target language. However, when the role of go-between or mediator is taken beyond the acceptable limits, it causes problems for the interpreter and everyone else involved.

Goffman explains that:

> When a go-between operates in the actual presence of the two teams of which he is a member, we obtain a wonderful display, not unlike a man desperately trying to play tennis with himself … As an individual, the go-between's activity is bizarre, untenable, and undignified, vacillating as it does from one set of appearances and loyalties to another (Goffman, 1959: 149).

When interpreters see themselves as this type of go-betweens, they become susceptible to a lack of impartiality and vacillation between loyalties. If they see themselves fulfilling this role, instead of representing the main participants' scripts faithfully in the target language, they will vacillate over whether they should assist the non-English speaking witness who is usually a member of the interpreter's ethnic community, or the court with which the interpreter shares professional membership to a certain degree. Hence the interpreter's subtle manipulation of the questions and answers can both add to or subtract from the lawyer's control of the situation. This will depend on whom the interpreter's loyalties are placed at the time.

6.2.4.5 *Rhetorical questions*

Semantically, rhetorical questions are those that do not genuinely ask for an answer but are used for effect and which allow the listener to infer the correct answer for themselves. Pragmatically, rhetorical questions may be used to challenge, to mock or to achieve sarcasm. Witnesses are strictly not allowed to answer with questions in the courtroom, where specificity is required from them. Inference is a tool permitted to counsel to be used to portray witnesses or facts in a certain light. Examples

28–31 are instances where the witness could have given a straight answer but chose to use a rhetorical question instead, either to indicate the irrelevance or absurdity of the question put to him/her, or to seek identification from the listener by involving him/her in the equation, as in the case of example 31. In doing this, the witnesses are openly rejecting their court-assigned role, and taking control over what they want to say and how they want to say it. The interpreters did not seem to find any difficulty in interpreting this type of answer, as they were all interpreted accurately. It is interesting to see the lawyers' responses to such utterances. Some simply ignored it and went on to ask the next question, as in example 28; some acknowledged the answer by prefacing their next question with a discourse marker such as "Yes, but…" (see e.g. 29) or "well" (see e.g. 30). Only one lawyer submits to the witness's demand for an answer by providing one. This can be seen in example 30, where the witness asks "how did he hurt my finger then?" and the lawyer answers "Well he, I don't know how you cut your finger…", then reverting to her position of power by using an "I put it to you that" clause: "I'm putting to you that this defendant did not take any knife out of his bag".

(28) Case 13 – Examination-in-chief

Original answers & questions with author's translations	Interpreter's renditions
A- *Me quedé quieto, ¿qué iba a hacer si se me sentó encima en el estómago?* (I didn't move, what was I to do if she sat on my stomach?)	I just stayed put, what was I going to do? she was sitting on my stomach.
Q- Did anybody else do anything to you, was there any other person there?	

(29) Case 7 – Cross-examination

Original answers & questions with author's translations	Interpreter's renditions
A- *¿Cómo voy a entrar a una casa que no es mía y ni sé como… si tiene animales o no?* (Why would I go into someone else's house when I don't even know how.. if they have animals or not.)	How could I have gone into a house that wasn't my own and I didn't know if there were animals there or…
Q- Yes, but you'd gone to the front door hadn't you?	

(30) Case 11 – Cross-examination

Original answers & questions with author's translations	Interpreter's renditions
A- *Eh, y, ¿y entonces con qué me hirió el dedo?* (Uh, and and then how did he hurt my finger?)	Well how did he cut my finger then?

Q- Well he, I don't know how you cut
your finger, I'm putting to you that this
defendant did not take any knife out of
his bag.

(31) Case 14 – Cross-examination

Original answers & questions with author's translations	Interpreter's renditions
A- *Si yo tengo a mi padre y confío en él ¿eh? Y yo no veo nada erróneo y veo a mi padre amigo mío, ¿podría yo desconfiar de quien es mi mejor amigo?* (If I have my father and I trust him, right? and I don't see anything wrong and I see my father as my friend, how could I not trust my best friend?)	If I have my father and I trust him, I trust fully in him and I don't see any anything wrong, will I think that there is anything wrong?
Q- And is it true also that until June 1995 you were not aware that there was anything wrong between your wife and G.?	

6.2.4.6 *Questions asking for permission to speak*

Examples 32–34 were extracted from examination-in-chief. They show an awareness on the part of the witnesses of their submissive role in the courtroom, where they feel they need to ask permission even to answer the questions put to them. In all instances their lawyer or the magistrate respond emphatically with either a "yes please" or a "yes, yes". Although this can be regarded as assigning more power to the courtroom, these extreme shows of deference detract from the principal line of questioning and hence lead to a loss of counsel control, as they are unexpected interventions.

(32) Case 2 – Examination-in-chief

Original questions & answers with author's translations	Interpreter's renditions with author's translations
Counsel- So can you tell the court in your own words, exactly how the accident occurred	*¿Puede decirle a la corte con sus propias palabras cómo ocurrió el accidente?* (Can you tell the court in your own words how the accident occurred?)
Witness- *Sí.* (Yes)	Yes [LONG PAUSE]
Witness- *¿Puedo empezar?* (May I start?)	May I start?
Counsel- Yes, please.	

(33) Case 11 – Examination-in-chief

Original questions & answers with author's translations	Interpreter's renditions with author's translations
Counsel- Can you state your full name.	*Deje la Biblia encima no más. Diga su nombre completo señora.* (Just leave the Bible there. Say your full name ma'am.)
Witness- *¿Lo digo ahora?* (Should I say it now?)	Do you want it right now?
Counsel- Sorry?	Do you want it right now?
Counsel- Yes, yes.	

(34) Case 4 – Examination-in-chief

Original questions & answers with author's translations	Interpreter's renditions with author's translations
Witness- *¿Yo puedo explicar mis razones?* (Can I explain my reasons?)	Can I tell you my reasons?
Magistrate- Yes, please.	

Example 35 is taken from cross-examination and is different from the previous examples. Here the witness asks if he can say something, not as a deferential request for permission to speak, but more as a way of regaining control of the situation (b.1). This is evident in the fact that the witness interrupts the lawyer to start speaking before the lawyer is able to finish his question (a.1), and in that the witness does not wait for an affirmative response in order to continue his turn. Not only does this witness interrupt the lawyer's turn at talk, he also interrupts the interpreter's who has to deliver her interpretation in segments (c.2). By doing this the witness managed to gain full control of the line of questioning, forcing the lawyer to change his question to follow the topics introduced by the witness (e.1). Whereas the lawyer had commenced his turn with what was to be a challenging "I put it to you that" clause, he ends up asking an open Wh- question to clarify a point raised by the witness and uses the third person instead of the first person in making such a question.

(35) Case 10 – Cross-examination

Original questions & answers with author's translations	Interpreter's renditions with author's translations
a.1 Counsel- So, I put it to you] [INTERRUPTED BY THE WITNESS]	a.2 [NO INTERPRETATION]
b.1 Witness- [*¿Puedo decir algo?* (Can I say something?)	b.2 Excuse me, could I say something?

c.1
Witness- *Pero, todavía ella siguió enviando*
el dinero con John a la casa.
(But, she kept on sending me the money
through John to my place)

c.2
But she kept on]
[INTERRUPTED BY THE WITNESS]

d.1
Witness- [*eso lo puedo comprobar.*
(I can prove that.)

d.2
… on sending the money through John
to my place, and I'm able to prove that.

e.1
Counsel- When does he say that that
money was still being sent by John?

6.2.5 Counsel resorting to the use of the third person

One of the norms of interpreting is that the exchange must be carried out in the first person. This ensures that the main participants speak to each other rather than to the interpreter and that the interpreter remains as "invisible" and inconspicuous as possible. It also reinforces the need for accuracy of interpretation. When the third person is used, the interpreter is forced to be inaccurate, by omitting the prefacing clause "Please ask her/him". The data for this study have shown that the exceptions when counsel use the third person to address the witness are when they lose control of the flow of information. When this occurs they address the interpreter as if to place the responsibility or the blame on the interpreter. This tactic is normally used as a face saving mechanism in cross-examination and as a signal for help in examination-in-chief, when counsel reach frustration point. We have seen in examples 24 and 35 above how the prosecutor resorted to addressing the interpreter rather than the witness; in example 24 after a challenging question from the witness and in example 35 after an interruption to the lawyer's question. In this way the lawyer pretends to save face by excluding the witness from the exchange altogether and by so doing showing who is really in control. In other words, the lawyer makes clear that the witness who does not speak English can only be included if counsel so desires it. By addressing the interpreter, we can also deduce that the lawyer is somehow blaming the interpreter for the loss of control and asking her/him to rectify it. In example 36 below the lawyer loses control by allowing the witness to interrupt his question before he has finished formulating it. To save face he then rebukes the witness through the interpreter by saying "Can you ask him to wait until I finish the question" (d.1). Once again, instead of rebuking the witness himself, he filters his annoyance through the interpreter.

(36) Case 14 – Cross-examination

Original questions & answers with author's translations	Interpreter's renditions with author's translations
a.1 Counsel- Is that your signature]? [INTERRUPTED BY THE WITNES]	*a.2* [NO INTERPRETATION]
b.1 Witness- [yeah	*b.2* *¿Esa es su firma?* (Is that your signature?)
c.1 Witness- yeah, yeah	*c.2* [NO INTERPRETATION]
d.1 Counsel- Can you ask him to wait until I finish the question?	*d.2* *Si puede esperar hasta que le terminen de decir la pregunta.* (If you can wait until they finished asking the question.)

Example 37 illustrates an incident where the witness simply answers "yes" twice to a request to tell the court what happened using the clause "can you tell the court…" (a.1 & c.1). Here, out of frustration, as evidenced by his laugh, the magistrate interrupts and uses the third person to ask the witness through the interpreter to tell the court what happened (e.1). The interpreter then takes on an extra role, implicitly allocated to her through her being introduced as an active participant in the exchange. Not only does the interpreter tell the witness to "be so kind as to say it", but she also tries to comfort the witness by asking her to calm down (e.2). We can see then that when the communication seems to break down or counsel control is lost, the powerful courtroom participants implicitly transfer their power to the interpreter. By using the third person, the interpreter is no longer under the obligation to interpret accurately what was uttered. She is given the freedom to paraphrase and express the contents in whichever way she feels.

(37) Case 11 – Examination-in-chief

Original questions & answers with author's translations	Interpreter's renditions with author's translations
a.1 Counsel- Now, can you tell the court what happened near Marion St and Queen St Auburn?	*a.2* *¿Puede decir a la corte qué pasó cerca de la Marion st y Queen st en Auburn?* (Can you tell the court what happened close to Marion St and Queen St in Auburn?)
b.1 Witness- Mm	*b.2* Mm, I can.

c.1	*c.2*
Counsel- Yes, now, can you tell the court what happened?	*¿Puede decirle a la corte qué pasó?* (Can you tell the court what happened?)
d.1	*d.2*
Witness- *Sí.* (Yes)	Yes.
e.1	*e.2*
Magistrate- [LAUGHS — TO THE INTERPRETER:] Would would she do so, please?	*Tenga la bondad, (tranquila, no más) tenga la bondad de decirlo señora.* (Be so kind as to [calm down dear] be so kind as to say it ma'am.)

The use of the third person is common in untrained, "natural" (Harris & Sherwood, 1978) interpreters. Bilinguals who act as interpreters without training are not aware of issues of accuracy and do not adhere to any specific role. The above example can be compared to Pöchhacker & Kadric's example of untrained hospital interpreters in Austria. They cite an instance where a cleaner is asked to act as interpreter for a patient and visibly goes beyond the limits of the interpreter role by making direct contributions to the content. They explain that:

> … the interpreter combines her (indirect) rendition of Tanja's instructions with a reassuring comment of her own. Apart from taking the initiative to calm the boy down … the interpreter also assumes responsibility for the boy's answers and actions. (1999: 174–75).

Evidence seems to indicate that the choice of grammatical person in addressing the participants in an interpreter-mediated encounter, is not an insignificant one. Wadensjö (1997) mentions the different possibilities of address among interlocutors of interpreted discourse which lead to a shift of footing (Goffman, 1981). Harris (1981) quotes the case of a court interpreter who at times deliberately used the third person in her interpretation to distance herself from the contents of a sensitive war crimes trial. We can see that the roles of each courtroom participant are not static. This can also be seen in example 38 below, where the interpreter starts interpreting in the first person but changes to "he says" when the expletive "fuck" is introduced (a.2).

(38) Case 13 – Cross-examination

Original questions & answers with author's translations	Interpreter's renditions with author's translations
a.1	*a.2*
Prosecutor- Uh… you said that, part of your evidence was that you used the word "fuck", do you agree with that?	*Usted… parte de lo que usted declaró… dice que usted usó la palabra "fuck", ¿está de acuerdo con eso?*

> (You… part of what you stated… he said that you used the word "fuck", do you agree with this?)

Mason (1999: 152) comments that "… the footing of each party is subject to constant renegotiation, with the stance of the primary interlocutors often influencing the interpreter's style". Witnesses often resist their submissive role and attempt to take control, sometimes successfully, by asking questions, not answering relevantly, making extra comments, and interrupting. Interpreters, on the other side, often unnoticed, take on extra roles by manipulating the questions and the answers which either helps to perpetuate the strict roles or to break them, or they are assigned extra roles by the bench and the lawyers when addressed directly. The fact that the interpreter is the only one who can understand both languages and is an independent professional, gives her/him immense potential power, which is only very rarely exercised.

6.2.6 The interpreter answering the witness's question

On a few occasions, interpreters take it upon themselves to answer the witness directly. When this happens the original question is not interpreted and the English speaking courtroom is excluded from the exchange. As no-one but the interpreter and the witness understand the contents of such exchanges, this could easily be misconstrued as illicit conversations between them. At no point does the interpreter receive a rebuke from the bench or the lawyer. This phenomenon is triggered by different factors. With all of them, the interpreter temporarily forgets her/his role of interpreter and takes on the role of active participant. Whereas the appropriate conduct would be to simply interpret the question formulated by the witness which would in turn be heard by the courtroom and answered by the lawyer or magistrate, if they choose to do so, the interpreter on occasion yields to the temptation to answer the question her/himself. Examples 39 and 40 below show instances when the witness does not understand the counsel's question, asks for clarification and the interpreter simply repeats the original interpreted counsel question. This saves the court some time, as the norm would be for the interpreter to interpret the Spanish question, wait for counsel to repeat the question and re-interpret counsel's question. However, no-one but the interpreter and the witness knows that it is a repetition of the original question.

(39) Case 11– Examination-in-chief

Original questions & answers with author's translations	Interpreter's renditions with author'stranslations
a.1 Witness- ¿Hm?	a.2 *¿Por qué lo siguió?* (Why did you follow him?)
b.1 Witness- *Para, o sea para "argue", o sea discutir más.* (To, I mean to argue, I mean to keep arguing.)	b.2 Eh to, I followed him to give him to, to argue more.

(40) Case11 – Cross-examination

Original questions & answers with author's translations	Interpreter's renditions with author'stranslations
a.1 Witness- *¿Cuando fui a ver a mi nena?* (When I went to see my girl?)	a.2 *Sí, ¿qué distancia estaba usted de ellos?* (Yes, how far were you from them?)
b.1 Witness- *Estaba como… estaba más lejito que de aquí a la puerta la nena, estaba más lejos.* (I was about… she was a little bit further than from here to the door, my daughter, she was further away.)	b.2 Yes, the child was further away than from here to the door.

In examples 41–44 the witness asks for some clarifying additional information and the interpreter provides the answer him/herself. In example 41 the interpreter answers the witness first with a *sí* (yes) and then remembers to interpret the witness's question "My husband?". This shows that at least on this instance, but possibly on all the others, the interpreter's direct response is involuntary, somewhat of a slip.

(41) Case 11 – Examination-in-chief

Original questions & answers with author's translations	Interpreter's renditions with author's translations
a.1 Witness- *¿Mi esposo?* (My husband?)	a.2 *Sí.* (Yes.) [TO THE WITNESS] My husband? [TO THE COURT]

In example 42 the interpreter tries to answer the witness's question but fails, having to resort to including the English speaking court again when the witness states he doesn't understand. The interpreter's words are interesting when he states "He doesn't understand what I'm saying, can I]". The interpreter clearly states that the witness does not understand him rather than does not understand the original

question and is about to ask for permission to continue to explain what he, the interpreter, means, at which point he is interrupted by the lawyer who posits the next question. The interpreter in this instance assumes the responsibility for ensuring the witness's understanding, when such is not his to assume.

(42) Case 3 – Cross-examination

Original questions & answers with author's translations	Interpreter's renditions with author's translations
a.1 Witness- *¿Cuál es el final de la estación?* (Which is the end of the station.)	a.2 *el final de la estación que está más cerca de la ciudad.* (The end of the station which is closest to the city) [TO THE WITNESS]
b.1 Witness- *Disculpe yo no le entiendo.* (I'm sorry I don't understand you.)	b.2 He doesn't understand what I'm saying, can I] [INTERRUPTED BY COUNSEL]

Example 43 is an instance where the interpreter anwers the witness's answer without interpreting the witness's question or his answer to the court at all.

(43) Case 10 – Cross-examination

Original questions & answers with author's translations	Interpreter's renditions with author's translations
a.1 Witness- *¿Desde marzo?* (From March)	a.2 *del 92.* (Of 92) [TO THE WITNESS]

Example 44 presents an inadmissible exchange between the interpreter and the witness. After the fourth consecutive turn (a-b), the interpreter decides to interpret the witness's question, which is subsequently answered by the lawyer after which another question follows and finally the desired answer is provided.

(44) Case 14 – Cross-examination

Original questions & answers with author's translations	Interpreter's renditions with author's translations
a.1 Witness- *¿Lo qué?* (The what?)	a.2 *Esto, haber ocurrido.* (This, has happened.) [TO THE WITNESS]
b.1 Witness- *¿Lo qué?* (The what?)	b.2 *Lo que hablaron.* What you spoke about.
c.1 Witness- *¿Lo qué ocurrió en julio?* (What happened in July?)	c.2 What do you mean about July, what happened?
d.1 Counsel- That your wife told you that	

In example 45 the interpreter uses an incorrect term for "screen door", a term that also means "screen" but is not used to mean "security door". As the witness questions the term, the interpreter automatically and correctly assumes that the witness did not understand the term he used. He starts to explain what he means to the witness (a.2) but stops himself shortly afterwards (b.2) to explain to the court what he is doing, thus keeping the English speaking courtroom informed. Even in a case like this, the interpreter could have easily interpreted the original question posed by the witness and allowed the lawyer to explain what a screen door was.

(45) Case 7 – Cross-examination

Original questions & answers with author's translations	Interpreter's renditions with author's translations
a.1 Witness- *¿Cómo una mampara?* (What do you mean a screen?)	*a.2* *Esas puertas/* (Those doors/) [TO THE WITNESS]
b.1	*b.2* She doesn't know the the word I used [TO THE COURT] *Una puerta de esas que ponen para seguridad* [TO THE WITNESS] (One of those doors used for security)
c.1 *Pero que se ve para el otro lado, se ve todo.* (But you can see through, you can see everything)	*c.2* Yes, one you can see through.

Example 46 is the only one where the witness is clearly addressing the interpreter directly, and only because the lawyer is discussing a point with the magistrate about a previous answer which the interpreter failed to interpret simultaneously to the witness. The witness was not being asked a question at this stage and so the interpreter felt it unnecessary to interpret. However, the witness is not aware of this and demands an interpretation.

(46) Case 13 – Examination-in-chief

Original questions & answers with author's translations	Interpreter's renditions with author's translations
a.1 Witness- *¿Qué es lo que me dice?* (What's he saying to me?) [TO THE INTERPRETER]	*a.2* *Eh, perdón, usted indicó eh, el lado izquierdo de su chaqueta, la solapa izquierda de la chaqueta.* (Uh, I'm sorry, you indicated uh, on the left of your jacket, the left lapel of you jacket) [TO THE WITNESS]

On all occasions when the interpreter answers the witness's questions the English speaking participants are excluded from the exchange. This leads to an inevitable loss of counsel control, which from the data does not appear to be regarded as much of a problem by the counsel concerned. In any event, annoyance is not verbalised by anyone.

6.2.7 Interruptions to counsel's questions by the witness, the interpreter, the magistrate and the counsel for the other side

In the Local Court the ultimate authority is held by the magistrate who has the power to interrupt at any time, decide on admissibility of evidence, and rule on whether to sustain or overrule objections. The lawyers are second in the hierarchy, with power to pose the questions, introduce the topics and object to the other side's questions. Witnesses have no real power assigned to them as they are only permitted to answer questions relevantly. However, they do not always adhere to such a submissive role and sometimes ask questions themselves, interrupt the lawyers, introduce new topics, and even make threats and rebukes. The interpreter is supposed to be a silent, passive participant. By this is meant that they are to interpret from one language to another only what each of the active participants says. However, this is not always the case either. Interpreters sometimes answer questions instead of interpreting them, make comments about questions and answers, volunteer information, interrupt to ask for clarification, protest on not being allowed to perform their work or for other less justifiable reasons, make subtle changes to questions and answers, and are sometimes given extra control by the lawyers or the bench themselves. Whenever there is an unexpected change to the witness's role, counsel loses some control of the situation. Whenever the interpreter shifts from her/his strict role, the change is not always detrimental to the lawyer, it may either add to or subtract from counsel control. Control is also obviously lost when the magistrate interrupts and when objections are sustained.

6.2.7.1 *Witness interruptions*
Witness interruptions are more difficult for counsel to handle when there is an interpreter involved. In a monolingual situation, counsel can interrupt the witness at any time, as he/she can understand what the witness is saying. When there is an interpreter involved, counsel cannot interrupt the witness, s/he can only interrupt the interpreter's rendition. However, when this happens, the interpreter usually protests to the bench, claiming that s/he has not finished interpreting what has been said and hence is not being permitted to do her/his job accurately. This is an obvious loss of counsel control which interferes with counsel power strategies.

Example 47 illustrates a loss of control by the prosecutor, beginning at question one (1.a). As is normally the case with cross-examination, it begins on common ground, re-establishing undisputed information that was given in evidence-in-chief. This is what the prosecutor in example 47 is attempting to do with his first question in the extract, to which he receives a negative answer from the witness (b.1). This initial failed attempt leads him to re-ask the question (c.1) which is again denied and which gives the witness the opportunity to add extra irrelevant information (d.1 & d.2). The magistrate then interrupts (e.1), taking control away from the prosecutor by remarking that the line of questioning was unnecessary. As the prosecutor submits to the magistrate's higher authority, the witness takes the opportunity to interrupt and rebuke the prosecutor for examining him, possibly taking courage from the magistrate's interruption, presuming the magistrate to be on his side (e.1). The prosecutor interrupts the witness in a loud voice (f.1), trying to regain control, but the interpreter continues to interpret what the witness said in his previous answer (f.2). The prosecutor, still in a loud voice, tries to stop the interpreter (g.1) but to no avail, finally appealing to the magistrate for help (h.1). The magistrate is able to regain order by simply saying "Just wait for the questions please and answer them" (i.1). We can see a power struggle here between the prosecutor, the witness and to an extent the interpreter. The prosecutor loses control with the first interruption by the magistrate and is not able to regain it until the magistrate intervenes again. The interpreter is not intimidated by the prosecutor and is determined to finish interpreting the witness's last remark. Had the interpreter not been there, the prosecutor could have managed the situation more smoothly.

(47) Case 13 – Cross-examination

Original questions & answers with author's translations	Interpreter's renditions with author's translations
a.1 Prosecutor - Uh… you said that, part of your evidence was that you used the word "fuck", do you agree with that?	*a.2* *Usted… parte de lo que usted declaró… dice que usted usó la palabra "fuck", ¿está de acuerdo con eso?* (You… part of what you stated… he said that you used the word "fuck", do you agree with this?)
b.1 Witness - *no.*	*b.2* no
c.1 Prosecutor - You didn't use that word at all.	*c.2* *¿No usó esa palabra?* (You didn't use that word?)

d.1	*d.2*
Witness- *No usé, porque yo no sé el significado de eso, no sé si le he hablado, porque estaba borracho.* (I didn't use, because I don't know the meaning of that, I don't know if I spoke to her, because I was drunk.)	Uh, I don't know the meaning of that word, I don't know if I uh said it or if I didn't say it because I was drunk.
e.1	*e.2*
Magistrate- If you're seeking to break down the defence's evidence I've heard the examination-in-chief.	[NO INTERPRETATION]
f.1	*f.2*
Prosecutor — Alright Your Worship.	[NO INTERPRETATION]
g.1	*g.2*
Witness- *¿Qué tanto es lo que me reclama, quién me va a pagar los daños y perjuicio?* (What's all this questioning? Who's going to pay me damages?)	
h.1	*h.2*
Prosecutor- Just] [TO THE WITNESS IN A LOUD VOICE]. [INTERRUPTED BY THE INTERPRETER]	Why are] [INTERRUPTED BY COUNSEL]
i.1	*i.2*
Prosecutor- hang on] [IN A LOUD VOICE] [INTERRUPTED BY THE INTERPRETER]	[why are you making so much fuss, who's going to pay my damages
j.1	*j.2*
Prosecutor- Sir] [TO THE MAGISTRATE] [INTERRUPTED BY THE MAGISTRATE]	[NO INTERPRETATION]
k.1	*k.2*
Magistrate- Just wait for the questions please and answer them.	*Por favor conteste las preguntas no más.* (Please just answer the questions.)
l.1	*l.2*
Prosecutor — Thank you, Your Worship.	[NO INTERPRETATION]

Example 48 shows an instance where the witness interrupts counsel just as he is about to put a challenging statement to the her (b.1). This evidences a significant loss of control. As it was explained in Chapter 2, the "I put it to you that" clauses normally have the effect of disarming the witness, the witness finding it difficult to respond to a statement rather than a question. In this case, the witness interrupts before such a statement from counsel is finished, starting the utterance with *pero* (but) and asking a question of clarification.

(48) Case 5 – Cross-examination

Original questions & answers with author's translations	Interpreter's renditions with author's translations
a.1 Counsel- If you could ask the witness please, people at the meeting were enthusiastic about putting their views forward?	*a.2* *Las personas en la reunión ¿estaban entusiastas acerca de exponer sus puntos de vista?* (The people at the meeting, were they enthusiastic about presenting their points of view?)
b.1 Witness- *No realmente.* Not really.	*b.2* (Not really)
c.1 Counsel- I… put it to you] [INTERRUPTED BY THE WITNESS]	*c.2*
d.1 Witness- *pero quiero preguntarle a él que si él se refiere a los miembros del de management committee o a las otras personas interesadas en la amnistía* (but I want to ask him if he's referring to the members of the the management committee or to the other people interested in the amnesty?)	*d.2* But I want to ask you uh are you referring to the members of the committee or the other people interested in the amnesty?

Counsel is then led to abandon his initial "I put it to you that" statement and to answer the witness's question by further clarifying his previous question (e.1).

(48 continued)

Original questions & answers with author's translations	Interpreter's renditions with author's translations
e.1 Counsel- All all people at the meeting when they said something they believed what they wanted, their point of view.	*e.2* *Todas las personas en la reunión cuando dicen algo eh se refieren a su propio punto de vista.* (All the people at the meeting when they say something, uh, they refer to their own point of view.)

The witness's next answer (f.1) shows a continuation of her control of this exchange. She responds by saying "Well I can't answer that question" which is incorrectly interpreted as "I wouldn't be able to answer that question" (f.2). Whereas the original is a certain negation, expressed with the use of the indicative mood, the interpretation is mitigated with the use of the conditional "wouldn't" and implies a more hypothetical position. Note that even though the counsel's

question (e.1) was not interpreted accurately "All the people at the meeting when they say something, uh, they refer to their own point of view", it follows the same vein. Counsel is asking a question that is impossible for the witness to answer and that should have been disallowed, as it contravenes the rules of evidence. Under the rules of evidence witnesses cannot answer for other people. The witness could not possibly say whether other people believed what they were saying or were referring to their own point of view.

(48 continued)

Original questions & answers with author's translations	Interpreter's renditions with author's translations
f.1 Witness- *Bueno yo no le puedo contestar esa pregunta.* (Well, I can't answer that question.)	f.2 I wouldn't be able to answer that question.
g.1 Counsel- Did people appear to put their point of view strongly?	g.2 *¿Las personas parecían que estuvieran exponiendo su punto de vista de una manera enfática?* (People seemed to be expressing their point of view in an emphatic way?)

Following this answer counsel changes his question by adding the word "appear" (g.1), making the question more relevant to the witness and more adherent to the rules of evidence. This question, however, fails also, with the witness explaining that such an answer would be very subjective (h.1).

(48 continued)

Original questions & answers with author's translations	Interpreter's renditions with author's translations
h.1 Witness- *Aparte de las tres personas ah que ya mencioné no puedo decir de los demás porque es una cuestión muy subjectiva.* (Apart from the three people uh that I already mentioned I can't say about the others because that's a very subjective thing.)	h.2 Apart from those three people that I already mentioned I wouldn't be able to say because it is a very subjective uh thing.

Counsel is then forced to admit that the witness is right: "Right I accept that" (i.1), and thus relinquishes more control to the witness. His next question is also emphatically rejected in the form of "Uh, what do you mean he didn't, what do you mean he didn't?, yes he uh said many things, he talked a lot" (j.1) which the interpreter changes to simply "He said many things" (j.2). Once again counsel's next question starts with the marker "right" (k.1).

(48 continued)

Original questions & answers with author's translations	Interpreter's renditions with author's translations
i.1	*i.2*
Counsel- Right I accept that. Uhm but in relation to Mr A., apart from those words that you repeated he said, that's that's basically, that's, there were no other words.	*Del Sr A. aparte de lo que usted dijo que que él la lo que él dijo en esa reunión, no hay nada más, ¿no dijo nada más aparte de eso?* (About Mr A, apart from what you said that that he…what he said at that meeting, he didn't say anything else, he didn't say anything else apart from that?)
j.1	*j.2*
Witness- *¿Ah cómo no, cómo no?, si él eh dijo muchas cosas, habló mucho.* (Uh, what do you mean he didn't, what do you mean he didn't?, yes he uh said many things, he talked a lot.)	He said many things.
k.1	
Counsel- Right, he was a former president, wasn't he?	

The beginning of each turn presents an interesting insight into who controls the exchange. Counsel starts his first question in the third person, surrendering control to the interpreter. His only attempt to put his version of the facts forcefully to the witness is immediately thwarted by the witness's quick interruption. His next two questions are in response to the witness's turns and his last two questions commence with the marker "Right", indicating either submission or agreement. In contrast, the witness's turns commence with a negative marker "Not really", a disjunctive marker which initiates an interruption "but", a discourse marker that initiates a refusal to answer "well", a disclaimer "apart from…" which initiates another negative answer, and a challenging question "what do you mean?".

6.2.8 Interpreter interruptions

There are different types of interpreter interruptions. The data show the following interpreter interruptions:

1. To ask for clarification of a question or an answer (e.g. 49).
2. To correct a question when it is an obvious unintentional mistake (e.g. 50)
3. To finish interpreting a previous, interrupted utterance (e.g. 51)
4. To provide unsolicited information (e.g. 52)
5. To offer a personal opinion (e.g. 53)
6. To protest to the bench for being interrupted (e.g. 54).

Any interpreter interruption to some extent impinges on the amount of control held by the examining counsel, as such interruptions are not planned by him/her and therefore interfere with counsel's line of questioning. However, some interruptions are more significant than others. Some interruptions are simply ignored by the English speaking court participants whereas others are taken up. Example 49 is one type of interruption that is unavoidable. When the interpreter does not understand the original utterance s/he cannot interpret it, hence the necessity to interrupt to request a repetition. Such an interruption can spoil counsel's possible strategy if s/he was deliberately being confusing or vague or if a quick, spontaneous answer was sought.

(49) Case 3
Interpreter - Excuse me uh I couldn't understand everything, could you repeat it, please.

The type of interruption presented in example 50 is unnecessary and easily avoidable. Had the interpreter adhered to his strict role of mouth piece, he would not have interrupted. Here the interpreter realises that counsel made a mistake with the name. Instead of interpreting the mistake and letting the witness question it, he decides to correct it and avoid confusion. However, while this conversation between the lawyer and the interpreter is taking place, the witness is being excluded, possibly not understanding the contents of the exchange. This interpreter interruption however, may have helped the lawyer maintain control rather than lose it, as it saved him from losing some amount of face.

(50) Case12
Counsel- … did you see the doctor's wife, Mrs G., in the surgery?
Interpreter- Mrs G.?
Counsel- Yes.
Interpreter- That's the name of the doctor]
Counsel-   Sorry, that's Mrs N., Mrs N.
Interpreter- Oh, I'm sorry.
Counsel- Sorry, you're right.

Example 51 shows a similar incident to example 47, where the interpreter ignores counsel's instructions to stop talking in order to complete her interpretation of the utterance, trying to adhere to the interpreter's code of ethics which directs interpreters to interpret fully and accurately without any omissions or additions.

(51) Case 13 – Cross-examination

Original questions & answers with author's translations	Interpreter's renditions with author's translations
a.1	a.2
Witness- *Sí, yo le hablé pero no sé el significado de esa palabra.*	Yeah, I used those words] [INTERRUPTED BY COUNSEL]

(Yes, I spoke to her but I don't know the
meaning of that word)

b.1	b.2
Counsel- No, no, stop there] [INTERRUPTED BY INTERPRETER]	[but I don't know what those words are.
c.1	
Counsel- Stop that, I'm just trying to get the three charges straightened up.	

All instances of interpreter interruptions form deviations from the interpreter's strict role of passive, inconspicuous participant. However, the most salient of these are when interpreters take it upon themselves to offer advice, provide unsolicited information or offer opinions. Example 52 is one of these, where the interpreter takes on an expert witness role, providing information about a Spanish name that can be used for males and females. Although her information was correct and could have been useful under the circumstances, the magistrate and the prosecutor choose to ignore the interpreter and not acknowledge her comments at all, with the prosecutor later asking the witness what his name was to clarify the issue. Hence, the interpreter's interruption was unnecessary and unjustified. On instances such as these, where the interpreter's utterances are ignored, there is no loss of counsel control.

(52) Case11

Original questions & answers with author's translations	Interpreter's interventions
a.1 Prosecutor- I call Carmen P.	a.2
b.1 Magistrate- Carmen or Carmelo? [TO THE PROSECUTOR]	b.2
c.1 Prosecutor- I have Carmen. [TO THE MAGISTRATE]	c.2
d.1 Magistrate-Is it the same person? Carmelo is the right name is it? [TO THE PROSECUTOR]	d.2 His name is Carmen.
e.1 Magistrate-Is that a male name, is it? [TO PROSECUTOR]	e.2
f.1 Prosecutor-I thought, I think Carmen is a female. [TO THE MAGISTRATE]	f.2 Carmen is also a male name, he was a pianist, Carmen] [INTERRUPTED BY PROSECUTOR]

g.1
Prosecutor- I think there's a confusion in
relation to that.
[TO THE MAGISTRATE]

In example 53, the same interpreter in the same case, offers her opinion through the channel of the witness's answer. This is done by changing the contents of the witness's answer to express her feelings about the exchange. This is a remarkable deviation from the interpreter's role and an abuse of the powerful position of being the only one in the room who understands both languages. The cross-examiner in this example had asked the same question a number of times, asking if the witness had looked at the defendant "in a nasty way". The way this is interpreted is obviously misunderstood by the witness who speaks a different regional dialect of Spanish from the interpreter. The interpreter's rendition is typical of the dialect spoken in her country of origin. In frustration, after a pause, the witness answers "I sort of, I mean, I don't understand those questions" (b.1). The interpreter however, says "You, the interpreter also speaks for herself, Your Worship, the answer was: your questions are very confusing" (b.2). She addresses the magistrate to explain that she agrees with the witness that the questions are confusing. At no time does the witness say that the questions were confusing. He says he does not understand them, putting the blame on his understanding rather than on the questions themselves. It is difficult to understand the interpreter's motivation for changing the content of the answer and for offering her opinion about the cross-examiner's questions. It can be speculated that she was feeling frustrated herself because of the communication breakdown or uncomfortable with the aggressive nature of the questioning, thus taking Goffman's mediator role (1959), showing her loyalty for the witness and hence a lack of impartiality which is essential in court interpreting.

(53) Case 11 – Cross-examination

Original questions & answers with author's translations	Interpreter's renditions with author's translations
a.1 Counsel - Well you looked at uh, you looked at him in a very nasty way, didn't you?	a.2 *Pero usted a él lo miró feo.* (But you looked at him in a nasty way.)
b.1 Witness- [PAUSE] *Casi que, o sea, no entiendo esas preguntas.* (I sort of, I mean, I don't understand those questions.)	b.2 You, the interpreter also speaks for herself, Your Worship, the answer was, your questions are very confusing.
c.1 Counsel- Well, with respect, Mr P., they're not confusing at all.	

Example 54 shows another incident where the cross-examiner tries to enforce his power by interrupting the interpreter once he had heard what he needed to hear from the answer (c.2 & d.1). This time the interpreter interrupts the cross-examiner, disregards his question and complains about his not allowing her to interpret the answer fully by saying: "I'm sorry but you are talking at the same time and what he said is longer, and it's got more explanation and I didn't finish" (d.2). The magistrate supports the interpreter (e.1) to which counsel is forced to apologise and lose control (f.1). The power is thus shifted to the interpreter who poses the next question to the witness: "Could you tell it to me again please?" (f.2). O'Barr (1982) found that simultaneous speech in the form of counsel interruptions was a tool used by lawyers to maintain control. This is very difficult to achieve and often impossible when an interpreter is being used, as most interpreters are unaware of the power games played by lawyers in the courtroom.

(54) Case 10 – Cross-examination

Original questions & answers with author's translations	Interpreter's renditions with author's translations
a.1 Witness - *Explico de nuevo*] [INTERRUPTED BY THE INTERPRETER] (I'll explain again)	*a.2*] I explain again.
b.1 Witness -… *que desde marzo hasta julio no s ignifica que ella no me haya cancelado.* (…that from March to July it doesn't mean that she didn't pay)	*b.2* That from March to July it doesn't mean that she didn't pay.
c.1 Witness- *Ahora, si yo no tomé ningún acto de echarla porque yo le prometí que no la iba a echar y ella me prometió a su vez que me cancelaba todo el dinero una vez que saliera el juicio que tenía con su marido, su exmarido.* (Now, if I didn't take any "act" to throw her out because I promised that I wouldn't throw her out and she promised me in return that she would pay the money once her case with her husband, her ex-husband was settled.)	*c.2* And also I had promised her that I wouldn't evict her] [INTERRUPTED BY COUNSEL]
d.1 Counsel- [So you're saying that she might have paid you in that period.	*d.2* I'm sorry but you are talking at the same time and what he said is longer, and it's got more explanation and I didn't finish.
e.1 Magistrate- Yes, just finish the] [INTERRUPTED BY COUNSEL]	*e.2*

f.1	*f.2*
Counsel- [Sorry, Your Worship.	*¿Me lo puedes volver a decir por favor?*
	(Could you tell it to me again please?)

6.2.9 Magistrate's interruptions and counsel's objections

The data show that magistrates interrupt the proceedings for a number of reasons: to regain control on behalf of counsel, as we have seen in previous examples, to ask questions themselves for their own clarification, to rule on objections or to rebuke counsel in some form. For most of these instances the interpreter excludes her/himself from the situation. Some interpret what is being said simultaneously in a whisper to the witness, others remain silent, unless the magistrate is addressing the witness. Nevertheless, magistrates' interruptions interfere with the lawyers' control of the evidence, and at times lead to an uprising from the witness, who takes advantage of the situation to also take control. Similarly, objections from the other side have the same effect. Matoesian also found that "… objections transform both the participation structure, the particular configuration of discourse identities and the relevant activities they may engage in…" (1993: 111). As objections always need to be either sustained or overruled by the magistrate, I will also discuss them under this section.

> (55) Case 11
> Counsel 1- … And in relation to that he was not looking for any trouble with you?
> Interpreter- *Y él*]
> Counsel 2- I object, Your Worship.
> Magistrate- Not in that form.

> (56) Case 9
> Counsel- Uh, could you… tell the court what conversation took place with the police and you?
> Interpreter- *¿Puede*]
> Magistrate- No.
> Counsel- Uhm, sorry, I withdraw that Your Worship.

In examples 55–56 we see how the interpreter is interrupted before s/he is allowed to interpret the question, in example 55 by the counsel from the other side with an objection which is sustained by the magistrate, and in example 56 by the magistrate, as the witness was unrepresented. Unlike the cases where the interpreter continued to interpret the witness's answers simultaneously when interrupted by counsel, here they immediately stop. This can be due to two reasons: the interpreter may be deferring to the magistrate's authority to be told whether the question should be interpreted or not, or the interpreter may feel that interpreting a witness's answer is more important than interpreting a lawyer's question, thus trying to equalise the

power disparity between the two. As sometimes objectionable questions are used deliberately by counsel in order to prompt their clients or to introduce information that would otherwise not be permitted, the non-interpretation of such objections often interferes with counsel's tactics and can be detrimental to the non-English speaking witness.

In example 57 we see an instance where frustration has led the prosecutor to use a leading question with his witness, which is correctly objected to. The magistrate's laugh appears to indicate that he sympathises with the prosecutor, as this particular witness has immense difficulty in giving relevant evidence. Had the case been a monolingual one, the witness would have heard and understood the question and taken up the prompt. In this case, the interpreter's silence aids the case for the defence, as the witness could not take advantage of the ruled out question.

(57) Prosecutor- Did you see… [PAUSE] did you see your husband get pushed?
Defense Counsel- Your Honour, I object to that question, Your Worship, please.
Magistrate- [LAUGHS] Why don't you just ask her if she saw anything happening?
Prosecutor- I tried that. Now, uh, did you see anything happen between your husband and the defendant?

(58) Magistrate- Ms S. uh, I would appreciate it if you didn't chew gum or whatever you're doing, it really isn't very ethical.
Counsel- I apologise, Your Worship.
Magistrate- I'm sure you wouldn't do it in the Supreme Court.
Counsel- I apologise, I have a bad throat at the moment.

Example 58 is one of the few where the magistrate rebukes counsel for an action that is unrelated to the evidence, in this case the chewing of gum. Such reprimands diminish counsel's power and give rise to witness's more assertive stances.

6.3 Conclusion

This chapter has explored the notion of power in the courtroom in terms of the exercise of control over the evidence. Most of the literature on courtroom interaction argues that counsel have control over the interaction by virtue of their role as questioners. Having the power to ask the questions gives them the power to frame the evidence and to control its contents. The strategies used by counsel to maintain control are found in the types of questions they ask. Chapter 2 reviewed the literature on courtroom question tactics and corroborated the findings of previous studies that the most coercive, constraining questions are found in cross-examination, with the aim to maintain tight control, and the most open, freer questions are used in examination-in-chief where witnesses are encouraged to provide more

narrative answers. This chapter has analysed the data as question and answer sequences and has found, as have other researchers (Keifer, 1988, Athanasiadou, 1993), that the type of question does not always guarantee a particular type of answer. The expected responses can be classified as successful and the unexpected ones as unsuccessful. This chapter found that Polar Interrogatives, which expect yes or no answers, often elicit narrative answers and that Wh- questions, which expect narrative answers, sometimes elicit a yes or a no answer. The chapter also showed that although control is mostly held by counsel, it sometimes shifts to the witness, to the interpreter and to the magistrate. Such power shifts were mostly a consequence of witness initiative and sometimes produced by the presence of the interpreter. The instances where counsel lost control were found to be the following:

1. When the same question had to be repeated a number of times in order to achieve the desired answer from the witness.
2. When witnesses were allowed to give long narrative answers and hence introduced new topics that were not expected.
3. When witnesses asked questions rather than provide answers.
4. When interpreters answered those questions directly and excluded the English speaking courtroom.
5. When counsel used the third person and addressed the interpreter rather than the witness.
6. When counsel was interrupted by the witness, by the interpreter, by objections from the other side and by the magistrate.

It was found that the interpreter's presence could at times interfere with counsel's strategies, such as when counsel try to interrupt witnesses before they finish their turn, or try to use an objectionable question to lead the witness. Interpreters' misinterpretations were at times also the cause of lengthened exchanges and subsequent counsel control loss, but sometimes also weakened the witness's assertiveness and power struggles, helping counsel to maintain control. However, at times it was the magistrates who were responsible for taking control away from counsel and at times the witnesses themselves. The findings of this chapter emphasise the intricate nature of courtroom interaction with its allocations of power which need to be constantly defended by those who possess it, and the heightened complexity of interpreter mediated struggles of power.

The interpreters' response

7.1 Introduction

I have so far discussed the discourse of interpreted court proceedings through a micro analysis of questions and answers taken from Local Court hearings. The main focus of the book has been on the interpreters' discursive practices, which were described in detail in Chapters 3 to 6. Assumptions were made about the reasons behind the interpreters' choices in interpreting specific linguistic features and in dealing with ethical dilemmas. Such assumptions can only be speculative, however. Discourse analysis can only describe and critically evaluate what is presented as product, but only speculate about the process. In an attempt to add further insight into the findings thus far presented, a group of practising Spanish interpreters were consulted through a questionnaire, about their views on the main issues raised in the book. The downside to surveys is that they will rarely be completely reliable. Respondents may answer according to what they feel the researcher wants to hear or what they know to be the correct answer even if such belief is not reflected in their practice. Often interpreters act contrary to that which they know they should be doing or would like to be doing for a number of reasons, such as lack of awareness of the consequences of their interpreting choices, lack of time to think of the best alternatives, or lack of linguistic resources. By combining these two methodologies, the discourse analysis of actual interpreting data, and the survey of interpreters' views, a richer picture can be obtained. This chapter aims to complement the previous chapters by adding an extra insight into the findings.

7.1.1 Details of questionnaire

A questionnaire was designed comprising 4 major components: (1) personal details, (2) knowledge of the legal system, (3) language issues and (4) role of the interpreter. The section on language issues asked the interpreters to translate questions and answers drawn from the data which are later analysed and compared with the interpreters' renditions from the authentic data. The questionnaires were sent to the 27 Spanish-English interpreters whose names appear on the NAATI directory. Unfortunately not all accredited interpreters appear on the NAATI

directory, as individuals need to pay a fee to be included. The questionnaire was also sent to all AUSIT members through their E-Bulletin. Only 11 responses were received and hence generalisations cannot be made. However, the responses provide a useful insight into the issues.

7.1.2   Personal details of the respondents

The sample comprised 7 females and 4 males. Ten of the eleven respondents live and work in New South Wales with only one from the Australian Capital Territory. Three respondents have less than one year experience, two less than five, three from five to ten and three more than ten. Roughly half (45.5%) had less than five years' experience and the other 54.5% had more than five years experience. This is an interesting fact, because the authentic courtroom data was drawn from cases held from 1993 to 1996, which means that those interpreters with fewer than five years' experience would not have been practising during 1993 to 1995. Nine respondents (82%) held NAATI accreditation at the professional level (old level III), with the ACT respondent only holding the Paraprofessional level (old level II) and one other the Conference Interpreter level (old level IV). Interestingly the majority of respondents (72.7%) were graduates of the University of Western Sydney, of the Bachelor of Arts (Interpreting and Translation), with one having completed the Master of Arts (Interpreting and Linguistics). This fact no doubt skewed the results, as the majority of practising interpreters do not have formal interpreting training. These graduates would then be expected to have greater knowledge and perform at a higher level than the average interpreter. The fact that the majority of respondents are graduates also indicates their willingness to participate in research as opposed to the others who did not return the questionnaire. The remaining 3 respondents consisted of two who had completed short non-award courses in Interpreting and one who had completed another, unspecified short course.

7.2   Knowledge of the legal system

Five basic questions were asked about the legal system. These were:

1.   What is the system mostly used in Australia's hearings and trials? Inquisitorial or Adversarial?
2.   What are the main differences between the two systems?
3.   What is the purpose of examination-in-chief?
4.   What is the purpose of cross-examination?
5.   Can you list some of the rules of evidence that apply to formal hearings and trials?

The questions were rated in order of difficulty and the answers confirmed this. 100% of respondents answered the first question correctly. The rate of correctness for the second question dropped to 72.7%, with 9% answering incorrectly and 18% being incomplete. The two most important questions were numbers 3 and 4, as a lack of knowledge of the purpose of examination-in-chief and cross-examination can affect the performance of the interpreter. This point was argued in the previous chapters. The results of the survey show that even some of the graduates of the university Interpreting and Translation courses could not answer these questions correctly. For question 3, 54.5% gave a correct answer, 9% a totally incorrect answer, and 36.4% a confused answer. This last category was not coded as totally incorrect because it had some elements that were correct. For question 4, the percentage of correct answers was the same as for question 3: 54.5%, with 36.4% being totally incorrect, and 9% confused. The most salient incorrect answers included the interpreter's belief that the purpose of cross-examination was to "clarify points that were raised in examination-in-chief", to "prove the case for the defendant beyond any reasonable doubt" and to "reinforce the veracity of the witness". These obvious misunderstandings of the purpose of cross-examination can lead to frustration in the interpreter when counsel resort to language strategies to discredit the witness's testimony.

As for the fifth question, 18% listed two correct rules, 36.4% listed four correct rules, 18% listed three correct rules, and 27.3% listed no correct rules at all. Overall, the same respondents tended to answer incorrectly and most of the time were those who did not hold Interpreting training.

7.3   Language issues

This section was divided into three sections. The first section asked direct questions about the interpreters' own perceptions of difficulty, accuracy and importance of certain linguistic features. The second section presented a list of questions and requested the interpreters to rank them in order of coerciveness and to tell whether they were typical of examination-in-chief or of cross-examination. The last section asked the interpreters to translate a number of questions and answers extracted from the data, without the use of a dictionary and without editing.

The first question under this section was: What do you find most difficult about interpreting accurately in the courtroom? (1) legal terms, (2) formal language, (3) witness's colloquial language, (4) witness's incoherent language and (5) other.

Some respondents ticked two options, hence there were more answers than respondents. The predominant answer (44%) indicated the witness's incoherent language as the main source of difficulty for the interpreter. This response was

followed by witness's colloquial language (25%) and legal terms (25%). No-one chose "formal language" as their answer and one ticked the "other" option referring to interpreting discussions between lawyer and magistrate about points of law. These results are consistent with the findings of the research presented in this book, where it was shown that witnesses' incoherent language cause difficulties for interpreters who then tend to clarify, disambiguate and polish their answers.

The next question in this section was an open question which asked "what does accuracy of interpretation mean to you as an interpreter?". The answers were easily coded into three categories: (1) being faithful to message intention, keeping the same force, semantic & pragmatic meaning, register and imperfections, (2) reflecting what the speaker meant, and (3) making sure interpretation is intelligible and coherent. The majority (72.7%) of answers fell under category 1, with 18% falling under category 2 and only 9% into category 3. Once again, the majority of university graduates (all but one), most of whom were taught by the author of this book, had the view about accuracy that this book proposes, as explained in category 1. The answers that fell in category 2 do not contradict category 1, but were not as specific. The category 3 answer contradicts the category 1 answer and was provided by one respondent who had no Interpreting training at all. As discussed in previous chapters, the interpreter's idea of accuracy will inevitably affect their choices when interpreting. This is evident in the results of this survey, especially with respondent 10, who was the only one who chose category 3 as the answer to the meaning of accuracy. His translations of the questions and answers are consistent with this view.

The next question attempted to ascertain whether interpreters were aware of the importance of grammatical form in courtroom questions, in light of the results presented in Chapter 3 of this book. This question elicited a number of different responses and was possibly due to the way it was expressed or due to the fact that interpreters did not understand what was being referred to. This question caused problems in the pilot study and was slightly changed. However, the use of the specialised grammatical terms could not be changed. The question was "Do you think it is important to maintain as much of the grammatical form of the questions as well as their content when interpreting in the courtroom? If yes, why?. Ten out of eleven answered yes, however their reasons fell into 5 different categories: (1) if you don't it may change the intention and the effect (27.3%), (2) if you don't it will interfere with question tactics (9%), (3) if you don't the question will become ungrammatical (36.4%), (4) no, if you do you would be inaccurate (9%) and (5) incomprehensible answers (18%). Answers 1 and 2 are consistent with the findings presented in this book, whereas the others are not, with answer 3 demonstrating a misunderstanding of the question and answer 5 an inability to express a logical reason.

The next question presented the respondents with a series of questions from the data and asked them to rank them in order of coerciveness. Interestingly, 54.5% of responses were consistent with the results of research findings, and ranked the questions from Confirmation Seeking to Information Seeking Questions, with Information Seeking Questions being the least coercive. The rest of the respondents (45.5%) had no logical pattern in their responses and hence the reason for their choice is unaccountable. The question that followed asked them to list the questions that were typical of cross-examination and those that were typical of examination-in-chief. 64% of the respondents answered correctly, with the rest (36.4%) answering incorrectly. Whether they made their choice based on intuition, experience or study is impossible to tell.

7.3.1   Translation of questions

The respondents were given thirteen questions to translate without the use of a dictionary. These questions were extracted from the main data and represented the main areas of investigation.

7.3.1.1   *Translating "re-questions"*

"Re-question" is the term Danet and Bogoch (1980) use for Modal Interrogatives. In Chapter 3 I showed that there was a tendency on the part of interpreters to translate these Modal Interrogatives into different grammatical forms, changing them to Polar Interrogatives, Imperatives and Wh-questions. The authentic data showed that interpreters translated Modal Interrogatives as Wh-questions 46.2% of the time, as imperatives, 34.62% of the time, as Modal Interrogatives, 11.53% of the time and as Polar Interrogatives, 7.7% of the time. The survey data showed different results. Table 39 below shows the 11 different versions produced by the surveyed interpreters:

Table 39. Interpreter renditions of re-questions

Original
Can you indicate to the court how far away you were from Mr Petro?

Translations

01 - *¿Podría decirle al tribunal a qué distancia se encontraba usted del Sr Petro?*
Could you tell the court…
02 - *¿Puede indicar al tribunal a qué distancia se encontraba Ud. del Sr Petro?*
Can you indicate to the court…
03 - *¿Le puede decir al tribunal cuán lejos estaba Ud. del Sr Petro?*
Can you tell the court… (slightly more polite with the use of 'le')
04 - *¿Puede indicar al tribunal a qué distancia se encontraba del Sr Petro?*
Can you indicate to the court…
05 - *¿Puede indicarle al tribunal a qué distancia estaba usted del Sr Petro?*
Can you indicate to the court…
06 - *Dígale al Sr juez a qué distancia se encontraba Ud. del Sr Petro*
Tell the judge…
07 - *¿Puede indicar al juzgado a cuánta distancia Ud. se quedaba del Sr Petro?*
Can you indicate to the court…
08 - *Haga el favor de indicar a la corte a qué distancia estaba del Sr. Petro.*
Please indicate to the court
09 - *¿Puede indicarle al tribunal a qué distancia se encontraba usted del señor Petro?*
Can you indicate to the court…
10 - *¿Puede indicarle al tribunal a qué distancia estaba Ud. del Sr Petro?*
Can you indicate to the court…
11 - *¿Podría mostrar al tribunal a qué distancia estaba Ud. del Sr. Petro?*
Could you show the court…

The results of the survey data are interesting when compared with the results of the authentic courtroom interpreter data. Whereas in the real interpreting setting, interpreters translated this question type as a Wh- question the majority of the time (46.2%) thus changing the potential answers elicited, when confronted with the written text, with more time to think, and with no reliance on memory, interpreters maintained the Modal Interrogative in their translations 81.8% of the time. They translated the modal "can" as *puede* (can), 63.6% of the time, and as *podría* (could) 18.18% of the time. The remaining two respondents (18.18%) translated the question as an Imperative: *dígale al Sr Juez* (tell the judge), *haga el favor de…* (please tell the…). This last version which translated the Modal Interrogative into a polite Imperative is probably the closest to the original pragmatically. As explained in Chapter 3, the imperative is used much more frequently in Spanish, particularly in a context such as the courtroom where the questions have the function of a command.

The other interesting aspect of this question to highlight is that in the authentic data, interpreters often omitted the reference to the courtroom. Ten of the survey

sample included the reference to the courtroom, with one changing it to the judge.

7.3.1.2 *Translating discourse markers*

Chapter 4 of this book presents the results of a study of discourse markers in counsel's questions and the interpreters' treatment of them. The three discourse markers discussed are "well", "you see" and "now". The overwhelming majority of these markers was omitted by all interpreters. The survey data indicate a different result: "Now" was translated 81.81% of the time, "you see" was translated 72.72% of the time, and "well" was translated 45.45% of the time. Although the percentage of translation is high (except for "well"), the number of different ways they were translated is also high, indicating a translation difficulty and hence a high level of mental processing. The fact that the question was written down and the interpreters had time to think of a translation may explain the discrepancy between the authentic data and the survey data.

7.3.1.2.1 *The different versions of "now".* As mentioned above, "now" was translated 81.81% of the time by the surveyed interpreters. The different translations appear below and in Tables 40 and 41:

Ahora (now) - 22.72%
Entonces (then) - 18.18%
Y (and) - 13.63%
Bien (right) - 13.63%
Ahora bien (now, right) - 9%
Pues (well) - 4.5%

Table 40. Interpreter renditions of "now" (1)

Now, after that meeting, ma'am, uhm everybody stayed around for coffee and biscuits, is that not correct?
Translations
01 - *Ahora bien señora, ¿no es verdad que después de esa reunión se quedaron todos para tomar café?*
02 - *Entonces… después de esa reunión todos se quedaron a tomar café con galletas, ¿no es así?*
03 - *Ahora, después de la reunión, Sra. ah, todos se quedaron a tomar café y comer galletitas, ¿o no es así?*
04 - *Y, señora, después de la reunión todo el mundo se quedó para tomar café y galletas, ¿no es cierto?*
05 - *Entonces, después del mitin, señora, eh todos se quedaron aquí para el café y las galletitas, ¿no es así?*
06 - *Ahora Sra., después de la reunión… todo el mundo se quedó a tomarse un café con galletitas, ¿no es así?*

07 - *Pues, después de esa reunión, señora, ah, todo el mudo se quedó para tomar café y galletas, ¿No?*

08 - *Ahora, después de esa reunión Sra. (apellido), todos se quedaron un rato a tomar un café con galletitas, ¿no es así?*

09 - *Y después de la reunión, señora, eh ¿todos se quedaron a tomar café con galletitas, ¿no es cierto?*

10 - *Y después de esa reunión, señora, todos se quedaron a tomar café con galletitas, ¿verdad?*

11 - *Sra., después de esa reunión, ahmmm todos se quedaron a tomar un café y galletitas. ¿correcto?[1]*

Table 41. Interpreter renditions of "now" (2)

Original

Now, Mr López, was the spot where it was, was the car space vacant or was there another car in its place?

Translations

01 - *Ahora bien, el lugar donde estaba, ese estacionamiento ¿estaba libre o había un coche aparcado?*

02 - *Bien, Sr López, el sitio donde estaba, ¿estaba el espacio para el coche ocupado?*

03 - I would ask for clarification – [INTERPRETER'S COMMENT]

04 - *Bien Sr López, el lugar donde estaba, ¿estaba el espacio vacío o había allí un otro auto?*

05 - *¿Entonces, Sr López, el lugar donde estaba el coche, estaba el espacio del coche vacío, o había otro coche en su lugar?*

06 - *Ahora, Sr López, el lugar donde esto sucedió, ¿estaba el espacio donde se estaciona el carro vacío o había allí otro carro estacionado?*

07 - *Bien, Sr López, el lugar donde estaba, el espacio de estacionamiento, ¿fue vacío, o había otro coche en su lugar?*

08 - *Ahora Sr. López, en ese lugar que se encontraba, el lugar para el coche estaba desocupado o había otro coche ya ahí?*

09 - *Entonces, señor López, ¿ahí estaba el lugar? ¿el espacio estaba vacío o había otro auto estacionado?*

10 - *Sr. López, considerando que ese era el lugar, ¿la cochera estaba libre o había un auto en el lugar?*

11 - *Sr. López, el lugar donde estaba, el lugar para estacionar ¿estaba vacante o había otro auto en ese lugar?*

In Chapter 4 I suggest *bien* and *ahora bien* as possible pragmatic equivalents of "now", both of which appear in the survey data. With the exception of *entonces* (then) and *pues* (well), which carry different illocutionary force and would be appropriate translations for "well", the other versions can be regarded to be correct. The use of *y* (and) is also appropriate, because, just as "now", it is used to indicate progression in a narration.

7.3.1.2.2 *The different versions of "you see"*. In the authentic data, "you see" was omitted by the interpreters 80.95% of the time. When it was translated it was translated as *lo que era* (what it was), *señora* (ma'am), *lo que quiero decir* (what I

want to say) and *pero* (but). The question presented to the interpreters in the survey was "You see, Mr Gomez, I put it to you that in fact there were many people discussing this situation". More than half of the respondents (63.65%) attempted to translate the initial discourse marker in the following ways (see Table 42 for full translations):

Vea (see) - 36.36%
Pero bien (but ok) - 9%
Lo que pasa (what happens) - 9%
Mire (look) - 9%

The only version that resembles any of the ones found in the authentic data is *lo que pasa* (what happens), which, as explained in Chapter 4, like *lo que era* (what it was) and *lo que quiero decir* (what I want to say), tries to change the pragmatic indirectness of "you see" into a direct, disambiguated speech act. It is also consistent with McCarthy's idea of the marker "you see" used to indicate "proclaimed knowledge" (1994: 112).

The most popular choice for the surveyed interpreters was the use of *vea* as a translation of "you see", which is the imperative mood of the verb *ver* (to see). This is a misunderstanding of the pragmatic meaning of "you see" in the English question. The question is not commanding the witness to "see" with their vision, as the Spanish imperative implies. The other option, *mire* (look), which is also in the imperative mood, is more appropriate, as such a marker has the same confrontational tone. However, it does not imply proclaimed knowledge as does the English "you see". It is clear from these results that this discourse marker causes translation difficulties to the interpreter, either when confronted with it in an authentic interpreting setting, or when presented to them in writing with time to think of the best translation.

Table 42. Interpreter renditions of "you see"

Original
You see, Mr Gómez, I put it to you that in fact there were many people discussing this situation.

Translations
01 - *Sr Gómez, le propongo que en realidad habían muchas personas hablando de esta situación.*
02 - *Sr Gómez, yo digo que de hecho había varias personas que conversaban de esto.*
03 - *Vea Sr Gómez, yo le digo que eran muchas las personas que estaban comentando esta situación.*
04 - *Vea, Sr Gómez, yo le digo que de hecho había mucha gente discutiendo esta situación.*
05 - *Vea usted, Sr Gómez, le estoy diciendo que es un hecho que había mucha gente hablando sobre esta situación.*

06 - *Pero bien Sr Gómez, yo le digo que en realidad habían muchos que conversaban sobre esta situación.*
07 - *Vea esto, Sr Gómez, le sugiero que de hecho había mucha gente discutiendo esta situación.*
08 - *Lo que pasa Sr Gómez, es que yo le digo que en realidad había mucha gente comentando esta situación.*
09 - *Mire, señor Gómez, yo le digo que en efecto, había mucha gente hablando de esto.*
10 - *Lo que quiero decir Sr Gómez es que, de hecho, habían muchas personas tratando esta situación.*
11 - *Sr. Gómez, yo le sugiero que en realidad había mucha gente discutiendo esta situación*

7.3.1.2.3 *The different versions of "well".* In the authentic data, "well" was omitted 70.37% of the time. When it was translated it appeared as *entonces* (so), *bueno entonces* (ok then) and *pero* (but). Chapter 4 discusses the different effects produced by these three versions. The interpreters in the survey were presented with the following question: "Well, but many people were putting their view across". This discourse marker was translated only 45.45% of the time, which means that over half of the respondents decided to omit it all together. The different versions were the following (see Table 43 for full versions):

Bien pero (right but) - 18.18%
Bueno pero (ok but) - 18.18%
Sí pero (yes but) - 18.18%
Muy bien pero (very well but) - 9%
Ya pero (alright but) - 9%

All of the interpretations indicated a positive + negative position: a type of affirmation followed by an adversative "but". Such a translation constitutes a disambiguation of the pragmatic meaning of the English "well" in this context. This translation is consistent with Pomerantz's (1975) view of the meaning of "well", as a marker that prefaces disagreements and can be substituted with "yes but". Therefore, although the percentage who translated "well" is lower than the other two, the versions produced were more pragmatically equivalent, thus indicating a lower level of translation difficulty than the other two markers.

Table 43. Interpreter renditions of "well"

Original
Well, but many people were putting their view across.

Translations
01 - 0
02 - *Pero había mucha gente que estaba opinando.*
03 - *Bien, pero muchas personas estaban exponiendo sus puntos de vista.*
04 - *Muchas personas estaban dando sus opiniones.*

05 - *Bueno, pero muchas personas estaban exponiendo sus opiniones.*
06 - *Sí, pero muchos opinaban.*
07 - *Muy bien, pero había mucha gente expresando su opinión.*
08 - *Ya, pero mucha gente estaba expresando su punto de vista.*
09 - *Sí, pero muchos opinaban al mismo tiempo.*
10 - *Pero mucha gente estaba expresando sus puntos de vista.*
11 - *Bueno, pero mucha gente estaba dando su opinión.*

7.3.1.3 Translating declarative questions with tags

The translation of tags was evidently a very difficult task for the interpreters who formed part of the authentic data. The only type of tag that did not cause much difficulty was the Invariant Tag, either negative or positive (Is that correct?/isn't that correct?), as there is a ready equivalent in Spanish. All other tags, as explained in Chapter 3, caused problems for the interpreters for lack of both grammatical and pragmatic ready equivalents in Spanish. As was explained in Chapter 3, the use of tag questions in English is complex and even more so in the courtroom, where they are used strategically.

7.3.1.3.1 *Invariant Tag Questions.* These were the tags that caused hardly any problem for the interpreters in the authentic data. These tags can be negative or positive, the opposite of the polarity of the main declarative clause. When the tag was positive it was translated 100% of the time and when it was negative it was translated 70.27% of the time by the court interpreters. The survey had two Invariant Tag Questions to translate, one with a positive tag and one with a negative tag. The results were similar to the results obtained in the authentic data, as these tags were translated 90.9% of the time. However, they were not all translated the same way and the polarity was not always the same as the original question. 72.72% of the respondents kept the same polarity of the tag, but had variations for the term they used. When they kept the positive polarity they used the following terms: *verdad* (true), *correcto* (correct), *es cierto* (is that right). This is interesting because even when having the question written in front of them, they did not all opt for the cognate term *correcto* when such an option would have been appropriate. The options used for the negative tag were *¿no es así?* (isn't it so?) and *¿no es cierto?* (isn't is true?), *¿no?* and *¿o no?* (see Tables 44 and 45). These last two options, especially *¿o no?* carry a stronger force and a stronger assumption. In Chapter 3 I suggest that these would be appropriate translations for the checking tags and not for the invariant tags. Whereas invariant tags are genuine ratification tags and used commonly in examination-in-chief, checking tags express a stronger assumption, are used for probing and are typical of cross-examination.

Table 44. Interpreter renditions of "is that correct?"

Original
And in the past that amnesty's been granted. Is that correct?

Translations
01 - *¿Y es verdad que en el pasado se ha otorgado esa amnistía?*
02 - *Y esa amnistía ha sido concedida antes, ¿verdad?*
03 - *Y anteriormente esa amnistía había sido otorgada, ¿correcto?*
04 - *Y en tiempos pasados se concedió una amnistía, ¿es cierto?*
05 - *Y en el pasado se había concedido esa amnistía, ¿verdad?*
06 - *Y en el pasado esa amnistía se otorgó, ¿no es verdad?*
07 - *Y en el pasado se le ha dado esa amnistía, ¿Verdad?*
08 - *Y anteriormente se ha concedido esa amnistía, ¿o no?*
09 - *Y en el pasado se ha otorgado esa amnistía, ¿verdad?*
10 - *Y en el pasado esa amnistía fue otorgada, ¿verdad?*
11 - *Y en el pasado ha sido otorgada esa amnistía ¿correcto?*

Table 45. Interpreter renditions of "is that not correct?"

Original
Now, after that meeting, ma'am, uhm everybody stayed around for coffee and biscuits, is that not correct?

Translations
01 - *Ahora bien señora, ¿no es verdad que después de esa reunión se quedaron todos para tomar café?*
02 - *Entonces… después de esa reunión todos se quedaron a tomar café con galletas, ¿no es así?*
03 - *Ahora, después de la reunión, Sra. ah, todos se quedaron a tomar café y comer galletitas, ¿o no es así?*
04 - *Y, señora, después de la reunión todo el mundo se quedó para tomar café y galletas, ¿no es cierto?*
05 - *Entonces, después del mitin, señora, eh todos se quedaron aquí para el café y las galletitas, ¿no es así?*
06 - *Ahora Sra., después de la reunión… todo el mundo se quedó a tomarse un café con galletitas, ¿no es así?*
07 - *Pues, después de esa reunión, señora, ah, todo el mudo se quedó para tomar café y galletas, ¿No?*
08 - *Ahora, después de esa reunión Sra. (apellido), todos se quedaron un rato a tomar un café con galletitas, ¿no es así?*
09 - *Y después de la reunión, señora, eh ¿todos se quedaron a tomar café con galletitas, ¿no es cierto?*
10 - *Y después de esa reunión, señora, todos se quedaron a tomar café con galletitas, ¿verdad?*
11 - *Sra., después de esa reunión, ahmmm todos se quedaron a tomar un café y galletitas ¿correcto?*

7.3.1.3.2 *Constant Polarity Tag Questions.* In the authentic data, this type of tag caused problems most of the time. The majority of them were changed in the

interpretation to become simple Polar Interrogatives. According to Quirk et al., the tone of this tag may indicate sarcastic suspicion, with a scalding, sarcastic or contradictory effect and it can be preceded by "oh" or "so" (Quirk et al., 1985). I suggested that in the absence of a satisfactory translation, the best strategy for interpreters in order to maintain the same pragmatic force, would be to delete the tag all together and to add the word "so" (*así que* or *entonces*) at the beginning of the question. In the authentic data, there was only one instance where this tag was translated as I suggested. The results of the survey are very different. Even though they had the question in front of them and time to think of a best rendition, only one of the translations was pragmatically accurate with one other being close. The question in English was "You'd seen it before, had you?". (See Table 46). The only two renditions that omitted the tag were:

¿Ah, lo había visto antes? (Oh, you'd seen it before?)
¿Entonces, lo había visto antes? (So, you'd seen it before?)

These two respondents were the only ones who understood the pragmatic meaning of the question, with the second one being more accurate in terms of force. All other renditions use either a positive or a negative tag: *¿verdad?* (true?), *¿sí?* (yes?), *¿cierto?* (true?), *¿no es cierto?* (isn't it true?), *¿o no?* and *¿no?* (hadn't you?). All of these tags express a different assumption to the original. Whereas the original expresses sarcasm for unexpected or different information presented by the witness, the translations seek confirmation to a statement proposed by the questioner.

Table 46. Interpreter renditions of constant polarity tag

Original
You'd seen it before, had you?

Translations
01 - *Ah, ¿lo había visto antes?*
02 - *Ya lo había visto antes, ¿verdad?*
03 - *Usted ya lo había visto anteriormente, ¿verdad?*
04 - *Ud. ya lo había visto antes, ¿no es cierto?*
05 - *Lo había visto antes, ¿sí?*
06 - *Ud. lo había visto antes, ¿cierto?*
07 - *Entonces, ¿lo había visto antes?*
08 - *Ya lo había visto antes, ¿o no?*
09 - *Usted lo había visto antes ¿no?*
10 - *Ud. ha visto eso antes, ¿no es verdad?*
11 - *Lo había visto antes ¿no?*

7.3.1.3.3 *Checking Tag Questions.* These tags appeared to be problematic for the court interpreters in the authentic data, with the positive Checking Tags being

translated only 20% of the time, and the negative tags only 15.38% of the time. The survey results were higher. However, the tags proved to be problematic for these interpreters too.

The respondents were presented with two checking tag questions, one negative and one positive:

1. "So, when you say that you took four weeks to clean the place and then rented it to a friend, that would be untrue, wouldn't it?" (See Table 47).
2. "It didn't worry you going up to the front door enough to stop you from doing it, did it?" (See Table 48).

Both of these questions were extracted from cross-examination. The first is accusing the witness of lying by presenting a positive declarative which states that, and the second is accusing the witness of carelessness in the declarative statement. They are both confrontational. Although all of the translations in the survey kept some type of tag in it, not all were successful in achieving pragmatic equivalence. It seems that the respondents all saw the importance of the tag in English and the need to retain it in the interpretation, but due to the difficulties these present, as discussed in Chapter 3, not all were able to find the most appropriate rendition, even when they did not have the constraints of a courtroom.

The first question is interesting to analyse. The English declarative ends with the word "untrue", followed by the tag "wouldn't it?". As the common tags in Spanish are *verdad* (true), *cierto* (right) or their negative forms, when the respondents opted for these tags, their interpretation ended with a juxtaposition of two opposing concepts: untrue and true, making the question very confusing. This can be seen below in the renditions of respondents 2, 5, 8 and 11:

02 - *Entonces, cuando… al decir que le tomó 4 semanas limpiar la casa, estaría mintiendo, ¿verdad?*
(So, when… when you say that it took you 4 weeks to clean the house, **you would be lying, true?**).

05 - *Entonces cuando dice que le llevó cuatro semanas limpiar ese lugar y entonces se lo alquiló a un amigo, eso sería falso, ¿verdad?*
(So when you say that it took you four week to clean this place and then you rented it to a friend, **that would be false, true?**).

08 - *De modo que al decir que le tomó cuatro semanas en limpiar el lugar y después lo arrendó a un amigo, eso no sería verdad, ¿cierto?*
(So when you say that it took you four weeks to clean the place and then you rented it to a friend, **that would not be true, true?**).

11 - *Entonces lo que Ud. dice, que le tomó cuatro semanas limpiar el lugar para alquilarlo a un amigo, no es verdad, ¿cierto?*
(So what you say, that it took you four weeks to clean the place to rent it to a friend, **that's not true, true?**).

This problem could have been avoided by using the simple tag *¿no?* or *¿o no?*.

Table 47. Interpreter renditions of "wouldn't it?"

Original
So when you say that you took four weeks to clean the place and then rented it to a friend, that would be untrue, wouldn't it?

Translations
01 - *Entonces al decir que tardaron cuatro semanas en limpiar el lugar y después lo alquilaron a un amigo, eso no es verdad, ¿no?*
02 - *Entonces, cuando… al decir que le tomó 4 semanas limpiar la casa, estaría mintiendo, ¿verdad?*
03 - *Entonces cuando Ud. dice que le llevó cuatro semanas limpiar el lugar y después se lo alquiló a un amigo, no es verdad. ¿Es así?*
04 - *Cuando usted dice que le llevó 4 semanas limpiar el local y que luego se lo alquiló a una amistad, eso sería falso, ¿no?*
05 - *Entonces cuando dice que le llevó cuatro semanas limpiar ese lugar y entonces se lo alquiló a un amigo, eso sería falso, ¿verdad?*
06 - *Así que cuando Ud. dice que le tomó cuatro semanas limpiar el lugar y luego se lo alquiló a un amigo, todo esto sería falsedad, ¿no es así?*
07 - *Por eso, cuando dice que Ud. duró cuatro semanas en limpiar el legar, y después le alquiló a un amigo, no será la verdad, ¿No?*
08 - *De modo que al decir que le tomó cuatro semanas en limpiar el lugar y después lo arrendó a un amigo, eso no sería verdad, ¿cierto?*
09 - *Entonces no es cierto lo que usted dice que demoró cuatro semanas en limpiar el lugar y alquilárselo a un amigo ¿no?*
10 - *De modo que cuando dice que le tomó 4 semanas limpiar el lugar y alquilárselo a un amigo, eso no sería verdad, ¿o sí?*
11 - *Entonces lo que Ud. dice, que le tomó cuatro semanas limpiar el lugar para alquilarlo a un amigo, no es verdad, ¿cierto?*

Table 48. Interpreter renditions of "did it?"

Original
It didn't worry you going up to the front door enough to stop you from doing that, did it?

Translations
01 - *Pero no le preocupó lo suficiente como para no haberse acercado a la puerta, ¿a qué no?*
02 - *No le preocupó lo suficiente que fueras a la puerta como para impedirte que lo hicieras, ¿verdad?*
03 - *No le preocupó lo suficiente como para ir a la puerta de entrada y dejar de hacer eso, ¿no?*
04 - *A usted no le preocupó el acercarse a la puerta de entrada, tanto como para no hacerlo, ¿no?*

05 - *A usted no le molestaría lo suficiente ir a la puerta del frente como para dejar de hacerlo, ¿verdad?*
06 - *Y no le preocupó tanto ir hasta la puerta de enfrente como para que parara de hacer eso, ¿no es así?*
07 - *El que le preocupaba ir a la puerta principal no le impidió hacer eso, ¿no?*
08 - *No le preocupaba ir hacia la puerta de entrada lo suficiente como para no hacerlo, ¿o sí?*
09 - *No puede haber tenido tanto miedo de ir a la puerta de calle porque de lo contrario no lo hubiera hecho, ¿no?*
10 - *No le molestó lo suficiente como para impedirle ir hasta la puerta de entrada, ¿verdad?*
11 - *No le preocupo el ir hasta la puerta como para impedírselo ¿verdad?*

The spelling or grammatical mistakes found in the surveyed interpreters' answers were kept in the tables in the book.

7.3.2 *Translation of answers*

Chapter 5 analysed the interpreters' renditions of the witnesses' answers and found that features such as repetitions, backtrackings, pauses, fillers, hedges, and discourse markers were consistently omitted by the interpreters, whereas hesitations and grammatical errors were added by them. These additions were obviously unintentional. The hesitations were the interpreters' own rather than a reflection of the original, and appeared before problematic words or phrases, retractions from already stated utterances and problems of pronunciation or grammar. Grammatical errors were also the interpreters' own.

In the analysis of the authentic data, it was impossible to ascertain whether the interpreters omitted the features mentioned above purposefully, believing them to be irrelevant and unnecessary, or whether they were unintentional omissions due to poor memory or automatic mental filtering. The survey data is simpler to analyse. As the respondents had the text in front of them, the omission of these features can only be attributed to intentionality.

The results were interesting, as some of the respondents tried to maintain a perfect equivalence, including repetitions, hesitations, incoherencies and discourse markers, others only kept some of them and others omitted them completely. These three tendencies coincide with the three views about the meaning of accuracy presented earlier in this chapter. The respondent who had indicated accuracy meant "making sure interpretation is intelligible and coherent" was consistent in his rendition. All of his interpretations omitted repetitions and hesitations and were much more coherent than the originals. This respondent did not have any Interpreting training and had more than ten years' experience. One of the two respondents who believed accuracy was "reflecting what the speaker meant", the one with no Interpreting training, omitted some of the features and kept some, whereas those who attempted to keep all features in their interpretation were

mostly the same ones whose views about accuracy were "being faithful to message intention, keeping the same force, semantic and pragmatic meaning, register and imperfections". This last group, however, was not consistent in their performance. They also omitted some of these features at times, contrary to their own stated ideas of accuracy.

Six of the witnesses' answers presented to the respondents to translate included hesitations, questions, repetitions and incoherencies. 32% of the translations omitted all these features, making the translations more coherent and changing the register to a formal, written-like register. 47% of the translations maintained all of the features, and the rest, 21%, omitted only some of the features, such as the questions or the repetitions.

I will discuss the translation of three of the answers that were presented to the respondents.

Answer 1: *Ah… ¿cómo no?, ¿cómo no?, si él dijo muchas cosas, habló mucho.*
(Uh… what do you mean he didn't?, what do you mean he didn't?, he said many things, he talked a lot).

There were three features that were of interest in this answer: the initial hesitation, the challenging question, which is repeated, and the repetition of the last concept. Only three of the respondents (27.27%) maintained these three features, achieving fully accurate renditions. 54.54% kept the initial hesitation in the answer (6/11), however, only half of those also translated the initial question, the other three omitted it. The remaining five (45.45%), omitted the initial hesitation, and the initial questions. Some of the respondents changed the initial question "what do you mean he didn't?" to an assertive "Of course he did!". The difference in translation between those who maintained a full accuracy and those who polished the version, is very noticeable, as can be seen in the examples below:

resp. 01 - "Ah… what do you mean, what do you mean? He uhm, he said a lot of things. He spoke a lot"
resp. 10 - "Of course he did! He said many things, he talked a lot."

The next answer included hesitations, repetitions, ungrammaticality and incoherencies. The original answer was:

Answer: "*Ah, eh yo venía entrando ahí mi marido me me acosó de que, de que le tenía que dar el divorcio y yo pasé a la cocina y me siguió*"
(Uh, uh I was walking in and there my husband harassed me, that I that I had to divorce him, to give him a divorce and I went to the kitchen and he followed me).

There is a common ungrammaticality found in the original, the addition of the preposition *de* preceding *que* (that) clauses, what is known in Spanish as *dequeísmo*.

This was discussed in Chapter 5. Only one of the respondents maintained this native speaker grammatical error in the English translation:

resp. 07 - "Ah, well, I was going in there and my husband harassed me about, about that I had to give him a divorce, and I went in to the kitchen and he followed me."

Respondent 7 kept the hesitations, although one was changed to the discourse marker "well", kept the repetition in an appropriate place, kept an ungrammaticality in the form of "… about that I had to give him.." and maintained the colloquial, spoken register. Some of the other respondents who tried to keep the repetitions failed in the attempt as the result was an unnatural rendition, as in respondent 03:

"Uh, uh, I was walking in there my husband harassed me me about about giving him the divorce…"

The repetition of "me" is not very likely in English, whereas in Spanish it is because the pronoun precedes the verb and hence the speaker repeats the pronoun while she is thinking about the correct verb to use "…*mi marido me me acosó…*". This is a problem that interpreters who try to be accurate can face if they try to maintain repetition mechanically. The maintenance of these features should be carefully managed within the practices and constraints of each language.

The respondents who omitted the hesitations and repetitions also changed the register of the utterance to a more formal style, resembling written language. This was achieved not only by omitting the above mentioned features, but also by breaking up the long sentence into up to three short sentences, thus omitting conjunctions. Some also used lexical items typical of written language. The following are two examples:

resp. 04 - I was entering there. My husband came and harassed me saying I had to give him a divorce. I went into the kitchen and he followed me.
resp. 10 - I had just come in and my husband started harassing me saying I should give him the divorce. I went to the kitchen and he followed me.

The last answer I will discuss contained an initial discourse marker, hesitations and repetitions. All except one respondent translated the initial discourse marker as "well", with one changing it to "OK". The original answer was:

Answer: "*Bueno, cuando yo me cambié a… ahora a Curry St. eh él hace cosa de unos dos meses no más que está ah, que ha llamado, antes no porque no sabía mi teléfono*" (Well, when I moved to … here, to Curry St uh, he's been like just about two months uh, that he uh has been calling, not before 'cause he didn't know my telephone).

Once again, respondent 10 stands out from the rest. His rendition is the following:

resp. 10 - "Well, when I recently moved to Curry St, he started ringing me for the last two months, not before as he did not have my telephone."

This rendition can be compared to one which attempted to be fully accurate:

resp. 9 : "Well, when I moved to to Curry St, uhm it's about only two months he's been uh, that he's called, not before because he didn't know my number."

The difference is very noticeable. Respondent 9's rendition is very close to the original: it maintains the hesitations, the repetitions, and the colloquial, spoken register. Respondent 10 adds the adverb "recently", omits all incoherencies and hesitations and replaces "because" with "as". The answer changes from a powerless to a powerful style (O'Barr 1982). Based on the results presented in Chapter 5, such a rendition would present a different impression of the witness.

7.4 Role of the interpreter

As discussed in Chapter 1, perceptions about the role of the interpreter are varied. The survey attempted to elicit the respondents' views about their role as a court interpreter. Four questions were dedicated to this theme. The first question was a direct question on their views about the role of the interpreter, whereas the other three presented possible situations where they needed to make a decision about how they would react. These answers should have been influenced by their ideas about their role.

The first question in this section was:

- In your opinion, what is the role of the court interpreter?
a. to ensure the non-English speaking witness understands the question
b. to ensure effective communication takes place between counsel and the witness
c. to help the non-English speaking witness express his/her case in the best possible light
d. to interpret the proceedings accurately even if questions are confusing and answers are incoherent
e. to interpret the proceedings accurately as long as questions are clear and answers are coherent
f. Other - please specify.

The results show a noticeable variety of opinions. Three of the respondents ticked more than one response, consequently, 18 answers were recorded. Half of the ticks

(50%) were found next to answer "d": "to interpret the proceedings accurately even if questions are confusing and answers are incoherent", which is the view proposed in this book. The next most popular answer was "b": "to ensure effective communication takes place between counsel and the witness", with 22.22% of the ticks. Answers "a" and "c" both received two ticks (11.11%), and answer "e" only received one tick (5.5%). These results show that even when the sample is biased, with the majority of respondents being graduates of a formal Interpreting and Translation course, there is still no consensus about the role of the court interpreter. Interestingly, for this item, respondents 7 and 10, two of the ones with no training, both ticked answer "d": "to interpret the proceedings accurately even if questions are confusing and answers are incoherent", even though such an answer contradicts what respondent 10 had previously stated about accuracy and is not consistent with his translations.

The next question was: If during cross-examination you feel that the lawyer's questions are confusing and the witness is not grasping their full meaning, what would you do?

a. make sure your interpretation is clear so the witness understands
b. ask the lawyer to clarify the question before you interpret as you suspect the witness will not understand
c. interpret the question as it is
d. other - specify

Ten of the eleven respondents (90.9%) chose answer "c". Respondent 7 chose answer "b". These responses are inconsistent with the responses of the previous question. Respondent 7 had answered in the previous question that his role was "to interpret accurately even if questions are confusing…", however, for this question he answered that if the question was confusing he would ask the lawyer to clarify it before he interprets. Similarly, two of the respondents had said in the previous question that their role was to ensure "the non-English speaking witness understands the questions", yet, for this question they said they would interpret the question as it is even if it is confusing.

The next question was: You feel counsel is using a register that will not be understood by the Spanish speaking witness. What would you do?

a. interpret in the same register
b. simplify the language by changing the register to match the witness's language
c. tell counsel s/he is using very difficult language that is likely to be misunderstood by the witness
d. Other - specify

Once again, 90.9% of the respondents (10/11) chose answer "a", with respondent 7

being the only one to choose answer "c". The same comment can be made about the result of this question as was made for the previous question. There is a discrepancy between what respondents answered they believed the interpreter's role to be and their answers to specific questions that should be guided by their views on role. This may be illuminating in itself. It may indicate that they have not stopped to think about what their role is and choices are made independently of any overarching principle about their code of conduct or role.

The last question in this section elicited a wider variety of answers. The question was: The witness is obviously not very articulate and has difficulties expressing him/herself. His/her speech is very repetitive, incoherent, hesitant and very colloquial. How would you interpret his/her answers?

a.   you would concentrate on the meaning of the answer and re-express it in the best way you can

b.   you would try to polish the answer to make it more relevant and coherent

c.   you would try to maintain the same style as the original

d.   you would improve the style of the original but tell the court that the witness has difficulties expressing him/herself

e.   other - specify

The most popular response was "c", with 66.6% of the answers. This percentage is higher than the percentage of respondents who attempted to maintain the style in their translations of the witnesses' answers in the survey (47%). We can speculate that even if they think they should maintain the same style, it may be difficult for them to achieve such a goal, or they may not know what they need to do to achieve it. The rest of the responses were "d" with 25% and "a" with 8.3%. One of the interpreters who ticked "d" explains that she would do this (improve the style of the original but tell the court that the witness has difficulties expressing him/herself) after she has tried "c" (try to maintain the same style as the original) and presumably failed. Once again, respondents 7 and 10, two of the three with no training, opted for answer "d" (improve the style of the original but tell the court that the witness has difficulties expressing him/herself), which is consistent with some of their previous answers and with their translations of the authentic answers, especially respondent 10's.

The last two questions asked them about the need for a specialist Court Interpreting course and their willingness to undertake such a course. 100% of respondents thought there was a need for such a course, but 72.27% stated they would be willing to undertake such course. Two of the respondents who answered negatively to this last questions, were two of the three with no Interpreting training: respondents 2 and 10.

7.5   Conclusion

This chapter presented the results of a small survey of Spanish interpreters from Sydney and Canberra. The survey consisted of four different sections: the first section on personal details, the second section on knowledge of the legal system, the third section on language issues, including the actual translation of questions and answers from the data, and the last section on issues of roles and ethics of court interpreters. As 72.72% of the respondents were graduates of the University of Western Sydney, most of whom had been taught by the author of this book, the results were expected to be biased. Nevertheless, the answers were not always as expected. The results showed that although most of those with training tended to express views that were concordant with the views presented in this book, even among graduates there was confusion about some issues, such as role and knowledge of the legal system, and their answers were not always consistent with their translations. In other words, their translations did not always reflect the views they expressed about accuracy of interpretation or role of the interpreter.

The survey corroborated many of the findings presented in previous chapters in this book. The majority of respondents claimed witnesses' incoherence and colloquial language to be the cause of major difficulty in the courtroom. There were a number of different ideas presented about accuracy and about role, showing a lack of consensus, even among graduates, and a confusion about the purpose of examination-in-chief and cross-examination. With regards to the translation of specific features, the survey found that Modal Interrogatives presented no problems for the respondents, with 80.8% of them being translated accurately. This result differed greatly from that of Chapter 3 and indicates that such a feature is not inherently difficult to translate. The translation of tags presented a different result. Invariant Tags proved to cause no difficulty with 90.9% of them being translated correctly. This compared positively with the results of Chapter 3, where it was stated that such tags caused very little problems to the interpreters, as ready equivalents exist in Spanish. Constant Polarity Tags, however, proved to be the most difficult for the respondents, with only two of them interpreting it correctly. This is the type of tag that cannot be translated into a tag in Spanish and needs to be replaced by an initial discourse marker. The majority of the respondents translated it as a tag incorrectly. Similarly, Checking Tags proved problematic. Although the majority of respondents kept the tag in the translation, they did not do so successfully. These results corroborate those presented in Chapter 3, which argued that English tags used in the courtroom are extremely difficult to translate into Spanish and require adequate analysis and preparation for interpreters to be able to translate them accurately.

The translation of the witnesses' answers generated very interesting results. Although the percentage of the omission of the powerless features was lower than in the authentic data, the fact that there was omission proves that these interpreters disregarded these features (hesitations, repetitions, discourse markers) deliberately, with fewer than half (47%) maintaining them in their interpretation.

As expected, the results of the survey were more positive than those of the authentic data. This can be due to two reasons: one, that they had the questions in front of them with no external courtroom pressures and no reliance on memory. As one of the interpreters expressed as an additional comment: "Time constraints and an impatient response by counsel and magistrates/judges should also be taken into consideration when analysing interpreters' performance at court" (respondent 5). This leads us to assume that many of the problems found in the authentic data are not deliberate but a result of the working conditions, poor memory or underdeveloped interpreting skills. The other reason for a better performance from the survey sample is very likely the high percentage of trained interpreters among the respondents.

CHAPTER 8

Conclusions

8.1 Introduction

This book has attempted to describe, interpret and explain, based on authentic data, the discourse practices of lawyers, Spanish speaking witnesses and interpreters in examination-in-chief and cross-examination in New South Wales' Local courts. It explored the intricate relationship between the court participants who must communicate through the mediation of an interpreter, transforming the already highly constrained activity type (Levinson, 1979) of the court hearing into a unique and even more complex set of discourse practices. Sarangi (2000), introduces the notion of discourse type as an extension to the Levinsonian activity type. He explains that "while activity type is a means of characterising settings … discourse type is a way of characterising the forms of talk…" (Sarangi, 2000: 2). While the activity type of the courtroom is characterised by its clear episodic structure, the discourse types found within it are partly motivated by certain functions expressed through language forms. This book has highlighted the particular "forms of talk" or "discourse types" as deployed strategically by counsel and the Spanish speaking witnesses through the medium of an interpreter in the "setting" of the courtroom. Therefore, in the activity type of the bilingual courtroom, the participants are involved in a range of discourse strategies, which consist of a combination of discourse types deployed strategically to cater for their own purposes. Such discourse strategies, although to a large extent constrained by the institution, are creatively employed by the actors of each case. Merry comments that:

> Discourses are rooted in particular institutions and embody their culture. Actors operate within a structure of available discourses. However, within that structure there is space for creativity and actors define and frame their problems within one or another discourse (Merry, 1999: 110).

It was the actors' individual choices that provided the most interesting findings of the research presented in this book. The book described in detail the ways the main participants' discourse types were altered by the intervention of the interpreter who frequently introduced his/her own discourse types and by so doing also altered the discourse strategies of the main speakers.

The book principally endeavoured to explore how interpreters deal with the inherently difficult interpreting process in the context of the courtroom; what choices they make under the pressures and limitations imposed by this activity type; the way they manipulate, filter and alter the messages of the main participants in their interpretation; and the ramifications those alterations may have on the legal process. It also analysed the way lawyers adapt to, relate to or even disregard interpreters in the course of their work. This triadic dynamic between lawyer, witness and interpreter inevitably impacts on the discourse performance of the Spanish speaking witnesses, who at times may elect to hide behind the comfortable shield of the interpreter, at times may feel frustrated by his/her intervention, and at times may even find courage through the mediation of the interpreter to express themselves in ways they would probably not do alone, thus creating an alignment with the interpreter and a co-production of the message (Goffman, 1981). In this way, the bilingual courtroom presents us with a process of cooperation, negotiation and even power struggle between the lawyers, the witness and the interpreter. We see how lawyers, through their strategic use of language, assert their authority and try to maintain control, but also often rely on the interpreter to "fix" the situation when such control is lost. On the other side of the interaction, witnesses either resist or submit to the control imposed on them, use their own discourse strategies and communicate with the lawyers through the mediation of the interpreter in a number of different ways. We see how the interpreter, who is in the middle of this interaction, attempts to be an accurate translator of messages, but is confronted with many constraints and difficult decisions in the process. The interpreter, by being the only one who understands both languages finds her/himself in a powerful position. Interpreters, therefore, often struggle with themselves to resist making use of that power and overstepping their role by allowing personal feelings, judgements, preferences and the desire to help, to get in the way of accurate interpreting. Thus the interpreted interaction creates a discursive hybridity (Sarangi & Roberts, 1999) which is multiple in nature, involving an interplay between the personal, the institutional and the professional spheres set against the overarching requirement of accuracy. Such is the communicative complexity and difficulty facing the work of the court interpreter.

The book began by referring to the different controversial views about the role of the court interpreter. Maley states that "the courtroom operates with a recognised participant format of distinct institutional participant roles, i.e. judge, jury, counsel, witness" (2000: 248). Such an account is significant in that it defines roles for all courtroom participants except the interpreter. Although not all court cases involve an interpreter, it is to be presumed that the interpreter is expected to take on the role of whoever they interpret for. Hence, not unlike an actor, the interpreter is present to linguistically act out the roles of the participants for whom they are interpreting,

and by so doing, remove the language barrier between the non-English speaking witness and the English speaking court. The interpreter takes on the very difficult and active role of linguistic actor, imitator or "reporter" (Wadensjö, 1997): the role of reproducing an original intention, with the same illocutionary force, in another language. The book argues that a firm understanding of their role will to a large extent underpin the practical choices made by interpreters in their work. We see throughout, however, that adhering to this role is rarely easily achievable. This sometimes depends on the actions of the lawyers or witnesses who may not understand the role of the interpreter. At times the interpreter is forced into the role of "recapitulator" (Wadensjö, 1997) when the main participants do not address each other directly, and instead of using the first person they ask the interpreter to "tell" or to "ask" the other party. At other times, the interpreter steps out of her/his role as "reporter" of others' utterances to become author of his/her own utterances, when personal opinions are expressed or interpreter interruptions occur; or to become a filter or a censor of the main participants' discourses, by changing the original utterances in ways that the interpreter believes are more appropriate. The repercussions of such actions are discussed in detail in the foregoing chapters.

The complex discourse task facing the interpreter can be adequately compared to the situation described by Sarangi and Roberts (1999) when writing about medical settings:

> Medical knowledge has to be differentially displayed as professionals orient to competing demands of practical action within a given speech activity with its complex participation structure, while warding off potential blames and responsibilities (Sarangi & Roberts, 1999: 61).

Sarangi & Roberts (1999) speak of an "overlay of the institutional over professional and personal experience modes" (p. 482) in medical doctors' oral examinations. Similarly, court interpreters must strive for accuracy of interpretation amidst a number of competing demands from all the participants involved (the interpersonal mode), the courtroom (the institutional mode) and their code of ethics, professional training and accreditation (the professional mode). This book highlights the struggle of the interpreter to negotiate pathways among the different roles the three main players (the institution, the profession and the witness) expect them to assume. These different roles are interdiscursively embedded and concurrently imbricated in the interpreter's discourse. We see how the interpreter deals with the institutionality of the courtroom, with its rigidity and constraints, but also with its inconsistencies in the use of interpreters. We see how they endeavour to conform to their professional code of ethics which advocates absolute accuracy and impartiality, while they also attempt to accommodate to the interpersonal relation, albeit very constricted, with the people they are interpreting for, especially the Spanish speaking witnesses.

Wadensjö mentions that in her role as interpreter, she is often "confronted with the practical dilemma of being simultaneously seen as the lay person's advocate and as the official's helping hand" (1998: 50). It is often evident in the data that the interpersonal relation comes in the way of the interpreters' obligations under their code of ethics and the strict role as mouthpiece. This can be seen when the interpreter interrupts to offer opinions or to clarify apparent misunderstandings. Attempts to help the Spanish speaking witnesses express their utterances more clearly or coherently, to ensure that questions are clearly understood when that is not always the intention of the lawyer, to make witnesses' utterances more appropriate to the submissive role of witness, or to apportion more power to the witness by intervening are all evidences of a lack of impartiality from the interpreter and a deviation from their role as prescribed by their code of ethics or as expected by the court. This filtering from the interpreter varies in magnitude and is not always intentional or conscious. It is manifested in a number of different ways, many of which lie in seemingly insignificant discourse features, of which the interpreters may not be aware. We also see that some of the difficulties facing interpreters in their quest for accurate interpretation lie in their lack of linguistic and discursive resources, whether an individual lack of proficiency or a cross-linguistic, cross-cultural gap. As Candlin and Maley state "… options available to and chosen by individuals serve to construct, reinforce, perhaps question, social roles and social behaviour" (Candlin & Maley, 1997: 202). The central challenge facing the interpreter, therefore, is how to adhere to accuracy on the one hand, and on the other take account of and seek to honour the demands made by the professional code, the constraints imposed by the institution and the interpreter's own personal inclination in relation to the Spanish speaking witness and the case at hand.

The hypothesis explored in this book was that interpreters are mostly concerned with maintaining accuracy of content alone, the "what" and not the "how". That is, they generally say what the other person said, but not in the same way or with the same pragmatic force. This can have ramifications in the courtroom where the manner in which testimony is presented and questions are asked, can be almost as important as the propositional content they carry. In speaking about discourse types as "specific manifestations of language form" typical of particular activity types, Sarangi explains that any contribution comprises "not only `what is said' but also `how something is said, when and where'" (2000: 11). This notion was examined and strongly argued for in this book. It was proposed that lawyers use language strategically for their own purposes: to present their client's version of the facts in a favourable light and to challenge the other side's. The way questions are asked, with specific use of grammatical form, tag questions, discourse markers, choice of lexis, is mostly deliberate on the part of counsel. The way the witnesses' answers are

presented can represent a conscious decision to express meaning in a certain way, or it can be subject to the speaker's own linguistic resources. Either way, the result will impact on the impressions about character and credibility that witnesses will present to those judging them. Based on the evidence presented in this book, the hypothesis stated above is warranted. Whether consciously or not, interpreters tend to maintain accuracy of propositional content alone. This can include the omission of important discourse markers which have pragmatic significance, the omission or misinterpretation of tag questions in cross-examination where such are used as challenging devices, the omission or addition of what O'Barr (1982) calls "power-less speech features" such as fillers, repetitions and hedges from the witnesses' speech, to name a few. The interpreters' alterations to the discourse of the main participants do not always favour the witnesses, however. They frequently present a weaker, less assertive witness which enhance the power already assigned to counsel by the institution. All of these findings indicate that for a number of different reasons, interpreters are not presenting the utterances of the main participants accurately, according to the definition of accuracy proposed in this book. Although historically many have argued that translating accurately across languages is an impossible task, due to the lack of direct equivalence across languages, cultures and personal understandings (Le Bon, 1894, Benjamin, 1923, Winter, 1961, Derrida, 1985), this book argues that accuracy can be achievable in the courtroom context through a pragmatic reconstruction of the message. Accuracy is defined as portraying the intention of the original message in the target language, with the same illocutionary force, so that the listener of the interpreted message can perceive the message and its author in as similar a way as a listener of the source language message would. Such a level of accuracy requires faithfulness of content and manner of speech. The book reinforces the complexity of the task and the high skills required of interpreters in achieving this, which are rarely recognised by those who employ their services. It concedes that the interpreted version will always be another person's reconstruction of the original meaning, but it argues that with adequate training, interpreters can achieve a pragmatic equivalence which will reflect the speaker's intention. This premise is crucial if issues of equity are to be taken seriously. Those who cannot speak the language of the courtroom have the right (morally if not legally), to express themselves in any way they want, choosing their own content, words, and speech style. As expressed in Chapter 2, providing non-English speakers with interpreters who will not interpret accurately takes away their right to hear and to be heard. All it does is allow a third person, the interpreter, to provide an edited version of their speech. Similarly, the original speakers must assume the responsibility for their own speech and cannot expect the interpreter to improve on their style and content.

8.2   Summary of results

The book was divided into five major components: an introduction to the main issues surrounding court interpreting in Australia, including its historical development, conceptions of role and accuracy and issues of training and research; the analysis of the discourse practices of counsel through their use of questions and the interpreters' renditions of them; the analysis of witnesses' discourse practices reflected in their answers and the interpreters' renditions of them; the analysis of the interaction between the questions and the answers in the struggle to gain control of the discourse with the interpreter's intervention either assisting or thwarting the lawyer's tactics to maintain control; and the response of practising Spanish interpreters to the findings of the research.

The analysis of courtroom questions corroborated previous studies about the different types of questions used by lawyers depending on whether they were used during examination-in-chief or cross-examination, with the most coercive, controlling and aggressive types predominating in cross-examination, and the freer, less constraining and friendlier types, predominating in examination-in-chief. With regard to the interpreters' rendition of the questions, there was a tendency on the part of the interpreter to omit certain types, with declaratives with tags and modal interrogatives being those that caused most difficulty. One of the reasons for omitting certain features were a lack of syntactic and semantic equivalence between the two languages. However, it was proposed that pragmatic equivalence, which strives to maintain identical or similar illocutionary force, should be aimed for. Alternative pragmatic renditions were suggested for each type of question. The failure to interpret question type accurately can impact on the effect such questions will have on the responses.

The analysis of the discourse of counsel uncovered a recurrent use of the discourse markers "well", "you see" and "now" to preface their questions. The research found that these discourse markers, seemingly insignificant to most speakers, carry pragmatic significance which must be maintained in the interpretation. The data showed that the use of these markers changed depending on whether they were used in cross-examination or examination-in-chief. When used in cross-examination, they generally took on the function of markers of argumentation and confrontation, mostly initiating disagreements or challenges. When used in examination-in-chief, they mostly functioned as a means for maintaining control of the flow of information, as well as to mark progression in the narrative. Not surprisingly, these markers were almost entirely omitted by every interpreter. It was suggested that such a uniform tendency may be explained by two reasons: a complete unawareness of the significance of these features, in that they were judged as superfluous to the message and considered disposable by the interpreters; and an

inherent translation difficulty found in the lack of direct semantic equivalents across the two languages that would carry the same illocutionary force. The omission of such features produced a noticeable change of pragmatic force which may lead to a possible change of reaction from the witness.

The analysis of the witnesses' answers was based on the premise that testimony style influences the way juries or the bench judge the credibility, competence and intelligence of a particular witness. It was found that most witnesses presented powerless speech styles as proposed by O'Barr (1982) and his team of researchers. The results clearly demonstrated that witnesses' speech styles were constantly altered by the interpreters. Many of the powerless speech features, common to the discourse of the Spanish speaking witnesses were omitted by the interpreters. However, other features which can also be construed as powerless speech features or detrimental to the evaluation of the witness's character and credibility, were on occasion added by the interpreter. The omission or addition of such features was not consistent. At times the interpreter omitted features such as hedges or repetitions but added ungrammaticality and hesitations to the same utterance. There were other instances, however, where the interpreted version was noticeably improved. The book therefore, does not claim that interpreters always improve the style of the witnesses' answers, as this was not evident in the data, where the opposite was sometimes found to be the case. Whether the style was improved or not depended mainly on the interpreter's competence of both languages as well as on his/her interpreting skills. What the book unequivocally claims, however, is that all interpreters tended to change the style of the witnesses' speech.

To corroborate the hypothesis that testimony style is of paramount importance in the evaluation of the witness's credibility, competence and intelligence, controlled experiments were conducted. The results of these experiments corroborate the hypothesis stated above. When different versions of the same content were presented to different groups to evaluate, those with the powerless features were ranked lower than those with the powerful features. The most important finding was that when a stylistically accurate translation of the original Spanish testimony was presented to the group, it received almost the exact evaluation as the original. This finding gives strength to the argument that it is possible for interpreters to interpret the "what" and the "how" accurately and place the non-English speaker in a very similar position as that of the English speaker.

In the analysis of the interaction between the questions and the answers and the exercise of power, the book challenges the notion that only the powerful court participants control the discourse all the time. The results showed that all participants: counsel, witness and interpreter, constantly negotiate control of the discourse. Counsel are obviously in an advantageous position as the rules of evidence assign them the role of questioner, however, this does not stop the witnesses from

answering irrelevantly, introducing new topics, interrupting or even asking questions him/herself. Although the interpreter was not the main cause of counsel's loss of control, it was apparent that her/his presence made it more difficult for counsel to maintain tight control of the discourse, as counsel became instantly disempowered when the Spanish language was used. However, interestingly, the interpreter sometimes aided counsel in maintaining control by omitting to interpret questions from the witness or diminishing the force of witnesses' answers.

Finally, the book presents the results of a survey of practising Spanish interpreters. These results corroborated the majority of the issues raised in the rest of the book. The respondents showed confusion about the meaning of accuracy, perception of role and degree of knowledge of certain aspects of the legal system. They were presented with a number of questions and answers from the data to translate, and although their performance on test was more accurate than that found in the authentic data, the surveyed interpreters presented some of the same trends as the interpreters who produced the authentic data. The most striking result was their tendency to omit powerless speech features from their translations even when these appeared before them on paper. This seemed to indicate that their omission was intentional.

8.3   Contributions and recommendations

The book by no means claims to be exhaustive. The data are limited to one language pair, one tier of the court system in one state of Australia, and to seventeen cases. Nevertheless, its findings can be used as a basis for research in other language groups, other settings and other aspects of the interpreting process. Another aspect the book does not present is the lawyers' direct perspective, as none was able to be personally interviewed. Neither were the Spanish speaking witnesses able to be surveyed to discover their view points.

The book makes important contributions to a number of areas. It is primarily aimed at the field of court interpreting, intending to add to the limited knowledge about its practice and theory. It aims to provide answers to practical problems based on empirical results rather than on anecdotal evidence. It is hoped that the findings will be useful to court interpreters, interpreter educators and researchers. It is also hoped that an awareness of the many issues presented in this book will help court interpreters improve their performance. It is envisaged that the findings will inform and influence the curricula of court interpreting training to make them more relevant and more effective. The book will hopefully also serve to encourage further research in the field of court interpreting in particular and community interpreting as a whole, especially among other language pairs. The findings should

also contribute to the legal profession in enabling a better understanding of the complex work of court interpreters, the different dynamics of the interpreter mediated courtroom, and the need for fully trained, competent interpreters in court. The results could feasibly lead to a re-evaluation of lawyers' evidentiary practices and of their expectations. The book also makes a contribution to the field of discourse analysis; to those interested in the discursive practices of the different actors at play, in the way discourse is negotiated in an institutional setting and in the way social roles are affected by discourse. Another contribution is made to the translatability of oral discourse between Spanish and English, from the lexical, to the grammatical to the pragmatic aspects of both languages.

Most importantly however, this book has a clear social and moral imperative: to help achieve a higher standard of justice. The question of equity for those speakers of languages other than English that must communicate through an interpreter is crucial. The main reason behind the existence of a court interpreting profession is the need to provide equal access to non-English speakers and to create a situation where the language barrier does not impede communication to the extent that it impinges on the quality of the exercise of justice. Interesting as the findings may be to linguists, they must have a practical implication: to assist to improve accurate interpretation in the courts. Accuracy of interpretation was defined in the book as comprising faithfulness of content and manner of speech. By this definition the results showed that perfectly accurate interpretation is not yet a reality in Australian courts. The speakers must be given the right and the responsibility to express themselves in the way they choose. When interpreters do not interpret accurately, they are imposing their own ideas, their own styles and their own interpretations on the main speakers' utterances. Such changes can impinge on the whole interaction, and by extension, it is feasible to assume, may also influence or alter the outcome of the case. However, the skills required of a competent court interpreter are not acquired instinctively or purely by practice. As Benmaman states, "the knowledge, skills and competencies [of a court interpreter] … can only be acquired through a carefully planned and sequenced course of studies" (1999: 111).

All responsibility, however, does not lie with the interpreters. Currently interpreters strive to "interpret to the best of their skill and ability" as stated in the court interpreter's oath, without the support of a regulated, well remunerated interpreting profession, with no adequate university training available in all languages and faced with a lack of understanding about their role and the complexity of their work from the legal profession and the non-English speaking witnesses. If court interpreting is to be improved, there must be changes at all levels. The quality and availability of interpreter services, the competence of interpreters, the quality and availability of legal interpreting courses, and the occupational conditions, must all

be improved. These factors are all interrelated. As Cook, Eades and Hale state:

> There is no use offering interpreting services if provided by incompetent inter-
> preters. Interpreting services will always be deficient unless proper, formal train-
> ing is put into place. For training to be effective it needs to be based on empirical
> linguistic research. And, finally, highly skilled, trained interpreters need to be
> rewarded with appropriate remuneration (1999: 2).

It is hoped that the results of this research will go some way to convince govern-
ment, the legal profession, tertiary institutions, the interpreting industry itself and
the community at large, that adequate, competent, and above all, accurate inter-
preting requires adequate university training, based on results of research and
accompanied by commensurate remuneration and working conditions. If these
issues are not addressed, access and equity cannot be guaranteed for the non-
English speaker in the courtroom and justice cannot be served.

Notes

1. The Local Court in New South Wales, Australia, constitutes the first tier of the state court system, which deals with both criminal and civil cases. The name refers to its geographical location. There is a Local Court for each Local Government area. The same court is called the Magistrate's Court in other states of Australia and used to be called the Court of Petty Sessions. This court acts as a filtering court for all criminal cases. All criminal cases must first be heard in the Local Court in what is called a Committal Hearing, where magistrates decide whether there is enough prima facie evidence to commit the defendant to trial in the District Court, which is the next tier in the court hierarchy. Civil cases are heard in different courts according to their money value.

2. Examination-in-chief in Australia and the United Kingdom is the equivalent of Direct Examination in the United States.

3. This comment was provided by respondent #5 of the questionnaire whose results are presented in Chapter 6 of this thesis.

4. In the Australian context, English is the language of the host country, therefore the non-English speaker always refers to the migrant. In other contexts, other languages will apply as the host languages.

5. Community interpreting in Australia encompasses all types of interpreting carried out for the Australian community between members of an ethnic group who do not speak English and English speaking service providers. This includes welfare, education, immigration, medical and legal settings. I will later refer to "legal" or "court interpreting" as a specialist type of community interpreting. Other authors have referred to "community interpreting" as "liaison interpreting".

6. Direct Examination in the USA is the equivalent of the Australian examination-in-chief.

7. Note that / indicates a rising intonation and \ indicates a downward intonation.

8. Aplicación is a false cognate for application, which is commonly used by Spanish speaking migrants living in Australia.

9. \ indicates a falling intonation

10. / indicates a rising intonation

11. This is part of the curriculum in the degree courses at the University of Western Sydney, Australia.

12. See Hale, S. (1996) "Pragmatic considerations in court interpreting". *Australian Review of Applied Linguistics 19, 1 (1996)*. Pp. 61–72. for a full discussion of the translation of "soy una persona educada".

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