

BOSTON UNIVERSITY
GRADUATE SCHOOL OF ARTS AND SCIENCES

Dissertation

**VOICING THE EVIDENCE: THE PRAGMATIC POWER OF
INTERPRETERS IN TRIAL TESTIMONY**

by

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Submitted in partial fulfillment of the
requirements for the degree of
Doctor of Philosophy

2002

UMI Number: 3010447

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ACKNOWLEDGMENTS

I need first to thank my major advisor, Bruce Fraser, whose support was beyond the call of duty. His enthusiasm and positive attitude inspired and encouraged me throughout this long journey.

I am grateful to my second reader, Steven Cushing, for his endorsement of my project and for his view, which I share, that linguistics can make a contribution to society. My third reader, Marnie Reed, who was both kind and patient, brought to this project her own unique perspective.

I could not have undertaken this project without the support, both financial and emotional, of my mother and my father.

Many people made this research possible: Robert Joe Lee, of the Court Interpreting, Legal Translating, and Bilingual Services Section of the Administrative Courts of New Jersey, who provided free access to audio and videotapes; Azucena Rigney, who sent me a videotaped copy of the Rosa Lopez testimony; the transcribers of the Spanish portions of the tapes, as well as many others too numerous to name.

To my special B.U. friends Jilani, Aisha, and Beth, who shared their own experiences of the task of writing a dissertation. You are all terrific!

Finally, to Lew, whose patience and understanding was sometimes hard to believe, I send my love.

**VOICING THE EVIDENCE: THE PRAGMATIC POWER OF INTERPRETERS IN
TRIAL TESTIMONY**

(Order No.)

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ABSTRACT

In a trial involving non-English speakers, the interpreter is responsible for accurately rendering the testimony of non-native-speaking witnesses into English and, correspondingly, the language of the court into the language of the witness. This dissertation addresses one aspect of the interpreter's task. Considering a set of 10 pragmatic markers such as report markers (e.g., *he said*), the study discusses the causes of interpreter alterations and the effect of these alterations on the pragmatic meaning of lawyer questions and witness answers.

The data for this study came from audio and videotapes of 6 trials covering 15 hours of testimony and involving 8 Spanish-speaking witnesses and 9 interpreters. Separate transcripts of the lawyer-witness colloquies were made for each trial and verified for accuracy by a bilingual Spanish-English speaker. The transcripts were analyzed for the presence of one or more of the 10 pragmatic markers, for whether they were added, deleted or substituted, and for

whether the alteration occurred in the witness answer, the lawyer question, in direct examination, or in cross examination.

There were a number of potentially significant findings. First, interpreters added uncertainty markers (e.g., *umm*) 158 times out of a total of 278 alterations to these markers, thereby altering the pragmatic meaning of the answer by conveying uncertainty on the part of the witness. Second, the addition of uncertainty markers made answers vulnerable to exclusion under evidentiary rules such as The Uncertainty Rule, potentially resulting in testimony being ruled inadmissible. Interpreters also added evidential markers (e.g., *I guess*) to witness answers 17 times out of a total of 30 alterations to these markers, thus altering the pragmatic meaning of the original utterance by suggesting witnesses lacked confidence in their testimony. At the same time, the addition of evidential markers made answers vulnerable to exclusion under The Opinion Rule, potentially resulting in testimony being ruled inadmissible. Such findings suggest that alterations to pragmatic markers have the potential to distort the lawyer-witness exchange, possibly affecting the witness' credibility and denying due process to non-native English speakers.

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CHAPTER I: INTRODUCTION

...the very activity of translation brings us again and again to face that which is particular or unique to the language and its context, to the speaker himself, and therefore cannot be translated, cannot be 'set over' into another language.

...how little of what happens in any real utterance is reducible to the words uttered, let alone to the 'propositions' they are supposed to express, and how much lies in the...relations between speaker and auditor...in the understandings they share....

James Boyd White, JUSTICE AS TRANSLATION: AN ESSAY IN CULTURAL AND LEGAL CRITICISM

The twelve jurors had argued over the meaning of the word doubt, then over the meaning of the term reasonable, then over both put together. "Well," Alexander Van Ness concluded, "I guess it comes down to a feeling doesn't it? If I feel uncertain, if I feel that I doubt, that's all that matters, right?"

David Guterson, SNOW FALLING ON CEDARS

1.1 Justification for the study

With the population of America becoming increasingly diverse, the number of Hispanics, according to the U.S. Census Bureau, is growing at 5 times the rate of other minority groups (de Jongh, 1992). Concomitantly, the number of trials involving non English-speaking defendants and witnesses is also expanding (Gonzalez et al., 1991). Thus the U.S. court system is under increasing pressure to insure due process, which guarantees "a fair hearing before an impartial jury of peers, or before a judge..." (Gonzalez et al., 1991,

p.158), for a rapidly growing sector of Spanish-speaking defendants.

In an adversarial system of justice language is the primary instrument through which due process is achieved, the foremost means in a trial for persuading a jury to condemn or pardon. However, when the defendant or witness is a non-native Spanish speaker of English, the interpreter, functioning as the voice of the non-English speaker, has the powerful ability to alter both lawyer and witness utterances, potentially compromising due process for non-English speakers.

Furthermore, not only *what* lawyers and witnesses say but *the manner* in which they say it plays a crucial role in how utterances are interpreted and, thus, in insuring a fair trial. For example, the degree of coerciveness of an attorney's question may influence the manner in which the witness responds. In turn, the extent to which a witness hesitates in answering, or inserts words such as *well* or *uh*, may lead the jury to an unwarranted conclusion. It is with *the way in which* speakers convey utterances in the lawyer/witness colloquy, that is, with their *pragmatic meaning*, and the potential that interpreter alterations to such language may have for jeopardizing due process for non-English Spanish speakers, that this study is concerned.

1.2 Goal of the study

While previous literature on Spanish/English court interpreting has acknowledged the importance of capturing the pragmatic aspects of language (Gonsalez et al., 1991, Berk-Seligson, 1990/1999, Wadensjö, 2000, Roy, 2000, Hale, 1996a/b, 1997a/b, Rigney, 1996/1999), no one has examined alterations to *pragmatic markers* (defined by Fraser, 1996, as words or phrases that modify the basic message of an utterance or signal a separate one), treating them as a group. Furthermore, there has been no research which uses a model to analyze interpreter alterations in trial testimony and makes systematic statements which assess the potential effect of these changes to the meaning of the lawyer/witness exchange.

The current study hopes to fill this gap in the literature by utilizing a model which describes the nature of interpreter alterations to 10 pragmatic markers in the lawyer/witness exchange of Spanish/English trial testimony, applying the following categories to the analysis of each marker:

- 1) whether the markers were added, deleted, or substituted
- 2) whether the markers occurred in lawyer questions or witness answers
- 3) whether the markers occurred in direct or cross examination

4) whether the markers intersected with legal rules of evidence, potentially affecting the admissibility of witness testimony.

The analysis has two parts. The first part accounts for the frequency of alterations across categories, identifying patterns that emerge and speculating about causes of interpreter alterations. The second part presents a descriptive analysis which assesses the effect of these alterations on the pragmatic meaning of the original utterances.

In addition, the study examines interpreter alterations to the same set of pragmatic markers in the testimony of Rosa Lopez, a critical defense witness in the double-murder trial of O.J. Simpson. The purpose of this chapter is to examine a high-profile trial where interpreters might have been expected to make few serious errors, an expectation particularly important in light of the criticalness of Ms. Lopez' testimony as the only eyewitness account of O.J. Simpson's whereabouts the night of the murders. In the literature on the Lopez testimony (Pym, 1999, Rigney, 1996/1999), there has been no research which assesses the possible effect of alterations to pragmatic markers on this critical testimony.

Based on an examination of these six trials, the dissertation argues that interpreter failure to preserve pragmatic markers may distort both the lawyer question and

the witness response, potentially affecting the credibility of the witness in the eyes of the jury.

1.3 The legal context of this study

Rules of evidence that govern the format of an American trial control the use of language permitted in witness testimony. This section provides an overview of the trial process and discusses how the use of pragmatic markers can affect the admissibility of witness answers.

The competitive nature of the adversarial trial has given rise to many comparisons. It has been referred to as a battle (Maley, 1991), a "story-telling contest" (Woodbury, 1984, p.206), and a "game with serious consequences" (Drew, 1979, p.13). The adversarial trial is a highly ritualized event bound by strict conventions, where lawyers representing opposing sides present different versions of the same story, each attempting to convince the judge and jury to believe his/her rendition. The intent of each side is thus not to uncover the truth but to win through persuasion (Danet, 1977).

Central to the trial is the question/answer format of witness testimony, where lawyers attempt to elicit responses from witnesses that will persuade the jury to accept their theory of the facts. However, convention dictates that the lawyer "... may not tell the story himself" (Woodbury, 1985, p.206). Attorneys can only make their views known indirectly.

As Danet (1997) states, "lawyers may not directly claim, assert, state or declare:...they may only ask" (p.219).

There are two divisions in a trial: direct examination and cross examination. In direct examination, each side is given the opportunity to present its version of the facts by questioning its own witnesses. The structure of direct examination is preplanned and rehearsed. Commonly, lawyers and witnesses discuss what will be presented in the testimony before the trial. At the same time, lawyer questions in direct examination tend to be minimally directive and encourage the witness to present a narrative rendition of the events. According to Lilly (1987), narrative answers give the jury the impression that the facts come directly from the witness, ostensibly devoid of the partisan view of the lawyer.

The lawyer/witness relationship in direct examination is friendly and cooperative, with witnesses presenting answers that are favorable to the examining lawyer's case. According to Valdes, "the attorney and the witness are, in Goffman's terms (1959), a 'performance team'...who cooperate in staging a single routine" (p.278).

In contrast, cross examination is adversarial and unplanned. Here the lawyer, interrogating the opposition's witness, "...attacks [the] opponent's version of the facts" (Woodbury, 1984, p.207). The relationship between the lawyer and witness is antagonistic, with the lawyer attempting to

discredit the witness and prove his/her testimony unreliable (Valdes, 1986). The lawyer maintains tight control over the witness, asking narrowly conceived questions which demand specific answers (Lilly, 1987, p.92). Such questions discourage narrative answers which could allow a witness to emphasize testimony favorable to the opposing side or add information not previously introduced in direct examination (Lilly, p.92).

In presenting its case, each side must consider both the actual facts of the situation and the application of Rules of Evidence as they pertain to the facts. Rules of Evidence regulate how witnesses present their testimony. However, while legal professionals know these rules, witnesses are not privy to them (Stygall, 1994). For example, Rules of Evidence prohibit witnesses from using personal opinion as well as information gleaned from another source in their answers (Drew, 1979). Nevertheless, witnesses are not told that such testimony is excluded by these rules and directly affects the admissibility of their answers (Lilly, 1987, p.2).

Several Rules of Evidence govern the use of particular pragmatic markers in lawyer questions and witness answers, affecting the admissibility of testimony containing these markers. These rules are The Opinion Rule, The Hearsay Rule, The Uncertainty Rule, and The Real Evidence Rule.

The Opinion Rule (Federal Rule of Evidence 701) limits personal opinion in witness answers to opinions or inferences

that are "... rationally based on the perception of the witness" or "helpful to a clear understanding of ... the testimony or the determination of a fact in issue" (Lilly, 1987, p.109). Keeton (1973) argues that the response to a question is an opinion, rather than an answer, when the "basis for the opinion has not been shown" (p.213).

For Stygall, The Opinion Rule reflects Chafe and Nichols' linguistic description of evidentials (1987), which "mark the basis of the speaker's knowledge" (p.138). She argues that their categories of reliability (e.g., "probably," "might," and "maybe") and belief (e.g., "I think" and "I guess") indicate that the speaker's knowing is based on possibility (pp.138-9). In witness answers, Stygall claims, the presence of these "evidentials of possibility" indicates that the answer is an opinion.

Chafe and Nichols' description of evidentials of possibility closely parallels Fraser's (1996) definition of *evidential markers*, which signal the speaker's degree of confidence in the truth of the basic message. According to Keeton, the presence of phrases such as "I think" and "I guess" (evidential markers in Fraser's typology) indicates that the witness is evasive and trying to "conceal relevant facts about which he is asked" (p.143). The use of evidential markers in witness answers, then, may potentially disqualify testimony under The Opinion Rule. The disqualification of testimony has critical implications for the adversarial trial

process, where ruling a witness's testimony inadmissible could give the advantage to the other side.

In trials where an interpreter is present, it is most likely that the interpreter, typically untrained in law, is unfamiliar with the use of evidentiary rules and procedures (Gonzalez et al., 1991). Thus he/she would be unaware that The Opinion Rule could disqualify answers containing evidential markers. However, interpreter additions or omissions of these markers could have serious legal ramifications for the admissibility of the testimony.

Another evidentiary condition that affects the use of pragmatic markers is The Hearsay Rule, which prohibits witnesses from using the speech of others to prove their testimony (Lilly, 1987, p.180). Hearsay is defined as a "statement, other than one made by the declarant while testifying..., offered in evidence to prove the truth of the matter asserted" (Federal Rule of Evidence 801(d)(1)(c), cited in Lilly, p.208).

Linguistic indicators of hearsay include verbs of saying, telling, hearing, and reading (Stygall, 1994). Thus witness testimony containing "reported speech" (Stygall, 1994, p.140) could be judged inadmissible¹ under The Hearsay Rule. The current study examines reported speech as *report markers*

¹ In trial testimony, it is expected that lawyers from one side will raise "objections" about the legal relevance of witness answers (or lawyer questions that encourage a particular response) presented by the opposition. Nevertheless, only judges may declare that a witness answer is inadmissible and should be struck from the record.

(Fraser, 1996), which signal that the basic message is a report. Report markers can occur in both witness answers and lawyer questions. Examples in witness answers include phrases such as *he told me* and *he saw*, and in lawyer questions, *you alleged* and *you testified*. While report markers are not excluded from lawyer questions under The Hearsay Rule, since only witnesses must prove the truth of their statements, the occurrence of these markers in lawyer questions is significant, since they allow the cross examining lawyer to emphasize that a witness' source of knowledge is not his/her own.

The Hearsay Rule is also reflected in lawyers' use of ritualized, stock phrases used to determine whether a witness' statement is hearsay.² In Fraser's typology (1996), these phrases are defined as *degree of adequacy markers*, which ask the speaker to measure his/her degree of certainty about the basic message of the utterance. A common marker used by lawyers to determine whether a statement is subject to hearsay is the phrase "to the best of your own knowledge," which asks the witness his/her source of knowing (email from Attorney Larry Solan, 2/00). Interpreters who omit this and similar markers (*if you recall/remember/know/could estimate*) from questions could unknowingly exempt the witness answer from The Hearsay Rule.

² According to Keeton, "a witness is not able to speak 'of his own knowledge' if he is merely repeating what has been told..." (p.122).

Degree of adequacy markers are also used in lawyer questions to decide if the physical evidence presented meets the standards of The Real Evidence Rule. This rule states: "to be admissible, tangible evidence must provide the trier of fact with some knowledge or understanding it lacked before viewing the thing presented...and must be...material to the controversy being tried" (Lilly, 1987, p.213). Thus phrases such as *fair and accurate representation* and *fairly and accurately* ask the witness to affirm that the evidence meets the standards of The Real Evidence Rule. If these phrases are omitted by an interpreter, they could permit the opposing side to dispute the admissibility of the evidence submitted.

Another evidentiary condition which allows opposing counsel to find witness answers inadmissible is The Uncertainty Rule. According to Keeton (1973), witness testimony can be disqualified if "the answer indicates that the witness is uncertain" (p.215). While the rule leaves ambiguous how to determine a witness' uncertainty, language provides one clue. Thus the presence in witness answers of pragmatic features such as *uncertainty markers* (e.g., *uh, I mean*), which signal the speaker's lack of confidence in the basic message, could be taken by the opposing side as indicating uncertainty, allowing them to object to the testimony as inadmissible. Interpreter additions of these markers, therefore, could potentially disqualify a witness answer.

Rules of Evidence also control the form of questions permitted in both direct examination and in cross examination. Leading questions, for example, are prohibited in direct examination but allowed in cross examination (Woodbury, 1984). Leading questions are those which suggest the desired answer (Lilly, 1973, p.94). According to Busch (1960), a question is leading when "...it puts the thoughts or words in the mouth of the witness to be echoed back" (cited in Danet, 1997, p.420). In this study, leading questions are examined as *assessment markers*, which signal the speaker's assessment of the truth conveyed by the utterance.

Leading questions frequently occur in the form of tag questions. According to Ogle et al., tag questions are inherently leading, since the statement preceding the tag suggests the desired answer: e.g., "*the car was red, wasn't it?*" (Ogle et al., 1980, p.44).

In direct examination, prohibiting leading questions reflects the goal of this division to present the facts through the recollection of the witness with minimal suggestion from counsel. Since direct examination is non-adversarial, The Leading Question Rule reflects the belief that witnesses, of their own accord, will offer responses favorable to their side's version of the facts (Lilly, 1987, p.93).

At the same time, leading questions considered "necessary to develop ...[the witness'] testimony" are permitted in direct examination (611(c), Federal Rules of Evidence, cited in Ogle et al., 1980). For example, leading questions can be used to clarify information about a witness' personal background or relationship to the defendant (e.g., *and you are the brother of the defendant, is that correct?*). Woodbury (1984) points out that when leading questions are used in direct examination, they commonly take the form of confirmatory tags "used to confirm the lawyer's understanding of the facts, such as "right?" and "is that correct?" (p.223).

In contrast, leading questions are encouraged in cross examination (Danet, 1977). The rationale for permitting this type of questioning reflects the nature of cross examination, where "the cross-examiner and the witness are antagonistic and there has been no preparatory conference between them" (Lilly, 1987, p.95). As a strategic device, leading questions allow the lawyer to control both the length and content of witness answers.

Argumentative questions are also permitted in cross examination. According to Keeton, argumentative questions, which fall under The Leading Question Rule, more directly state the lawyer's theory of the facts than leading questions (p.141).

Argumentative questions often begin with the phrase "isn't it a fact," followed by a statement which explicitly describes the lawyer's assessment of the events. Both leading and argumentative questions function as assessment markers, permitting the lawyer to present his/her view of the truth by embedding it in the question. Interpreter omission of tags in leading questions or initial phrases in argumentative questions alter the coercive nature of these utterances, diminishing the lawyer's control over the testimony.

The strict distinctions between direct and cross examination are also reflected in the language lawyers use to communicate with the witness. In direct examination, for example, the cooperative nature of the lawyer/witness relationship assumes that the lawyer will portray the witness in as favorable a light as possible. One way lawyers accomplish this goal is to suggest a bond with their witnesses. A strategy frequently employed by lawyers to achieve this end is to address the witness by his/her first name (in an uncharacteristic use of these markers, Chris Darden, in cross examination during the Rosa Lopez testimony, used the familiar term "Mr. Johnnie" to refer to Lopez' lawyer, Johnnie Cochran). Familiar terms of address in lawyer questions are examined in this study as *solidarity markers* (Fraser 1996), which signal a message of solidarity between the speaker and the hearer. When interpreters omit

solidarity markers in lawyer questions, they can undermine the lawyer's attempt to suggest, through addressing a witness in familiar terms, that the witness is trustworthy and hence credible.

In summary, interpreter alterations to pragmatic markers can have serious ramifications for the admissibility of witness answers in trial testimony.

1.4 An Overview of the study

The remainder of this study is organized in the following manner. Chapter 2 presents a review of the literature on court interpreting. Chapter 3 discusses the methodology used in the study. Chapter 4 looks at the frequency of alterations to the data, discussing patterns that emerge and speculating about possible causes of interpreter alterations. Chapter 5 presents colloquies where interpreters made alterations to each of the 10 pragmatic markers, offering 2 examples of additions, 2 examples of deletions, and 2 examples of substitutions for each marker. In addition, the chapter discusses the potential effect of alterations to these markers on the meaning of utterances and on the credibility of the witness. Chapter 6 looks at alterations to selected markers in the testimony of Rosa Lopez, a Spanish-speaking defense witness in the high-profile trial of O.J. Simpson. Finally, Chapter 7 offers a summary of the findings, discussing the contribution of the study to the

field of court interpreting and suggesting areas for further research.

CHAPTER 2: REVIEW OF THE LITERATURE

2.1 Overview

The review of literature on court interpreting will cover the following domains, as follows:

- 1) What constitutes an accurate interpretation
- 2) Cognitive issues that promote interpreter alterations
- 3) Court-imposed problems which promote interpreter alterations
- 4) Previous approaches to the study of pragmatic alterations in interpreted court proceedings.

2.2 What constitutes an accurate interpretation

One of the more controversial issues among researchers is what constitutes an accurate interpretation. The existing research can be divided into two camps: 1) those who believe that interpreters should have the latitude to decide what is important to include in the interpretation and intervene in the process if necessary and 2) those who believe that the interpreter, functioning in a non-interventionist fashion as the voice of the non-native speaker, must produce a pragmatic interpretation that faithfully captures every nuance of the source language utterance, including its culturally-bound features.

2.2.1 Interpreting with latitude

This section discusses those researchers who espouse the view that interpreters should play an active role in the process of interpreting. A leading proponent of this view, Morris (1995b) critiques the courts' perception of

interpretation as a literal rendering of words from the source language to the target language, which perceives language as a series of messages embedded in code which ignore speaker intention and the context in which messages occur.

Morris claims that, in the legal setting, *interpretation* equates with the "interlingual act," performed by lawyers, of conveying understanding of speaker intention, while court interpreters are relegated to *translation*, or producing a literal rendering of words devoid of speaker meaning. The court's concept of interpretation, Morris claims, is motivated by its desire to function essentially as a monolingual courtroom where the interpreted version is viewed "as the original text" (p.30). Morris offers an insightful explanation of the principle underlying the court's desire for literal interpretation: mainly, that control, in the legal system, is achieved through language:

...for an interpreter to seek clarification means identifying ambiguities and potentially querying time-honored legal conventions. Challenges to language use to the 'language' which is the very essence of the law- can shake its foundations (p.32).

Morris argues that the role of the interpreter as *translator* does not allow an accurate interpretation. Interpreters must become active participants in the courtroom, "...using their own strategies for identifying misunderstandings... and clarifying meaning explicitly"

(p.32). Fenton (1997) agrees with Morris' (1995b) criticism of the way the courts define interpretation, claiming that their view perceives the interpreter as a conduit through which information is conveyed. For Fenton, this conduit role is neither a realistic nor viable view of the interpreter, who "...perches precariously between the artificially created role of a mechanical device and the realities of complex linguistic and interpersonal demands" (p.32). Fenton makes the strong claim that interpreters do, in fact, influence the outcome of cases, both positively and negatively.

The central point of Fenton's article is that the nature of interpreting, which often gives rise to problems, demands that interpreters become more than conduits and insert themselves into the proceedings to clarify issues. She argues that interpreting is not a passive activity but rather one of continuously making choices. Espousing a more radical view than Morris, Fenton claims that interpreters should function as expert witnesses, who can be called upon by attorneys and the court to provide expertise and knowledge when needed. While this view is offered as a suggestion to generate future discussion, the author fails to provide adequate evidence for her argument.

Similar to Morris and Fenton, Shlesinger(1991) finds fault with the court's narrow perception of the role of the interpreter. However, like Fenton, she takes a more extreme

stance of what constitutes interpreter latitude than Morris. Using examples from a multilingual trial (The State of Israel vs. Ivan John Demjanjuk, criminal case 373/86) in which interpreters chose to omit elements which detracted from grammatically coherent utterances, Shlesinger condones these omissions. She argues that, in utterances marked by stylistic disfluencies, interpreters must weigh the need to interpret accurately with the "awkwardness" (p.150) of producing an ungrammatical interpretation.

She also endorses omitting derogatory information. In one striking example from the Demjanjuk case, when a defense lawyer referred to a Ukrainian interpreter as "the guy with the bald head," the interpreter omitted this phrase, substituting the person's title and name. Shlesinger finds no objection with the fact that the interpreted version significantly diverges, both semantically and pragmatically, from the original utterance.

Even more controversial, however, is her argument that, when clarification is needed, interpreters should insert themselves into the proceedings as independent personae without requesting permission from the bench, rendering the interpretation in the third person, as in "the witness says..." (p.152).

At the same time, Shlesinger concedes that interpreter latitude in editing utterances can potentially distort the illocutionary force of the original utterance. She cites an

example where an interpreter's penchant for omitting lawyers' false starts undermined what appeared to be the attorney's intentional strategy to "highlight...the irony of the situation" (p.150).

Overall, Shlesinger's article fails to present a consistent view of accurate interpreting, vacillating between seeing the interpreter as an independent persona who should make her own decisions and concern that freedom to make these decisions may potentially distort the pragmatic meaning of an utterance.

For Roy (2000) and Wadensjö (1998), interpreting with latitude is an interactional process, one based on Goffman's (1963/1971) and Gumperz's (1971/1982) theories that talk is an activity situated in a particular context. Adapting these theories to the arena of interpreting, Wadensjö contrasts the model of talk as text, where accurate interpreting means capturing the meaning of the original speaker, with the "dialogical model" of talk as activity (p.8), where interpreting involves capturing the ongoing interaction between speaker and hearer. Strongly espousing the second, Wadensjö states that this model sees the source text as the original utterance which helps shape the second text, with both texts independent and separate units. Here, the second text evolves from the first and "...re-contextualize[s] a new version of the flow of talk" (p.107).

Wadensjö presents a comprehensive and in-depth analysis of interpreting as an interactional activity, with examples from court interpreted events. At the same time, she takes pains to examine the contrasting view of interpreting, providing her own taxonomy of different types of "renditions," each accompanied by excerpts from court hearings.

Extending Wadensjö's view of interpreting as an interactional activity, Roy (2000) sees the interpreter as playing an active role through the management of verbal exchanges between interactants. One of the interpreter's primary responsibilities, Roy believes, is handling speaker turns. Thus interpreters must make active decisions when talk overlaps. For example, they may choose to stop one speaker and allow the other to continue or "momentarily ignore one speaker's overlapping talk...and then produce the "held" talk immediately following the end of a speaker's turn" (p.85).

Taking a more conservative view towards interpreter latitude than either Wadensjö, Roy, Fenton, or Shlesinger, Pym (1999) proposes that interpreters should intervene in proceedings only when problems arise. Pym uses the testimony of Rosa Lopez, a Spanish-speaking defense witness in the O.J. Simpson trial, as an example of a case where interpreters often had more latitude than necessary, at times usurping the power of both the witness and the lawyer. Thus Pym's concern

is with the "interventionist" strategies employed by interpreters in the trial.

Pym's discussion of interpreter intervention revolves around the choice of lexical equivalents used for the English verb "to slap" during cross examination, when Chris Darden repeatedly asks Rosa Lopez why Nicole Simpson had slapped the Simpson's maid, Michelle. While Rosa Lopez's Spanish equivalents escalate in intensity, Pym claims that the interpreter maintains "the English discourse at one degree of semantic intensity lower than the Spanish" (p.271).

In addition, Pym claims that the interpreter's choice of words (i.e. "...pegar (hit) for slap, and *dar patadas* (kick) for hit", p. 270) reflects an attempt to shield the witness from the brunt of the prosecution's questioning. By acting in this manner, Pym says, the interpreter oversteps her bounds, indicating her alignment with the witness.

However, Pym claims, interpreters were not consulted about matters when, as the most knowledgeable experts in Spanish available, their intervention would have been appropriate. For Pym, the decision not to consult interpreters reflects the court's view that "interpreters are not supposed to interpret," a reference to Morris's (1995) distinction between what interpreters do (offer literal translation) and what lawyers do (interpret the law and any problems that arise in carrying it out).

At the same time, Pym criticizes researchers such as Fenton who espouse the professionalizing of interpreters to an independent status approaching that of lawyers as beyond the scope of what interpreters' duties should be.

In the final analysis, Pym vacillates in his stance on interpreting with latitude. The article seems primarily bent on attacking theories of interpreting rather than on arriving at a solution for what constitutes an accurate interpretation.

2.2.2 Interpreting pragmatically

The following section presents the views of researchers who believe that interpreting accurately necessitates faithfully reproducing the pragmatic, non-propositional³ aspects of the original utterance, including the culturally-embedded aspects of the source language.

For these researchers (such as Gonsalez et al., 1991, Berk-Seligson, 1990, Hale 1996b, Rigney, 1996), equally important to the grammatical and lexical aspects of the source language are its pragmatic features. Reproducing every nuance of an utterance, such as self-corrections and repetitions, as well as faithfulness to culturally-bound language, is crucial to producing an accurate interpretation in the target language.

³ As defined in Section 1.2, utterances convey both a propositional meaning, reflecting what the sentence is about, and a pragmatic meaning, indicating how the speaker intends the utterance to be taken.

Berk-Seligson (1990), a leading proponent for interpreting pragmatically, believes that accurate interpreting means reproducing all "linguistic errors," whether grammatical, lexical, or pragmatic, made by the lawyer or witness. She argues that an accurate interpretation must be "a precise and hi-fidelity rendition of the source language utterance..." (p.275). At the same time, she goes to pains to avoid sounding prescriptive in her advice to interpreters, citing that it is "theoretically" advised to reproduce errors in the target language, even those that will make an interpreter look incompetent. She accedes that "...if an interpreter correctly interprets a poorly worded answer, it is very possible that the monolingual judge or attorney might assume that a faulty interpretation has been made" (p.65).

Espousing Berk-Seligson's view, Gonzalez et al. (1991) claim that the oath interpreters take binds them to reproduce an accurate version of the source language utterance which conserves "every single element of information that was contained in the original source language message" (p.474):

If a witness says yes, yes, yes it's true, the interpreter has to translate 'yes yes yes, it's true, and not 'yes, it's true.
(San Diego Municipal Court Guidelines for Interpreter, 1983, in Gonzalez et al., p. 110).

While Gonzalez et al. and Berk-Seligson stress the importance of rendering linguistic nuances to produce an accurate interpretation, Dixon, Hogan, and Wierzbicka (1980)

emphasize the cultural aspects of interpreting pragmatically. Stating that "different languages are different worlds" (p.163), they argue that interpreters must use their knowledge of the cultural, political, and social systems of both the target and source language when interpreting. Even though lexically similar words may be available in the target language, semantic equivalence does not necessarily reflect cultural equivalence; hence, they claim, a pragmatic interpretation must be both culturally and linguistically accurate.

Reflecting Dixon, Hogan, and Wierzbicka(1980)'s concern with fidelity to the cultural norms of the source language, Hale (1997b) discusses the interpretation of polite forms in Spanish/English court proceedings. She explains that the Spanish lexical equivalents of English polite forms are not necessarily pragmatically equivalent. For example, because the Spanish address forms *Señor* and *Señora* indicate less formality than *Sir* and *Ma'am*, translating *Señor* as *sir* does not accurately reflect its cultural meaning. Thus, according to Hale, a pragmatically correct interpretation of *sí Señor* would not be *yes Sir*, but rather *yes, that's right*, where the speaker's purpose is to emphasize agreement (p.41).

Another cultural difference between Spanish and English in interpreting politeness is how requests are made. Corroborating Mir's (1993) findings that Spanish speakers prefer direct requests while English speakers favor indirect

requests, Hale's study suggests that interpreters tend to maintain the Spanish preference for directness over indirectness when rendering English requests into Spanish.

For Hale, conveying English requests as imperatives in Spanish by omitting polite forms does not constitute an error. Instead, it reflects her belief that a pragmatically accurate interpretation necessitates faithfulness, both linguistically and socially, to the cultural meaning of the source language utterance.

Another important aspect of a pragmatically accurate interpretation, Hale (1996b) claims, is conserving the illocutionary force of the original utterance. Focusing on lawyer questions, she argues that interpreters must maintain the force of the question in the Spanish version in order to convey the lawyer's original strategy. Hale proposes that the lack of mutual understanding between lawyers and interpreters creates unclear expectations about what constitutes an accurate interpretation. For their part, attorneys and magistrates must realize that interpreting is not a literal word-for-word rendition of the source language into the target language. At the same time, Hale claims that interpreters, largely unaware of the strategic intention of lawyer questions, must learn the "linguistics of the courtroom" (p.431).

Downing and Dunnigan (1995) consider the question of interpreting pragmatically in languages other than Spanish.

They discuss a Hmong case appealed on the basis of inaccurate interpretation and denied due to lack of adequate evidence. The appellant, arguing that the interpreter had not rendered a "verbatim" interpretation, insisted that the objective meaning of lexical items in Hmong had not been conveyed by the interpreter. However, the authors point out that the appellant's case was based on a narrow view of verbatim interpretation which expected an equivalent English lexeme for every Hmong word, disregarding factors of cultural and pragmatic equivalency.

2.3 Cognitive issues which promote interpreter alterations

The following section discusses cognitive issues which contribute to interpreter error and interfere with the interpreter's ability to produce an accurate interpretation. Gonzalez et al. (1991) discuss how the consecutive mode of interpreting, commonly used during witness testimony, can affect the interpreter's ability to recall utterances. There are two modes of interpreting utilized in the courtroom: consecutive, where the interpreter waits for a speaker to complete an utterance before rendering it into the target language, and simultaneous, where the interpreter produces the target language version at the same time the speaker is delivering the message in the source language (Mikkelsen,

1983, and Gonzalez et al., 1991).⁴ The rationale for using consecutive interpretation in witness testimony is to allow the judge and jury to hear both the lawyer question and witness answer in English (Gonzalez et al., 1991).

However, because a lag-time exists between the source language utterance and its interpretation, Gonzalez et al. state that memory becomes a factor that can create unintentional errors. While interpreters sometimes take notes, the authors claim that empirical research (Herbert, 1969, Rozan, 1956, and Seleskovitch, 1975, cited in Gonzalez et al, p.382) suggests that note taking actually impedes recall.

According to the authors, two other cognitive factors make consecutive interpretation a difficult process: 1) "active listening," which involves attending to both the message and the contextual information of the utterance and 2) prediction, a natural process listeners employ to anticipate new information based on known schemas (Le Ny, 1978, p.291, cited in Gonzalez et al., p.382). Gonzalez et al. suggest that prediction can potentially distort the way a message is interpreted into the target language: "The individual's decision, whether conscious or unconscious, about what the message really was, is affected by his or her

⁴ Simultaneous interpretation is used to explain the on-going court proceedings to a plaintiff or defendant seated at the defense table.

own biases, expectations, and knowledge, and distortion can easily result" (p.382).

Like Gonzalez et al., Palma (1995) discusses cognitive factors that can affect the interpreter's memory during consecutive interpretation. For Palma, one of these factors is the degree of complexity of the source language utterance. Palma (1995) offers a compelling argument for how the interpreter's ability to retain information is affected by the *textual density* of an utterance. Textual density refers both to the amount of information presented and to the complexity of its form. For example, a witness who responds that his name is "Gervasio Ramirez" presents a text that is simple both in information as well as form. In contrast, when the witness answers that his name is "Gervasio de la Cruz Ramirez Viuda de Gonzalez," the information requested remains simple but its form becomes complex (p.219).

Textual density increases with the amount of information presented (i.e., responses that contain more than one idea and include abstract concepts). Palma argues that lawyer questions in cross examination tend to produce high-density texts containing elaborate grammatical constructions and multiple ideas which strain the interpreter's memory. Palma believes that permitting the interpreter to interrupt a speaker reduces the textual density of utterances, decreasing the chance that information will be lost in the interpreted version. If the textual density exceeds the short term memory

capacity of the interpreter, Palma claims, the possibility exists that the interpreter will omit some of the original text, resulting in an inaccurate interpretation.

2.4 Court-imposed difficulties that promote interpreter error

Researchers (Fowler, 1995, Gonzalez et al., 1991, Berk-Seligson, 1990) cite fatigue as a factor which can also cause interpreter errors. While much fatigue is due to recall and concentration, the realities of working in the court system impose additional strain. An interpreter's ability to produce a faithful rendition is impaired when working more than 45 minutes without a break (Gonzalez et al., 1991, and Berk-Seligson, 1990). However, in most state court systems, interpreter workload exceeds that time, since an overload of cases creates pressure to get through trials quickly (Gonzalez et al., 1991). Thus length of time interpreting may be a factor that contributes to alterations.

An additional pressure that working in courts imposes on interpreters, according to Fowler (1995), stems from the wide range of registers used in the courtroom. Interpreters must be able to alternate with ease from the more formal language of judges and lawyers to the consultative style (Joos, 1967) of witnesses, characterized by "contractions, hedges, and fillers" (p.193). The ability to move from one type of discourse style to another adds an additional challenge to interpreting accurately.

Berk-Seligson (1990) discusses errors that, while cognitive in nature, are exacerbated by court-imposed pressures to present testimony as quickly and flawlessly as possible. For example, Berk-Seligson states that interpreters, pressed by demands placed on them by lawyers and judges, may repeat words or phrases "...to gain time to process...the interpretation" (p.136). Berk-Seligson argues that such cognitive byproducts of interpreting can negatively affect how a witness is perceived. Citing research by London (1973) which shows that "repetitions in a person's speech are associated with a lack of persuasiveness..." (p.136), Berk-Seligson suggests that repetition in witness utterances might thus suggest to a jury that a witness is not persuasive.

2.5 Previous approaches to the study of pragmatic alterations in interpreted court proceedings

The following sections present approaches previous researchers have taken in analyzing the effect of alterations to pragmatic features in interpreted court proceedings.

2.5.1 Pragmatic alterations in the monolingual courtroom

One of the earliest works on the importance of conserving the non-propositional aspects of courtroom language is O'Barr's (1982) Linguistic evidence: language, power, and strategy in the courtroom. O'Barr identifies four styles of courtroom discourse: 1) powerless speech and

powerful speech 2) narrative speech and fragmented speech 3) hypercorrected speech
4) simultaneous speech.

Of specific relevance to the current study is his category of "powerless speech" (a style based on R. Lakoff's (1975) description of women's language). Features identified with this powerless style include hedges (e.g., *sort of*), hesitation forms (e.g., *uh*), and polite forms (e.g., *Sir*).

O'Barr devised an experimental study to assess the effect of these speech styles on mock jurors' perception of witness credibility. This study will discuss his findings on the impact of powerless speech in witness testimony.⁵ Using tapes of witnesses whose language reflected features of either powerless speech or powerful speech (i.e., lacking the features of powerless speech), mock jurors were asked to judge witnesses according to the following criteria: convincingness, truthfulness, competence, intelligence, and trustworthiness. O'Barr's findings revealed that witnesses who used features belonging to a powerless speech style were judged less credible, in every category, than those whose speech did not contain these features.

This study of language in the monolingual courtroom is one of the first to suggest the potential impact of the pragmatic aspects of witness testimony on influencing jury

⁵ The other styles are not discussed because they are not directly relevant to the current study.

opinion. In addition, O'Barr's research has served as a model for many researchers concerned with the effect of interpreted testimony style on jury opinion (See Gonzalez et al., 1991, Hale, 1997a, de Jongh, 1992, Berk-Seligson, 1990).

2.5.2 An overview of issues in court interpreting

Gonzalez et al. present an overview of issues in court interpreting in the United States. Their range of topics is broad, including historical precedents of laws guaranteeing the right to an interpreter, the role an interpreter plays in different stages of the legal process and, of particular relevance to the current study, the effect of interpreter alterations on Spanish/English judicial proceedings. The *raison d'être* of the authors' book is how inaccurate interpreting can compromise "... the fundamental right of non-English speakers to participate in the legal system" (p.6).

Gonzalez et al. devote 3 chapters to discussing interpreter errors that, they claim, can distort the source language utterance. Although they briefly discuss grammatical and lexical errors, their focus is primarily on pragmatic errors which, they argue, "have a serious adverse impact on the presentation of the facts and on the credibility of the witness" (p.281).

The data on which these chapters is based is taken from tapes of the Spanish-English Federal Court Interpreter Certification oral examination, including "nearly 2000 hours

of testing and student practice observation" (p.281) as well as 400 hours of administrative hearings. While the authors have an impressive amount of data at their disposal, most of it appears to come from student interpreters taking the Federal certification examination. Furthermore, the authors tell us nothing about the "administrative hearings," omitting information about the type of proceeding, the level of the court, and in what state these hearings occurred. Thus the questionable soundness of their data detracts from the persuasiveness of their findings.

At the same time, their discussion of types of pragmatic errors, although it fails to examine any one feature in depth, is nevertheless informative about a wide range of features interpreters tend to alter. Included are alterations to register, culturally-bound terms such as idioms and metaphors, repetition, self-corrections, adding understood information, omitting information, and paralinguistic elements such as "hesitation words" (*well*) and "fillers" (*uh*).

Of particular relevance to this study is their assertion that an interpretation that does not preserve paralinguistic elements makes it "impossible to render an accurate and meaningful interpretation" (p.479). The resulting version produces an interpretation that, stripped of such elements, becomes homogenized. To illustrate their point, the authors

offer an example of how the intention of the witness is altered when interpreters omit hesitations and fillers, rendering the original utterance "*¿Cómo?...¿Cuándo?...¿El domingo?...Pues...eh..estuve en casa todo el día*" (gloss: What?...When?...Sunday?...Well...uh..I was home all day) as "*I was home all day*" p.479).

Thus, they argue, failure to reproduce elements which "might connote lack of certainty or perhaps even insincerity, and removing those hesitations from the utterance, distorts its impact" (p.479). While the authors' claim is incorrectly stated as fact ("distorts") rather than as speculation (might distort), nevertheless the above example effectively illustrates how interpreter failure to render pragmatic nuances has the potential to alter the intended meaning of the utterance.

In summation, although Gonzalez et al.'s book contains a wealth of information, its scope is too large to allow satisfactory coverage of any one domain. In addition, the absence of any clearly-defined method of data collection detracts from the book's overall strength.

2.5.3 An ethnographic approach to pragmatic alterations in court proceedings

In contrast to Gonzalez et al.'s lack of methodological rigor, Berk-Seligson (1990) presents a well-documented, ethnographic study of the role of interpreters in Spanish-

English legal proceedings, based on seven months of observation at the municipal, superior, and federal court levels. Using 114 hours of taped recordings, she reveals how the use of an interpreter transforms the courtroom into a bilingual environment that significantly alters the legal process.

Like Gonzalez et al., a major focus of Berk-Seligson's research is the effect on court proceedings when an interpreter alters pragmatic elements in lawyer questions and witness answers. Although some of the alterations she discusses are grammatical in nature (i.e., ergativity and impersonal verb constructions), she argues that these grammatical changes nevertheless have pragmatic consequences. For example, she claims that Spanish passive-like constructions which avoid the direct naming of an agent when rendered into English function as a "blame-avoidance mechanism" (p.100).

Another pragmatic alteration that results when Spanish answers are interpreted into English is that witness testimony is lengthened. Analyzing 2470 pairs of Spanish/English interpreted responses, Berk-Seligson found that English answers were consistently longer than the Spanish ones. Berk-Seligson claims that such lengthening is a result of the systematic addition of features characteristic of a powerless testimony style (see O'Barr, 1982) such as hedges (e.g., *sort of*) and hesitation elements (e.g., *umm*,

well). These interpreter-induced alterations are problematic, she claims, for two reasons: first, because they "...convert 'fragmented' speech style into a more narrative testimony style" (p.119), affecting an attorney's control over the length of a witness answer; secondly, the addition of powerless features can affect the degree of certainty of the witness answer. The additions of hesitation forms, for example, she argues, can make the witness appear less committed to his/her belief.

Interestingly, Berk-Seligson found no systematic explanation for why such elements were sometimes added and at other times deleted. She speculates that many of the additions of *well* or *uh* seemed unconsciously inserted due to the strain of the interpreting process. At the same time, these elements might have been consciously ignored by interpreters who considered them unimportant to the utterance (p.140).

Interpreter additions such as politeness forms, Berk-Seligson claims, may be culturally motivated. For example, polite address forms in Latin America are commonly used in relationships of unequal social status. Thus interpreter additions of English politeness markers when a Spanish witness addressing an attorney or a judge fails to use them reflect the interpreter's adherence to Spanish cultural conventions. Regardless of interpreter motivations for adding or deleting such features, Berk-Seligson's concern is that

"alterations in ... utterances that are produced in a court of law as sworn testimony can make the difference between jurors having confidence in such testimony or not" (p.145).

Perhaps the most valuable contribution of Berk-Seligson's book is her experimental study (based on O'Barr's 1982 model) evaluating the impact of pragmatic alterations to interpreted testimony on mock jurors' perceptions of witnesses. Examining the features of register, politeness, hedging, and active versus passive constructions, mock jurors rated witnesses using O'Barr's criteria of convincingness, competence, intelligence, and trustworthiness.

While the majority of her findings concurred with O'Barr's that the use of powerless features negatively affected the way witnesses were perceived, one result was significantly different. In contrast to O'Barr's findings, Berk-Seligson found that the feature of "politeness," by itself, created for jurors the impression of deference. Thus, she claims, politeness "...in the testimony of a witness is an asset, from the point of view of jury impression-formation" (p.167). This finding suggests that an interpreter who omits politeness from a witness response may cast the witness in a more negative light. Conversely, if the interpreter adds politeness to the witness response, the jury may be inclined to judge the witness more favorably. While experimental in

nature, Berk-Seligson's study offers powerful evidence of how interpreter alterations can affect a jury's judgment.⁶

2.5.4 Alterations to specific pragmatic features in Spanish/English court proceedings

Unlike Berk-Seligson's ethnographic approach which examines a wide range of interpreter alterations, Hale (1997a/1999) analyzes alterations to specific pragmatic features in Spanish/English court proceedings.

For example, Hale's 1997a study looks at changes to register (defined as the use of formal speech style versus informal speech style)⁷ using data from four Australian court cases involving Spanish-English interpreting. While her findings illuminate patterns of alterations, she fails to adequately explain her methodology, omitting crucial information such as the number of interpreters and witnesses in her data. Thus it is not clear whether the size of her sample allows the reader to consider her findings more than anecdotal.

Nevertheless, her analysis of instances where interpreters tended to raise the witness' vocabulary level "to match the register of English-speaking lawyers" (p.47) has merit. Hale offers the following example, where filling

⁶ Although an experimental study cannot replicate an actual jury trial, it provides a method for assessing reaction to witness testimony. One drawback to an experimental study is that the jurors are not, in fact, real jurors, and thus have little at stake. Whether this difference would affect the way they perceived witnesses could be worthwhile to explore in future research.

⁷ Hale uses Joos' (1967) definition of register as a continuum of styles "ranging in formality from intimate to frozen" (Berk-Seligson, 1990, p.13).

out understood information increases the level of formality of the witness answer:

W: No me recuerdo de eso

Gloss: No, I don't remember that.

I: No I don't remember *him having said* that (p.48).

In the preceding example, the interpreter's addition of "him having said" clearly raises the level of register of the witness's original utterance. Conversely, interpreters in her study lowered the register when interpreting the lawyer questions into Spanish, using informal language and simplifying legal terms for the witness. In particular, Hale found that interpreters tended to use colloquial Spanish when interpreting lawyer questions. An interesting example was interpreters' frequent addition of *no más*, a Spanish colloquial term which, Hale claims, while it literally means *no more*, has little semantic meaning out of context (p.50). Instead, its presence functions, pragmatically, to soften the force of the lawyer question:

Magistrate: Up into the witness box and just remain standing.

Interpreter: Puede seguir de pie *no más* (gloss: you can just stay standing (p.51)).

Here *no más*, translated by the interpreter as *you can just*, serves, she claims, as a pragmatic device to mitigate the force of the command *just remain standing*.

However, in concluding the article, Hale contradicts her argument that alteration of register distorts the pragmatic force of lawyer questions and witness answers, positing that

"there is no suggestion ... that register equivalence is either easy to achieve or desirable in all contexts" (p.52). This statement not only conflicts with the point of view presented throughout the paper but also lacks substantiation.

In contrast, Hale's (1999) study of interpreter alterations to discourse markers in lawyer questions has more scholarly rigor, following a clear pattern of analysis. According to Hale, these "function words" (p.58) not only serve as cohesive devices indicating a relationship between units of discourse (Schiffren, 1987) but, in lawyer discourse, appear to have pragmatic meaning as argumentative and coercive strategies. Examining the effect of interpreter alterations to 3 discourse markers (*well, now, you see*) in lawyer questions, Hale uses data from a significantly larger sample (17 court cases involving 8 interpreters) than in her previous (1997a) article to examine how omissions of these markers from lawyer questions alter both lawyer questions and witness responses. Hale ascribes a strategic purpose to each marker, speculates as to why interpreters omitted them, and compares the impact of omissions in direct examination with those in cross examination.

Hale's main point is that, when used to preface lawyer questions, these discourse markers can function as devices of "argumentation, combativeness, and even control" (p.59). Comparing the frequency of their use in direct examination and cross examination, her data reveals that *well* and *you see*

occurred most often in the adversarial environment of cross examination. Such results, she suggests, indicate that these markers are stronger argumentation devices than *now* which, in her data, occurred more frequently in direct examination.

Hale's results indicated that, in direct examination, interpreters omitted *well* in all instances, suggesting that they did not find the marker semantically significant. Hale claims that lawyers' use of *well* indicates frustration "when a witness is not providing desired answers" (p.67). However, such an assertion ascribes an intention to the speaker that is merely speculative. In discussing the two other markers, Hale follows the same format and her analysis reflects similar areas of strength and weakness. Based on her findings that *well* and *you see* occurred primarily in cross examination, Hale concludes that these markers appear to be more argumentative than *now*, which occurred primarily in direct examination.

While Hale's article presents a convincing analysis of how omitting these markers from the interpreted lawyer question changes its force, she fails to explain, with a few exceptions, the *effect* of such omissions on witness answers, a large oversight considering this was a question she set out to address.

Like Hale, Rigney (1996/1999) focuses on interpreter alterations to specific pragmatic features. However, Rigney's research looks exclusively at questions, exploring the lack

of pragmatic and grammatical equivalency between Spanish and English interrogatives. Analyzing data from Rosa Lopez' testimony in the O.J. Simpson trial, Rigney (1996) found that 50% of pragmatic errors occurred in the interpretation of English yes/no questions. The large percentage of errors may be attributed, she claims, to the difficulty of capturing the pragmatic meaning of English declarative questions (e.g., *you want to go?*) in Spanish. As Rigney explains, declarative questions in English are distinguished grammatically from yes/no questions which have a mandatory subject-verb inversion (e.g., *do you want to go?*). In contrast, Spanish yes/no questions allow both SV (subject-verb) and VS (verb-subject) order, thus relying on intonation to be identified as interrogatives. Therefore, in Spanish questions, "form alone cannot be used to differentiate between true interrogatives and conducive [coercive] ones" (p.25).

For Rigney, this finding foregrounds a problem encountered by interpreters, who need to find a way to capture the coerciveness of the English declarative question in Spanish. As Rigney states, declarative questions in English have the force of statements and permit lawyers to indicate their belief about the facts. Without a structural equivalent in Spanish, the force of the question can be lost when interpreted. Rigney proposes that interpreters use alternative structures that allow the pragmatic meaning of such questions to be expressed. For example, she finds that

the statement aspect of English declarative questions, as distinct from yes/no questions, can be expressed "through discourse markers such as 'así' and 'entonces'" (p.33).

Another type of English question Rigney identifies as difficult to interpret into Spanish because of lack of equivalent structures is the tag question. Her data showed that many interpreter errors were caused by omission of the tag portion of English lawyer questions. As a result, "...interpreters turn directive questions, which puts [sic] words in the witness' mouth, into information seeking ones..." (p.23).

Rigney also claims that English offers more options for tag questions than Spanish. Using Woodbury's typology of questions, Rigney says English tag structures include, among others, constant polarity tags (e.g., *did you?*, *were you?*), reverse polarity tags (e.g., *didn't you?*, *weren't you?*), affirmative tags (e.g., *right?*), and negative tags (e.g., *isn't that correct?*). In contrast, Spanish has only two tag questions: affirmative tags (e.g., *¿verdad?*, *¿correcto ?*) and negative tags (e.g., *¿no es verdad?*, *¿ no es correcto?*, pp.12-13). According to Rigney, the use of negative or positive tags in Spanish depends on the propositional part of the question: "The positive or negative conduciveness of the question rests on the affirmative or negative proposition, not the tag" (p.22).

Rigney (1999) claims that each English tag structure reflects a unique pragmatic function. For example, while the constant polarity tag asks speakers to agree with the question's proposition (e.g., *you weren't home then, were you?*), reverse polarity tags ask speakers *whether* they agree with the proposition (e.g., *you were home then, weren't you?*).

However, since Spanish does not allow the auxiliary verb to be copied in the tag portion of a question, neither the English constant polarity tag nor the reverse polarity tag can be replicated in Spanish. Thus, Rigney claims, lack of structural equivalency may explain why English polarity tags were frequently deleted by interpreters in her data, while positive tags (e.g., *true?*), which have a direct grammatical equivalent in Spanish (e.g., *¿verdad?*), were correctly interpreted.

As a result, Rigney claims, interpreters tended to rely on the grammatical structure of English tags as a guide when interpreting them into Spanish. Rigney concludes that interpreters must strive to maintain the pragmatic equivalence of English questions and distinguish between question form and question meaning.

Reflecting similar concerns, Berk-Seligson (1999) focuses on the ability of interpreters to conserve the pragmatic meaning of English leading questions in Spanish. According to the author, leading questions are characterized

both by their formal structure and by their coercive function. Using a looser adaptation of Woodbury's (1984) typology than Rigney, Berk-Seligson examines those questions with the highest degree of coerciveness: mainly, what she refers to as prosodic questions (e.g., *you entered the house at that time?*), copy tags⁸ (e.g., *you entered the house at that time, did you?*), positive truth questions (e.g., *is it true that you entered the house at that time?*), confirmatory tags (e.g., *you entered the house at that time, is that right?*), and checking tags (e.g., *you entered the house at that time, didn't you?*, pp.36-37).

Berk-Seligson's concern is with the degree to which the coercive force of the leading question is captured in the interpreted version. Examining 504 leading questions from five trials revealed that only 1/2 of the questions maintained the coercive force of the original lawyer question and thus could be considered accurate interpretations.

A surprising finding was that federally certified interpreters did not have a greater rate of pragmatic accuracy than those who were not federally certified. Berk-Seligson speculates that interpreters, whether certified or not, tend to consider lawyer questions less significant than witness answers and are less aware of the importance of rendering lawyer questions with the same degree of accuracy as witness answers.

⁸ Copy tags are synonymous with Rigney's "constant polarity tags."

At the same time, based on observations from her 1990 ethnographic study, she suggests that alterations to lawyer questions often result when interpreters, aligning with witnesses, attempt to make witnesses feel less intimidated by diminishing the coerciveness of leading questions (e.g., omitting tags).

Berk-Seligson concludes that altering the coerciveness of lawyer questions not only affects the lawyer's ability to control the testimony but also distorts the question that the witness hears. It is the responsibility of both interpreter training programs and certification boards, she claims, to make interpreters aware of "...the dangers of inadvertently altering the pragmatic force of attorneys' questions" (p.50).

Examining interpreter alterations to lawyer questions from a different perspective, Hale and Gibbons (1999) explore how such changes affect the "courtroom reality" in contrast to the external reality or events "under examination in the case" (p.203). Courtroom reality is defined as the constructed reality each side presents in describing their version of the facts. Examining 4 interpreted Spanish-English court proceedings that occurred in Australia, their findings revealed that nearly three times as many alterations occurred in interpreters' renditions of the courtroom reality as compared to their renditions of the external reality.

One example of alterations to courtroom reality occurred in the omission of reported speech (*report markers* in

Fraser's typology) from lawyer questions (e.g., "...you say or you allege..?," pp. 215-116). As a result of these omissions, the authors claim, the interpreted version of the question presents the evidence as the truth rather than as a version of the truth. They suggest that one reason the phrase "you allege" may be omitted by interpreters is that Spanish has no lexical equivalent that captures its force. Most frequently, this verb was interpreted as "'sugiero' (suggest) or 'digo' (say)," (p.217), neither of which, according to the authors, adequately captures the pragmatic meaning of "allege."

Two particular categories where references to courtroom reality were not carried over in the interpreted version were changes in the tenor (Halliday and Hasan, 1985) and form of questions. The authors claim that changes in tenor, described as "a means of negotiating social relationships" (p.210), are triggered when interpreters rendered English indirect questions as direct questions in Spanish. As direct questions, or imperatives, these interpreted questions omit polite forms as well as the witness' name. In one example cited, the original lawyer question "Mr. Gomez, could you please give your name?" was rendered as "diga su nombre," *state your name* (p.211). Hale and Gibbons argue that omitting the witness' name along with the polite form *could you* not only renders the question as a command but changes its tenor, making it "less polite and less formal" (p.211).

Thus changing the *tone* of the lawyer question through the use of polite forms can elicit a more formal response from the witness. Interestingly, this finding directly contradicts Hale's (1997b) claim that interpreting indirect requests as imperatives in Spanish reflects a pragmatically correct interpretation which captures the Spanish preference for directness.

Finally, according to Hale and Gibbons, the omission of tags from interpreted lawyer questions in cross examination (as both Berk-Seligson, 1999, and Rigney, 1996/1999, have pointed out) changes the coercive force of the question. The types of tags omitted in their findings, such as *didn't you?* and *weren't you?*, reinforce Rigney's (1996/1999) claim that there is no direct grammatical equivalent for auxiliary tags in Spanish. However, according to the authors, the Spanish tags "'¿no?'" and "¿o no?'" (p.214) are more coercive than the Spanish tags *¿verdad?* and *¿correcto?*. Thus, Hale and Gibbons state, they are a better choice for capturing the accusatory nature of English declarative questions containing auxiliary tags (e.g., *you entered the house at that time, didn't you?*).

While their discussion of interpreter options for English tag questions, particularly those that approach the coerciveness of English auxiliary tags, is informative, the authors fail to state how such changes affect the way the

courtroom reality is presented, a large oversight given the premise of their article.

2.5.5 Pragmatic alterations to culturally-bound features in languages other than Spanish

Researchers examining languages other than Spanish have also explored how changes to culturally-bound pragmatic features can influence the jury's perception of a witness. Such literature reinforces the research on Spanish/English court proceedings (Berk-Seligson, 1990, Hale, 1997a/b, Gonzalez et al., 1991, Rigney, 1996/1999) that alterations to such features may seriously affect the credibility of witness testimony.

Gumperz (1982) discusses the case of a Filipino doctor, fluent in English, who testified for the prosecution in a child abuse case. Sometime after the trial, the doctor was recalled to face indictment charges of perjury based on an earlier FBI interview which allegedly contradicted his testimony during the trial.

Using a linguist as an expert witness, the defense examined the issue of "comprehensibility" of the transcripts (including the trial testimony and transcripts of a Navy hearing). Gumperz describes how the doctor's language deviated from English usage in grammar, lexical choice, and stress and intonation, "... caus[ing] difficulties either in sentence comprehension or in following the speaker's line of reasoning" (p.170). While the transcripts indicated that the

doctor's command of English was quite good, under stress of interrogation he often reverted to Tagalog discourse patterns. For example, a question posed in the past tense was frequently answered in the present tense. However, according to Naylor (cited in Gumperz), such shifts may be due to differences in the tense and aspect verb systems of Tagalog, as the following quote indicates:

Tagalog verbs operate on a system of aspectual distinctions and tense is not marked in the verb as it is in English....For example, in the following representation of the Tagalog aspect system, *is eating* and *was eating* are not differentiated in the Tagalog verb form (cited in Gumperz, p.174).

According to Gumperz, the doctor's grammar and discourse patterns reflected different linguistic and cultural conditioning, or "contextualization conventions" (p.179), from those of his English examiners, resulting in communication problems. This "miscommunication argument" (Gumperz, p.195), the defense's primary strategy, was accepted by a majority of the jurors and the perjury charges were dropped.⁹

Both Naylor (cited in Danet, 1979) and Bresnahan (1991) also report on a case involving Filipino defendants fluent in

⁹ In a related issue, Fowler (1995) makes the point that witnesses who have some ability to speak and understand English, yet require an interpreter, are often viewed by the court with suspicion. In interviews with both monolingual and bilingual English magistrates, monolingual magistrates expressed the belief that the testimony of witnesses with marginal fluency in English who used an interpreter would appear less credible than the testimony of witnesses with no English-speaking ability who used an interpreter. In contrast, bilingual magistrates considered that witnesses who spoke limited English would be at a considerable disadvantage *without* the aid of an interpreter.

English where culturally-bound linguistic factors were critical in deciding the outcome of the trial. Although an interpreter was not required, Naylor contends that, because the native language of the defendants differed from that of the English-speaking court, linguistic and cultural differences critically influenced the jury's perception of the defendants' testimony. According to Naylor, the Filipino preference for indirect language such as *I believe*, used in Tagalog as a mitigating marker, gave defendants the appearance of being evasive and lying to the jury.

Bresnahan, describing the same case, confirms Naylor's observations. She claims that the defendants' use of indirect speech such as *I don't think so*, a mitigating response motivated by the desire not to confront authority, might have been construed as evasive and undermined the defendants' credibility. Bresnahan makes the interesting observation that the fact that these defendants did not use an interpreter may have worked against them, since jurors had high expectations of their ability to express themselves in English. However, as Bresnahan indicates, while these defendants had adequate command of conversational English, their knowledge of the pragmatic conventions of the language was not sufficient to defend themselves against the barrage of cross examination questioning.

CHAPTER 3: METHODOLOGY

3.1 The trials

The data for the study is taken from audio and videotaped court recordings of 6 trials that occurred in large urban centers in New Jersey, Massachusetts, and California. The 6 trials involved 8 Spanish-speaking witnesses, 13 English-speaking lawyers, and 9 interpreters.¹⁰ A total of 15 hours of interpreted testimony, consisting of 2156 colloquies, was analyzed. Of the six trials, one was a municipal court criminal trial, four were superior court civil trials, and one was a high-profile superior court criminal trial.

Audio and videotapes from Massachusetts and New Jersey were made available through the state interpreting offices.

¹⁰ All except one of the nine interpreters were primarily Spanish-speaking. While the issue of whether the quality of interpretation is affected by the native language of the interpreter is certainly relevant, the scope of the current study does not permit exploring this question. Nevertheless, it is one that deserves attention in future research.

Obtaining data was limited to those trials which are routinely recorded in the courtroom. In the state of New Jersey, only superior court trials are taped, while in Massachusetts, only municipal court trials are taped. In New Jersey, The Court Interpreting, Legal Translating, and Bilingual Services Section of the Administrative Courts granted permission to contact judicial interpreter units throughout the state in order to obtain the tapes. In Massachusetts, the Judicial Interpreters Unit provided a list of interpreted cases and tapes were obtained from the Office of the Clerk of Courts. The videotape from California, the high profile case of O.J. Simpson, was recorded by Azucena Rigney, a Ph.D. candidate in linguistics at the University of Southern California, Los Angeles, from the televised proceedings of the trial on a local television network in Los Angeles. The portion used in this study is the testimony of Rosa Lopez, a Spanish-speaking defense witness.

3.2 Interpreters in the trials

Because regulations for who may practice as a court interpreter are set by the individual states, the professional status of the nine interpreters used in this study varies. Two of the nine had approval from the state as court interpreters, four held state certification,¹¹ and three

¹¹ While requirements vary, interpreters in most states must pass an oral and written exam in order to be certified by that state. In California, for example, state statutes require that interpreters follow a training and testing program that gives them the expertise to interpret in court settings, such as "...an understanding of courtroom procedures and legal terminology" (Berk-Seligson, 1990, p.28).

had unknown qualifications. The three interpreters used in the O.J. Simpson case, a superior court criminal trial, were certified by the state of California (email from H. Mikkelson, 11/99). The interpreter from the Massachusetts' trial, a municipal court criminal trial, also held state certification (Salimbene, 1997). In the four New Jersey superior court cases, two of the interpreters were approved by the state and two had unknown qualifications. New Jersey, which does not currently grant certification, nevertheless requires state approval for interpreters who practice in superior court (email from R.J. Lee, Administrative Offices of the State Courts of New Jersey, 7/99). The interpreters whose qualifications were unknown were brought into a civil case by the party's lawyer (the judge, in these cases, overlooking the requirement for state approval).

The issue of frequency of alterations according to interpreter preparation, while it deserves attention, is a separate concern which this study does not address, since producing valid results would involve a statistical analysis which is not part of the methodology of this paper.¹²

3.3 Transcribing the tapes

¹² Berk-Seligson (1999) addresses this issue as it pertains to federally certified court interpreters. Her study on the interpretation of leading questions revealed that federally certified interpreters did not capture the force of leading questions more accurately than non-federally certified ones. These findings offer empirical evidence that the professional status of an interpreter does not guarantee that pragmatic alterations will not occur.

Transcribing the taped trials involved creating separate transcripts for each trial. To insure authenticity, the English portion of the tapes was transcribed by native English speakers, while the Spanish portion was transcribed by native Spanish speakers. The English transcribers were law students, Ph.D. candidates in linguistics, and Ed.D. candidates in bilingual education at Boston University. The Spanish transcribers were bilingual Spanish law students at Boston University as well as professional Spanish translators. In addition, an English speaker with native-like fluency in Spanish was used to check the accuracy of both the English and Spanish transcriptions.

Transcribers were instructed about the types of pragmatic markers being examined and were given guidelines for how to produce an accurate transcription. In these guidelines, transcribers were directed to 1) transcribe everything uttered by the lawyer, the witness, and the interpreter, including all verbal nuances 2) replay utterances at least three times in order to render them as accurately as possible 3) indicate inaudible words and phrases in the transcripts by using parentheses. Since the lawyer/witness exchange is the focus of the study, transcribers were instructed to omit discourse that routinely occurs throughout witness questioning, such as objections, bench remarks, and jury instructions.

Each lawyer-witness exchange was transcribed as a separate conversational turn, consisting of the lawyer question, the witness response, and the interpreter's rendition of both. These exchanges are presented in the following format, reflecting the order in which utterances occur in interpreted courtroom colloquies: 1) the English lawyer question 2) the question interpreted into Spanish 3) the witness' Spanish response 4) the response interpreted into English. In addition, there is an English gloss of both the interpreted Spanish question and answer which provides a literal translation of each interpretation. These glosses are crucial to the methodology of the study. By highlighting discrepancies between the original and the interpreted utterances, they make it possible to examine the types of alterations interpreters produced.

3.4 Coding the data

Alterations to the 10 pragmatic markers in each transcript were then assigned coding categories using the HyperRESEARCH computer application. These categories account for the type of alterations (additions, deletions, substitutions) and whether they occurred in a lawyer question, a witness response, in direct examination, or in cross examination. The coded features form the corpus of data for the analysis of pragmatic changes in the lawyer/witness exchange.

3.5 Pragmatic markers examined

While the study uses Fraser's typology of pragmatic markers,¹³ several of his categories have been added to or amended in order to reflect their relevance to the courtroom setting. Those markers whose definitions have been amended are hearsay markers and assessment markers, while those categories added are uncertainty markers, degree of adequacy markers, and agreement markers.

The following pragmatic markers are discussed in the dissertation. Examples provided below are taken from actual courtroom data analyzed in the study:

1. Evidential markers signal the speaker's degree of confidence in the truth of the basic message: *I don't know, I mean, I/you think, believe, imagine, guess, it is possible, maybe, possibly, probably, surely, certainly.*

You believe it's true, right?

2. Emphasis markers emphasize the force of an answer, including information not sought or not necessary: *yes yes, no no, no I didn't/no I did, yes I did, I did yes, yes indeed.*

I looked **yes yes**.

3. Report markers signal that the basic message is a report: *you say/said, you testified/alleged, he/she said,says, he/she testified, alleged, you/he/she told.*

And what do you mean when **he said** in a bad way?

¹³ Pragmatic markers, as defined in Section 1.2, are words or phrases that modify the basic message of an utterance or signal a separate message.

4. Uncertainty markers signal the speaker's uncertainty about the basic message when, in the context of a witness answer, these markers give the impression of uncertainty, rather than of any other discourse or cognitive function: *uh, umm, like, I mean, you know.*

I know about him because he **uh** grabbed me.

5. Solidarity markers signal a separate message that suggests solidarity between the speaker and hearer; in direct examination, they are seen in the lawyer's addressing witnesses by their first name.

And **Roy**, you recognize them as pictures of Farcher's Grove.

6. Assessment markers signal the speaker's assessment of the truth conveyed by the message. In lawyer questions, they occur predominantly as tags at the end of questions.

It wasn't just a couple of people fighting, **was it**?

7. Degree of adequacy markers ask the hearer to measure his/her degree of certainty about the message; in lawyer questions, they ask witnesses to measure their knowledge of the facts or of any physical evidence presented: *to the best of your recollection/knowledge/ability, in any way, shape, or form, in any way, fairly and accurately, if you recall, if you remember.*

Did he **in any way, shape, or form** hurt your friend?

8. Markers of repetition involve the reiteration of lexical items or pragmatic markers at any point in an utterance: *did*

did, I I, I think I think, uh uh, umm umm, no no, yes yes, yeah yeah.

I I I think they **uh uh** went out on their own.

9. False start markers are uncompleted words or phrases subsequently followed by a self-correction.

I was I don't know because I don't know.

10. Agreement markers affirm or deny the basic message; in addition, they signal *the manner in which* a speaker affirms or denies the message: *no, yes, yeah, uhum, uhuh, that is so, it is like that, yeah.*

I believe so **yes yes.**

Although Fraser's model offers a comprehensive typology of pragmatic markers, other researchers, using different terminology or different categories, have previously explored some of these markers.¹⁴ However, one category that has received less attention than others is that of uncertainty markers as indicators of tentativeness and unsureness.

¹⁴ A brief synopsis of the markers most frequently discussed by other researchers follows. Evidential markers have been commonly referred to as hedges (G. Lakoff, 1972, R. Lakoff, 1973, Danet, Crystal & Davy, 1975, Brown & Levinson, 1978, and Berk-Seligson, 1991), defined by Brown and Levinson as "a particle, word, or phrase that modifies the degree of membership of a predicate or noun phrase....It says of that membership that it is partial, or true only in certain respects...(p.145). Chafe's (1986) definition, which more closely parallels Fraser's, describes them as "markers of evidentiality" which serve to qualify a speaker's attitude towards knowledge or information. Schiffren claims that *well* prefacing answers (*discrepancy markers* in Fraser's typology) signals that the speaker's answer will not fulfill question expectations (see also Shoroup, 1985, and Hine, 1977). R. Lakoff (1973) notes that *well* before an answer indicates that the speaker considers either the response or the question itself to be somehow deficient. Mitigating markers, pragmatic idioms (*please*) and vocative markers have been generally treated as markers of politeness and deference, such as *would you/could you, please, thank you* and honorifics, i.e. *sir, Your Honor* (Gumperz, 1970/1975,

While many researchers perceive these markers as indicating problems in speech production,¹⁵ others are concerned with the *effect* of these markers in speaker utterances, claiming that their presence indicates uncertainty. For example, Smith and Clark's (1993) experimental study reveals that the use of *uh* and *umm* in answers accompanied by pauses indicates the speaker's lack of confidence that the answer was right. According to James (1973), "*uh* is very commonly used when the speaker has any uncertainty about what he is saying, or even about how his addressees are reacting to him" (p.87). Agreeing with

Fillmore, 1975, Brown & Levinson, 1978, Lakoff, 1973a, Gordon & Lakoff, 1971, and Tannen, 1990). Additionally, Brown & Levinson discuss solidarity markers as membership markers, such as "dear, babe, mom" (p.107). Finally, assessment markers, as tags at the end of leading questions, have been most fully explored in the literature on questioning (Woodbury, 1984, Ogle et al., 1980, Goody, 1978, Danet, 1977, Berk-Seligson, 1999, and Rigney, 1996/1999). Woodbury (1984) defines tag questions as those which "...incorporate answer-expectations" (p.221). According to Berk-Seligson (1999), tag questions characteristically occur during cross examination where they allow the lawyer to indicate his assessment of the facts (i.e. you went home at ten, *didn't* you?). As such, they function as a strategic device to coerce the witness to produce the desired response.

¹⁵ Predominantly, the features *like*, *I mean*, *uh*, and *umm* have been viewed as cognitive devices speakers use to signal they are in the process of formulating what to say next. In this capacity, they have been referred to as hesitation phenomena (Gonzalez et al., 1991, Berk-Seligson, 1990, and Brown & Levinson, 1992), fillers and editing expressions (Clark, 1993), fillers (Brennan & Williams, 1995, Smith and Clark, 1993), and interjections (Shoroup, 1985). According to Clark (1993), hesitation forms occur when speakers are unable to produce an ideal utterance with no disfluency. For Smith and Clark (1993), the fillers *uh* and *umm* are used when a speaker anticipates a hiatus in speech and signals to the listener that there will be a delay. In answers to questions, these forms allow respondents to explain "their delays, uncertainties, and failures in answering" (p.25-26) and signal that the answer will be forthcoming. Similarly, for Clark (1993), delays in answering a question can suggest that the speaker is momentarily unable or reluctant to respond. Thus speakers use the fillers *uh* and *umm* to indicate their intention to answer. Hieke (1981) presents a more positive view on hesitation phenomena, claiming that they function as a type of "quality control" in speech production, reflecting the speaker's attempt to create wellformed, error-free utterances.

Smith and Clark, she suggests that the presence of this marker indicates that the speaker is uncertain that the utterance is correct.

Similarly, Brown and Levinson (1987) argue that *uh* and *umm* often accompany face threatening acts (utterances that can cause participants in an interaction to be humiliated) and create the impression of reluctance and incompetence. In addition, Brennan and William's (1995) experimental study evaluating the role of hesitation forms in influencing listeners' evaluation of speaker answers revealed that listeners were less likely to judge answers containing *uh* and *umm* as correct.

In the literature on courtroom language, O'Barr (1982) examined the effect of hesitation phenomena in the answers of English-speaking witnesses. He identified *uh* and *umm* as features of powerless testimony, a speech style associated with women's language (R.Lakoff, 1975). The results of his experimental study revealed that mock jurors found witness answers less credible when they included *uh* and *umm*, features which typify powerless language.

Berk-Seligson (1990), looking at interpreted witness answers of non-native Spanish speakers of English, claims that the addition of hedges (e.g., *probably*) and hesitation forms (e.g., *uh*, *umm*) changes the force of the answer, making it "...weaker in the strength of its affirmation [in English] than ...in Spanish" (p.131). Thus, she claims, witness

answers "...become hesitant when the English interpretation includes 'uhs' that were not uttered in the source-language testimony" (p.141).¹⁶

Such research provides evidence for the argument made in this study that the presence of these markers suggests speaker uncertainty, thus potentially harming the credibility of the witness.

3.6 Pragmatic features not examined

The markers examined in this study do not purport to cover all types of pragmatic alterations interpreters make. First, being pragmatic in nature, they exclude errors that are lexical and grammatical. Grammatical errors may derive from mistakes in translating verb tense, number, or mood. Lexical errors, often the most obvious, result from lack of semantic equivalence between a word in the source language and a word in the target language.

Secondly, a limited number of pragmatic markers are examined, since the purpose of the study is to offer an in-depth analysis. Including the full range of markers would make such an approach unfeasible.

In addition, this study excludes pragmatic features not covered by Fraser's model. Those features are register,

¹⁶For example, a witness's Spanish answer *varios hondureños* (several Hondurans) in response to the question asking who accompanied him when he illegally entered the US was rendered by the interpreter as "*uh, uh, several other Hondurans*" (p.141). Berk-Seligson argues that the addition of the hesitation markers in the interpreted answer makes the witness appear less confident about the facts.

filling in understood information, stress, intonation, and pauses. The first two features, particularly register, have already received significant attention in prior research on courtroom interpretation (Gonzalez et al., 1991, Berk-Seligson, 1990, Hale, 1997a, de Jongh, 1992, Edwards, 1995).

While features such as pause, stress, and intonation are certainly crucial to capturing the pragmatic intention of an utterance (Palma, 1995, Gonzalez et al., 1991), the scope of this study does not permit an in-depth discussion of these features. Moreover, an adequate examination of these features calls for a different approach which is not part of the descriptive methodology this study utilizes. Analyzing the role of intonation, for example, would necessitate a study of intonational contours, while looking at pause would require statistical measurement studies, such as the one done by O'Barr (1982) examining the affect of witness response lag time on mock juror's assessment of witness credibility. Therefore the features of pause, stress, and intonation are not addressed.

CHAPTER 4: POSSIBLE CAUSES OF INTERPRETER ALTERATIONS

4.1 Introduction

This chapter has two purposes. First, it looks at the distribution of interpreter alterations to ten pragmatic markers based on an analysis of 1,478 court colloquies and organizes the results into tables that examine the data according to the following categories: the frequency of alterations to each of the 10 pragmatic features examined, the number (including percent) and types of features added, deleted, and substituted, the number (including percent) and types of features altered in lawyer questions and in witness

answers, and the number (including percent) and types of features altered in witness answers and in lawyer questions in direct examination and in cross examination.

The purpose of this analysis is to organize the data into categories that reveal both the types of alterations interpreters tend to make (additions, deletions, or substitutions) as well as the environments in which they make them (lawyer questions, witness answers, direct examination, or cross examination).

Secondly, the chapter interprets the findings presented in the tables and examines patterns that emerge. In addition, the chapter speculates about what causes interpreters to add, delete, and substitute the ten pragmatic markers examined in this study.

4.2. Total number of interpreter alterations by marker

Table 1 accounts for the total number of interpreter alterations to the 10 markers examined. It also presents the total number of all markers added, deleted and substituted (reading down), as well as the total number of instances each individual marker was added, deleted, and substituted (reading across). Alterations to the following 5 markers (uncertainty markers, false start markers, markers of repetition, emphasis markers, and discrepancy markers) reflect their occurrence in witness answers alone. The

results of a pilot study on which this dissertation is based suggested that, although these markers were present in lawyer questions, altering them did not seem to harm the meaning of the original utterance. Therefore the data does not account for the occurrence of these markers in lawyer questions.

4.2.1 Discussion of findings of Table 1

Examining the alterations in Table 1 reveals a high percentage of alterations to two markers: *uncertainty markers* and *markers of repetition*. *Uncertainty markers* signal the speaker's uncertainty about the basic message when, in the context of a witness answer, these markers give the impression of uncertainty. *Markers of repetition* involve the reiteration of lexical items or pragmatic markers at any point in an utterance. Together, these markers account for 56% of all alterations interpreters made, with each feature altered 28% of the time. At the same time, Table 1 shows that the greatest number of interpreter alterations, 45%, occurred as deletions, while 43% occurred as additions, and 12% occurred as substitutions.

TABLE 1: TOTAL NUMBER AND % OF INTERPRETER ADDITIONS, DELETIONS, AND SUBSTITUTIONS BY MARKER

FEATURES	FREQUENCY OF MARKERS ADDED	FREQUENCY OF MARKERS DELETED	FREQUENCY OF MARKERS SUBSTITUTED	TOTAL	TOTAL% EACH MARKER ALTERED
Markers of repetition	45% N=126	47% N=129	8% N=23	100% N=278	28%
Uncertainty markers	58% N=158	41% N=112	1% N=4	100% N=274	28%
False start markers	45% N=54	49% N=58	6% N=7	100% N=119	12%

Assessment markers	8% N=7	65% N=58	27% N=24	100% N=89	9%
Agreement markers	19% N=16	43% N=36	38% N=31	100% N=83	9%
Emphasis markers	63% N=39	34% N=21	3% N=2	100% N=62	6%
Evidential markers	57% N=17	27% N=8	16% N=5	100% N=30	3%
Report markers	35% N=6	35% N=6	29% N=5	100% N=17	2%
Degree of adequacy markers	17% N=2	33% N=4	50% N=6	100% N=12	1%
Solidarity markers	0% N=0	100% N=12	0% N=0	100% N=12	1%
TOTAL NUMBER Added, Deleted, Substituted	44% N=427	45% N=444	11% N=105	100% N=976	100%

The striking number of errors to *markers of repetition* and *uncertainty markers* suggests the following explanations. First, both markers occur ubiquitously in ordinary speech. According to Tannen (1989) and Freidrich (1979), repetition is a fundamental aspect of routine conversation, while Berry (1992) claims that everyday speech, unplanned in nature, is characterized by hesitations (*uncertainty markers* in Fraser's typology). Thus we might expect these patterns of ordinary language to be carried over into the courtroom and expressed in witness answers.

Secondly, the persistence of these features in ordinary speech makes them unremarkable. The general literature on pause and hesitation (Levelt, 1983, Jefferson, 1989, Shourup, 1985, and Clark, 1996) suggests that the prevalence of *uh* and *umm* in ordinary speech most frequently signals a delay or problem in speech production.¹⁷

¹⁷ Clark (1996) finds that these features serve as fillers accompanying pauses which signal that the upcoming utterance will not be an ideal, but rather, a flawed one. Discussing the use of *I mean* (uncertainty markers

Furthermore, uncertainty markers and markers of repetition are not part of the propositional content of the utterance. Thus these seemingly unessential linguistic elements may be easily overlooked by interpreters, resulting in additions, deletions, and substitutions. According to Berk-Seligson (1990), interpreters often omit these features because they find them unimportant to the meaning of the utterance; at the same time, she states, interpreters may add them as a result of the "mental concentration and strain...[they] often experience... in the process of interpreting" (p.140). Similarly, interpreter additions of markers of repetition may have the same cognitive function as uncertainty markers, serving as "a ... mechanism to gain time to process the rest of the interpretation" (Berk-Seligson, 1990, p.136).

4.3 Markers most frequently deleted¹⁸

TABLE 2: MARKERS WHERE MAJORITY OF ALTERATIONS OCCURRED AS DELETIONS

FEATURES	NUMBERS DELETED	PERCENT DELETED
Solidarity markers	N = 12 out of 12	100%
Assessment markers	N = 58 out of 89	65%

in Fraser's typology), Clark claims that this marker serves a more specific function than *uh* and *umm*, indicating the *type* of trouble the speaker is in with regards to an upcoming repair. For Shourup (1985), *I mean* signals a mismatch between what the speaker said and what he/she intended to say.

¹⁸ One type of marker, report markers, which signal that the basic message is a report, showed no clear majority in any one category, occurring with the equal frequency (35%) as both additions and deletions, with the remaining 29% occurring as substitutions.

False start markers	N = 58 out of 119	49%
Markers of repetition	N = 129 out of 278	47%
Agreement markers	N = 36 out of 83	43%

4.3.1 Possible motivations for interpreter deletions of pragmatic markers

Table 2 indicates those markers where the majority of interpreter alterations occurred as deletions: namely, solidarity markers, assessment markers, false start markers, markers of repetition, and agreement markers. What reasons might explain why these markers occurred primarily as deletions? To answer this question, we must first explore what motivates interpreters to omit pragmatic markers.

In courtroom trials, the use of the consecutive mode of interpreting in witness testimony,¹⁹ where interpreters wait for the speaker to stop before beginning their rendition, creates a lag time between the source language utterance and its interpretation. As a result, memory becomes a potential factor that can create unintentional deletions, particularly of elements that carry less semantic weight.

Concomitantly, the intense concentration that interpreting demands creates fatigue which can result in interpreter alterations. Court-imposed realities also contribute to this fatigue. As researchers have indicated,

¹⁹ This mode of interpreting is generally prescribed for witness testimony, since both lawyer questions and witness answers need to be reproduced in the source language for the record.

the ability to render a faithful interpretation is compromised when interpreters work more than 45 minutes without a break. However, court systems rarely consider this factor, pressured by an overload of cases and the desire to facilitate a quick trial (Gonzalez et al., 1991).

Another factor possibly contributing to interpreter alterations is the textual density of utterances (Palma, 1995). Textually dense utterances contain a great deal of information and/or are syntactically complex. Thus witness answers in direct examination involving long narrative responses are dense in both information and length, while lawyer questions in cross examination, which typically contain multiple embedded clauses, are dense in form. Both types of utterances put strain on the interpreter's memory, possibly resulting in deletion of features which have less semantic value.

Finally, culturally-bound linguistic norms can motivate interpreter alterations. As researchers have indicated (Berk-Seligson, 1990, Edwards, 1995, Rigney, 1996, and Hale, 1997), interpreters often eliminate pragmatic features which differ from the culturally-driven norms of Spanish-speaking witnesses. These include informal address forms, such as addressing a witness by his/her first name (*solidarity markers* in Fraser's typology).

Having explored possible motivations for interpreter deletions of pragmatic markers, Section 4.3.2 offers

explanations for why interpreters deleted the specific markers listed in Table 2.

4.3.2 Discussion of findings from Table 2

Table 2 shows that 100% of interpreter alterations to *solidarity markers*, which signal a separate message suggesting solidarity between the speaker and the hearer, occurred as deletions. As discussed in Section 1.3, solidarity markers, such as addressing witnesses by their first name, are informal address forms used as a strategy by lawyers in direct examination to suggest a bond between themselves and the witness.

What might account for the fact that interpreters deleted them 100% of the time? According to Berk-Seligson, the linguistic norms of Latin Americans indicate "the use of polite address ...[as] a prominent, regular feature of social interaction..." (p.138). In a courtroom setting, where the relationship between the lawyer and the witness is one of unequal power and status, the appropriate address forms for both lawyer and witness should, then, reflect this cultural predilection for politeness. According to Berk-Seligson, the use of politeness is even more strongly expected when an attorney makes a request of a witness. Thus the striking number of omissions of solidarity markers suggests that interpreters tended to align with the cultural norms of the witness and delete informal address forms.

Another marker frequently omitted by interpreters was *assessment markers*, which signal the speaker's assessment of the truth conveyed by the message. In the data, 65% of these markers, as tags at the end of lawyer questions, were omitted. One explanation for these omissions might lie in the difficulty of interpreting English tags into Spanish due to the greater number of options English offers for tags (Rigney, 1996/1999). For example, Spanish (which does not permit the auxiliary verb in the tag) is not able to replicate the English copy tag (e.g., *did /didn't you?*), very commonly used by lawyers in cross examination because of its high degree of coerciveness. Thus interpreters might tend to omit English tags containing auxiliary verbs in their Spanish rendition, since "the possibilities of asking questions with an auxiliary verb and a subject are very limited" (Rigney, 1999, p.98). This explanation suggests that, in the current study, the high percentage of deletions of assessment markers as tags at the end of lawyer questions may be motivated by the lack of equivalent forms in Spanish.²⁰

This finding foregrounds a problem for interpreters, who must distinguish between question form and question meaning if they are to maintain the pragmatic equivalence of English tag questions. While Spanish does have the tags *¿verdad?* and

²⁰ In the current study, many of the tags deleted from the Spanish rendition contained the English auxiliary. While comparing the frequency of deletion of tags containing auxiliaries with those not containing auxiliaries warrants further exploration, the purpose of this dissertation is to analyze alterations to pragmatic markers and not to compare alterations to specific question types.

¿correcto? and their negative counterparts *¿no es verdad?*, *¿no es correcto?*, these tags do not convey the force of English auxiliary tags (Rigney 1996/1999). However, researchers have suggested that the Spanish tags *¿no?* and *¿o no?* are more coercive than *¿verdad?* and *¿correcto?* and thus offer a more pragmatic equivalent for conveying the accusatory nature of English auxiliary tags (Rigney, 1999, Hale and Gibbons, 1999).

In addition, the elaborate rhetorical phrasing of lawyer questions is yet another factor that might account for the high percentage of deletions in the findings. Tags may be omitted because they occur at the end of syntactically complex questions and thus are difficult for interpreters to remember.

Furthermore, lawyer questions in cross examination, typically comprised of multiple embedded clauses, are syntactically dense (Palma, 1995), putting additional strain on the interpreter's memory. Thus the density of such questions may offer another explanation for the high percentage of tags deleted in the findings.

A set of markers whose omission can be explained by the way they cluster is false start markers and markers of repetition. *False start markers*, which can occur at any point in an utterance, are incomplete words or phrases subsequently followed by a self-correction, while *markers of repetition* involve the reiteration of lexical items or pragmatic markers at any point in the utterance. Table 2 indicates that these

two markers were omitted from witness answers 49% and 47% of the time, respectively. Both markers can be characterized as 1) not being part of the basic message and 2) detracting from the clarity of utterances. Thus interpreters may have tended to delete false start markers and markers of repetition because they appear unessential to the meaning of the utterance. At the same time, such omissions may reflect the interpreter's attempt to sanitize witness answers and make them more comprehensible to the jury. Berk-Seligson(1990) adds that these omissions can indicate an interpreter's desire not to appear incompetent before the judge and the jury.

While agreement markers were deleted 43% of the time in both lawyer and witness utterances, motivations previously mentioned for alterations of markers, such as their omnipresence in speech or their culturally-bound nature, do not seem an appropriate explanation for the deletion of agreement markers. Certainly an affirmation or denial of the basic message ought not go unnoticed or be culturally challenged by interpreters. Thus we could speculate that these deletions might be due to interpreter error.

4.4 Markers most frequently added

TABLE 3: MARKERS WHERE MAJORITY OF ALTERATIONS INVOLVED ADDITIONS

MARKERS	NUMBERS ADDED	PERCENT ADDED
Emphasis markers	N = 39 out of 62	63%
Uncertainty Markers	N= 158 out of 274	58%

Evidential markers	N = 17 out of 30	57%
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4.4.1 Discussion of findings of Table 3

Table 3 indicates that alterations to 3 out of the 10 markers examined, emphasis markers, uncertainty markers, and evidential markers, occurred most frequently as additions. At the same time, these additions occurred primarily in witness answers.

The highest percentage of additions (63%) were made to emphasis markers. *Emphasis markers* function to emphasize the force of the answer by including information not sought or unnecessary (e.g., *yes I did*, where *I did* functions to emphasize the answer *yes*). While emphasis markers are not part of the basic message, they are nevertheless pragmatically significant and signal the speaker's intention. We can speculate that interpreters added these markers to witness answers with such frequency because of failing to recognize that intensifying a speaker's response could alter its intended meaning.

Table 3 also indicates that *uncertainty markers*, which signal the speaker's uncertainty about the basic message, were added 58% of the time. What motivates interpreters to add these markers? As mentioned in Section 4.2.1, interpreters often add hesitations such as *uh* and *umm* to maintain the flow of speech while interpreting from one language into another. Furthermore, interpreters inadvertently interject these forms into their own rendition

because of the mental strain caused by the process of interpreting.

A high percentage (57%) of *evidential markers*, which signal the speaker's degree of confidence in the truth of the basic message, were also added. Similar to uncertainty markers, these markers signal how the speaker feels about the message. According to Smith and Clark (1993), speakers indicate their lack of confidence about the correctness of answers with "hedges" such as *I guess* and *I think*. Thus we could speculate that additions of these markers to witness answers suggest the interpreter's own doubt about what the witness meant to say.²¹ Such doubt could be attributed to the disfluency of the original answer or to the presence of uncertainty features in the Spanish version (e.g., *eh, este*) that the interpreter rendered as evidential markers.

4.5 Markers most frequently substituted

TABLE 4: MARKERS WHERE MAJORITY OF ALTERATIONS INVOLVED SUBSTITUTIONS

FEATURES	NUMBERS SUBSTITUTED	% SUBSTITUTED
Degree of Adequacy markers	N = 12 out of 12	100 %

4.5.1 Discussion of findings of Table 4

Table 4 indicates that only one marker occurred primarily as a substitution: *degree of adequacy markers*, which ask the hearer to measure his/her degree of certainty about the basic message. In addition, Table 4 shows that 100%

²¹ Gonzalez et al. (1991) indicate that adding information may indicate that the interpreter does not sufficiently understand the context of the source message.

of alterations to these markers occurred as substitutions. Degree of adequacy markers, which occurred exclusively in lawyer questions, are formulaic phrases which ask the witness to measure his/her knowledge of the facts or of any physical evidence presented. Since alterations to these markers occurred only as substitutions, it appears that interpreters judged them significant enough to include them in the interpreted version, possibly because they occur as long phrases. Secondly, the fact that the markers occurred in an altered form suggests a lack of both grammatical and pragmatic equivalence in Spanish. This explanation is a strong one, since these markers are legal idioms particular to English (see Section 1.3).

4.6 Markers altered in lawyer questions

Table 5 looks at those markers added, deleted, and substituted in lawyer questions. A discussion of the findings follows.

TABLE 5: MARKERS ALTERED IN LAWYER QUESTIONS²²
ADDITIONS, DELETIONS, SUBSTITUTIONS

MARKERS	% ADDED	% DELETED	% SUBSTITUTED	TOTAL OCCURRENCES
Solidarity markers	0%	100%	0%	N=12
Assessment markers	8%	65%	27%	N=89
Degree of adequacy markers	17%	33%	50%	N=12

²² Alterations to five other pragmatic markers (markers of repetition, false start markers, uncertainty markers, discrepancy markers, and emphasis markers) were found in lawyer questions. However, as discussed in Section 4.2, a pilot study indicated that alterations to these markers would not damage the original lawyer question. Thus they are not accounted for in the data.

Report markers	18%	35%	24%	N=17
Agreement markers	1%	2%	0%	N=83
Evidential markers	3%	7%	3%	N=30

4.6.1 Discussion of findings of Table 5

Table 5 indicates that 6 markers were altered in lawyer questions. However, when compared with the findings of Table 6 (markers altered in witness answers), we see that there were no alterations to three of these markers, *solidarity markers*, *assessment markers*, and *degree of adequacy markers*, in witness answers. How do we account for the finding that these 3 markers were altered exclusively in lawyer discourse? The explanation lies in the fact that these markers dominate lawyer discourse, reflecting language characteristically used by attorneys.

Tiersma (1993) argues that much of legal language, specifically statutory language, is "...created by lawyers, for lawyers" (Tiersma, p.130, cited in Stygall, 1994, p.23). Stygall claims that such terminology is meaningful only to those who belong to the legal community and excludes others, such as witnesses and jurors, from understanding it.

Interpreters, like witnesses and jurors, are not legal personnel. Thus we could speculate that most interpreters do not have a clear understanding of the purpose of legal expressions. If we accept this premise, it is easy to

understand why interpreters made alterations to the three markers listed in Table 5.

Solidarity markers, which signal a separate message suggesting solidarity between the speaker and the hearer, are forms attorneys use specifically in the environment of direct examination to suggest a bond with a friendly witness, thus implying that the witness is trustworthy and credible. However, as non-legal personnel, interpreters are most likely unaware of the strategic significance of these markers. In addition, because these markers clash with the cultural norms of Spanish-speaking witnesses, interpreters might tend to omit them.

Assessment markers, which signal the speaker's assessment of the truth conveyed by the message, when they occur as tags at the end of lawyer questions, are formulaic expressions used in cross examination to coerce a hostile witness to produce the desired response. Berk-Seligson (1990) argues that even if interpreters are aware that these markers have a strategic purpose for lawyers, they tend to align with witnesses with whom they share a cultural and a linguistic background. Thus, in addition to the lack of a pragmatic equivalent in Spanish for many English tags, deletions and substitutions to assessment markers may reflect the interpreter's attempt to diminish the coerciveness of the question and make the witness feel less intimidated. Furthermore, the use of negative constructions in tag

questions (e.g., you went home, *isn't that true?*) creates highly complex utterances that are extremely difficult to interpret into Spanish (Edwards, 1992).

Degree of adequacy markers (which ask hearers to measure their degree of certainty about the message), such as *to the best of your knowledge* and *fairly and accurately*, are legal expressions whose use is controlled by specific Rules of Evidence (see Section 1.3). Alterations to degree of adequacy markers in lawyer questions reinforce Stygall's (1994) argument that interpreters are unaware of the legal significance of these expressions and hence make alterations which, unknowingly, thwart the cross examining lawyer's ability to discredit a witness based on evidentiary conditions.

4.7 Markers altered in witness answers

Table 6 indicates those markers that were added, deleted, or substituted in witness answers rather than in lawyer questions. Section 4.7.1 interprets the results of Table 6, offering explanations for why specific markers were changed and revealing patterns of alterations particular to witness discourse (See Table 6 and the discussion of findings on following page).

**TABLE 6: MARKERS ALTERED IN WITNESS ANSWERS:
ADDITIONS, DELETIONS, SUBSTITUTIONS**

MARKERS	% ADDED	% DELETED	% SUBSTITUTED	TOTAL NUMBER OF OCCURRENCES
Uncertainty markers	58%	41%	1%	274

False start markers	45%	49%	6%	119
Markers of repetition	45%	47%	8%	278
Emphasis markers	63%	34%	3%	62
Evidential markers	53%	20%	13%	30
Agreement markers	19%	43%	38%	83
Report markers	18%	0%	6%	17

This data reflects all of the naturally occurring pragmatic markers examined in this study that were altered in witness discourse.

4.7.1 Discussion of findings of Table 6

As Table 6 indicates, the majority of occurrences²³ of 6 out of 10 markers examined in this study (uncertainty markers, false start markers, markers of repetition, emphasis markers, evidential markers, and agreement markers) were altered in witness answers. Of the six, the first four alterations occurred exclusively in witness discourse.

How do we account for the fact that these six markers were altered predominately in witness answers? The explanation lies in the fact that these markers, ubiquitous in everyday speech, typify the unplanned discourse of witness answers (Section 4.2).²⁴ Thus their omnipresence in witness speech suggests that such markers could easily be overlooked by interpreters as unimportant, both in their own speech and in that of the witness, resulting in unwarranted alterations.

Table 6 shows that interpreters added markers of repetition to witness answers 45% of the time. As Berk-

²³ Report markers were also added with equal frequency in lawyer questions.

²⁴ In contrast, lawyer discourse tends to be more formal and is characterized by legal phraseology.

Seligson (1990) discusses, interpreters often consciously backtrack and rephrase their utterances while interpreting. This backtracking suggests the interpreter's attempt to more accurately capture the original utterance.

Table 6 also indicates that 58% of alterations to *uncertainty markers*, which signal the speaker's uncertainty about the basic message, occurred as additions in witness answers. As mentioned in Section 4.2.1, uncertainty markers help interpreters maintain speech flow while interpreting from the source to the target language. This explanation might account for the large percentage of additions of these markers.

Furthermore, in direct examination, where the attorney's goal is to present his/her version of the facts, witnesses are encouraged to respond in a narrative fashion, elaborating their answers (see Section 1.3). Since narrative answers tend to require more time to interpret than shorter ones, we could speculate that interpreters frequently added uncertainty markers to witness answers because the length of the answer made recall difficult. Thus these markers would serve to preserve the flow of language while processing the interpretation.

Another reason why interpreters may have added uncertainty markers to witness answers can be attributed to their lack of understanding "the linguistics of the courtroom" (Hale, 1996b, p.431). While Rules of Evidence are

an integral part of the trial process, as Stygall (1994) suggests, generally only lawyers and judges understand the legal significance of these rules. Nevertheless, interpreter alterations can have serious ramifications for the admissibility of witness testimony controlled by specific Rules of Evidence.

For example, The Uncertainty Rule, which states that testimony can be declared inadmissible if "the answer indicates that the witness is uncertain" (Keeton, 1973, p.215), allows the opposing side to object to answers containing language which seems uncertain. Thus the presence of uncertainty markers (e.g., *uh* and *umm*) could potentially exclude testimony based on this Rule of Evidence. However, since it is unlikely that the majority of interpreters are familiar with this rule, they may unwittingly add and delete these markers.

The use of *evidential markers*, which signal the speaker's degree of confidence in the truth of the basic message, is also controlled by an evidentiary rule: The Opinion Rule. The Opinion Rule limits personal opinions in witness answers to those that are "...rationally based on the perception of the witness..." (Lilly, 1983, p.109). This rule states that only opinions which reflect witnesses' direct knowledge of the facts through their senses, such as seeing, touching, and hearing, are admissible in answers. In contrast, the use of evidential markers such as *I guess* and *I*

believe, which do not indicate that the opinion is "rationally based on...perception," could possibly disqualify an answer under this rule. The fact that interpreters added evidential markers to witness answers more than 50% of the time strongly suggests that they are unaware that such language is the criterion the law may use to decide that an answer is an opinion.

Like markers of repetition and uncertainty markers, alterations to false start markers and emphasis markers in witness answers can be clustered together. *False start markers* are incomplete words or phrases followed subsequently by a self-correction, while *emphasis markers* emphasize the force of an answer by including information not sought or necessary. Motivations for adding and deleting these markers can be explained by the fact that they are not essential to the basic message. As mentioned in Section 4.2.1, interpreters tend to delete features which are not part of the propositional content of the utterance or detract from the clarity of the message. Thus we could speculate that omissions of both false start markers and emphasis markers occurred because interpreters judged them unimportant. In addition, interpreters may have omitted false start markers to sanitize witness answers and make them more comprehensible.

Interpreter motivation for altering *report markers*, which signal that the basic message is a report (e.g., *he*

told me) could be attributed to the following reasons. First, similar to the other markers discussed in this section, report markers are not part of the semantic content of the message and could be considered unimportant by interpreters. Secondly, interpreters most likely do not know that the use of report markers is controlled by a Rule of Evidence called *The Hearsay Rule*, which prohibits witnesses from using the speech of others to prove their testimony. The findings of Table 5, which show that the majority of alterations to report markers in witness answers, or 18%,²⁵ occurred as additions, strongly suggest that interpreters were unaware that the adding these markers could disqualify an answer as hearsay.

4.8 Markers altered in direct examination and in cross examination

Tables 7 and 8 display, respectively, the types of markers primarily altered in direct examination and those primarily altered in cross examination. In addition, the tables indicate whether these alterations occurred in lawyer questions or in witness answers. Examining where these alterations cluster suggests the type of language characteristically used in direct examination and in cross examination. Thus the types of markers most frequently used

²⁵ The fact that the majority of alterations to these markers in witness answers is relatively small can be accounted for by the fact that they were also altered in lawyer questions (see Table 5).

in a particular trial division tend to be the same ones altered, helping explain why interpreters may overlook them, resulting in unintended additions, deletions, and substitutions of these markers.²⁶

4.8.1 Markers altered primarily in direct examination

TABLE 7: MARKERS ALTERED PRIMARILY IN DIRECT EXAMINATION

LAWYER QUES.	% ALTERED	WITNESS ANS.	% ALTERED
SOLIDARITY MARKERS	N=12/12 100%	UNCERTAINTY MARKERS	N=174/274 64%
DEGREE OF ADEQUACY MARKERS	N= 9/12 75%	REPETITION	N=175/278 63%
		FALSE START MARKERS	N=75/119 63%
		EMPHASIS MARKERS	N= 31/62 50%
		AGREEMENT MARKERS	N= 46/83 56%

4.8.1.1 Markers altered in lawyer questions in direct examination

Table 7 indicates that 2 types of markers, *solidarity markers* and *degree of adequacy markers*, were altered in lawyer questions in direct examination. Comparing the markers altered in lawyer questions in direct examination with those in cross examination (Table 8) reveals that the two markers above were altered exclusively in direct examination. The distinction between the cooperative nature of direct examination and the adversarial purpose of cross examination accounts for the language lawyers use in each trial division

²⁶ A similar argument was made in Sections 4.6.1 and 4.7.1, where the types of markers altered in lawyer discourse tended to characterize the kind of language which dominates lawyer questions.

and helps explain why alterations to particular features tend to occur in either direct examination or cross examination.

The fact that 100% of alterations to *solidarity markers* (which signal a separate message suggesting solidarity between the speaker and the hearer) occurred in direct examination reflects their prevalence as a linguistic strategy in the non-adversarial arena of direct examination, where lawyers attempt to suggest a bond between themselves and the witness.

Degree of adequacy markers (which ask witnesses to measure their degree of certainty about the message) also typify language used in direct examination. Lawyers in direct examination use degree of adequacy markers such as *of your own knowledge* to emphasize that the witness has direct knowledge of the facts and that the answer is not based on the speech of others. The fact that 75% of all occurrences of these markers were altered in direct examination argues that attorneys tend to use these markers as a strategy to establish that the foundational facts of the case are based on witnesses' direct knowledge. Furthermore, the high percentage of alterations of these markers suggests that The Hearsay Rule may be frequently invoked by attorneys in this environment, since any indication that a witness is using second-hand knowledge to present the foundational version of the facts might raise objections from the opposing side.

The frequency of alterations to degree of adequacy markers in direct examination also reflects their use by lawyers when asking a witness to evaluate the validity of the physical evidence (e.g., does this picture *fairly and accurately* depict your condition at the time?). As explained in Section 1.3, The Real Evidence Rule states that "to be admissible, tangible evidence must provide the trier of fact with some knowledge or understanding it lacked before viewing the thing presented..." (Lilly, 1987, p.213). Thus degree of adequacy markers such as *fair and accurate representation* ask the witness to affirm that the evidence presented meets the standards of The Real Evidence Rule. If these markers, whose ritualistic phrasing reflects the purpose of this rule, are omitted or substituted by the interpreter, the opposing side may be able to dispute the admissibility of the physical evidence.

4.8.1.2 Markers altered in witness answers in direct examination

An examination of Table 7 reveals a striking finding: namely, that the markers altered primarily in witness answers in direct examination (uncertainty markers, markers of repetition, false starts markers, emphasis markers, and agreement markers) are identical, with the exception of evidential markers, to those altered in witness answers (see Table 6). This finding suggests that such markers are

characteristically used by witnesses in direct examination rather than in cross examination.

The use of these markers in direct examination can be explained by the fact that attorneys, in this part of the trial, encourage witnesses to give long, narrative accounts in order to establish the facts (Laster and Taylor, 1994, Lilly, 1987). Thus witness answers in direct examination would tend to reflect features which occur in everyday speech, such as uncertainty markers, markers of repetition, and false starts markers, making them prone to alterations by interpreters because of their omnipresence.

4.8.2 Markers altered primarily in cross examination

TABLE 8: MARKERS ALTERED PRIMARILY IN CROSS EXAMINATION

LAWYER QUES.	% ALTERED	WITNESS ANS.	% ALTERED
ASSESSMENT MARKERS	N = 82/89 92%	EMPHASIS MARKERS	N= 31/62 50%
REPORT MARKERS	N = 9/17 53%	EVIDENTIAL MARKERS	N = 16/30 53%

4.8.2.1 Discussion of markers altered in lawyer questions in cross examination

Table 8 reveals that the following features were altered primarily in lawyer questions in cross examination: assessment markers and report markers. Such findings suggest that these markers reflect language characteristically used by lawyers in this environment. Thus their prevalence could make them particularly prone to alteration in cross examination.

When we examine the individual markers altered in cross examination, this supposition is borne out. As we see, 92% of all assessment markers, as tags at the end of questions, occurred in cross examination. This finding reinforces the discussion in Section 4.6.1 that tag questions are used primarily in cross examination by lawyers as a coercive strategy when examining hostile witnesses.

Moreover, Rules of Evidence control the type of questions permitted in cross examination and direct examination, once again suggesting a relationship between the type of language characteristically used by lawyers in cross and direct examination and the particular markers altered in these environments. For example, The Leading Question Rule prohibits leading questions in direct examination but allows them in cross examination. Tag questions are inherently leading, since the declarative portion of the question²⁷ suggests the desired response. The purpose for allowing leading questions in cross examination is to permit attorneys to control the content of the testimony (Lilly, 1987) and to compel the witness to produce a particular answer.

Report markers, altered 53% of the time in lawyer questions, indicate that the basic message is a report. These markers function, typically, as a strategic device in cross examination to emphasize that a witness' source of knowledge

²⁷ Tag questions are comprised of a declarative sentence followed by an interrogative phrase tagged onto the end of the sentence (e.g., you went home, right?).

is not his/her own (e.g., *he told you* the man was running, but you didn't see him running yourself, did you?). As Hale and Gibbons (1999) state, these markers allow attorneys to register their disbelief in the witness answer. Thus their prevalence as a frequently employed strategy in cross examination helps explain the high percentage of interpreter alterations. As Hale and Gibbons (1999) suggest, interpreter omissions of reported speech from lawyer questions unwarrantedly present the evidence as the truth, rather than as the witness' version of the truth.

4.8.2.2 Markers altered in witness answers in cross examination

In witness answers in cross examination, two markers showed a high frequency of alterations: evidential markers, where 53% of all occurrences of these markers were altered, and emphasis markers, where 50% of all occurrences of these markers were altered. It can be argued that such findings suggest that these alterations typify language characteristically used by witnesses in cross examination.

Why should *evidential markers*, which signal the speaker's degree of belief in the utterance, be particular to answers in cross examination? Under the scrutiny of cross examination, witnesses may produce these markers as a form of hedging to avoid a direct response they believe could be incriminating. As Keeton (1986) suggests, the use of phrases such as *I think* and *I guess* in cross examination can indicate

a witness' attempt to be evasive and "... conceal relevant facts about which he is asked" (p.43). Naylor (1979) claims that, in a case involving native Tagalog speakers, the defendants' use of indirect language such as *I believe* and *maybe* made them appear evasive to the English-speaking jurors, influencing the resulting guilty verdict. Thus it is possible to speculate that witnesses, under pressure of hostile questioning to produce a yes/no response, might rely on evidential markers because they are unable to produce an answer without equivocating.

The high frequency of alterations to emphasis markers in cross examination (50%) suggests that witnesses, once again bombarded by questions from a prosecuting attorney, may have emphasized their answers in an attempt to appear more certain of their testimony. Since the majority of alterations to emphasis markers occurred as additions (see Table 1), we could speculate that interpreters, aligning with witnesses who shared their linguistic and cultural background, added these markers as a show of solidarity (e.g., *yes of course I saw him*).

4.9 Summary of possible causes of interpreter alterations

The distribution of interpreter alterations revealed the following patterns. Uncertainty markers and markers of repetition were the two markers most frequently altered, accounting for 56% of all interpreter alterations. The high

percentage of changes to these markers, omnipresent in everyday language, suggests that they are easily overlooked by interpreters, resulting in random additions, deletions, and substitutions.

Of the 10 markers examined, the majority of errors involved deletions. When these deletions occurred in lawyer questions, the markers most frequently omitted were solidarity markers, assessment markers, and degree of adequacy markers. This finding suggests that interpreters tend to omit markers from questions when they clash with the cultural norms of the witness (solidarity markers) or when no pragmatically equivalent form is available in Spanish (assessment markers). Furthermore, by deleting assessment markers in the form of tags at the ends of questions, interpreters diminished the coerciveness of lawyer questions. Such deletions may reflect a conscious attempt on the interpreter's part to make the witness feel less intimidated, reflecting an alignment with the witness with whom they share a linguistic and/or cultural background.

When interpreter deletions occurred in witness answers, the most frequently omitted markers were markers of repetition and false start markers. This finding suggests that these markers, which reflect the disfluencies of ordinary speech, are omitted by interpreters because their omnipresence in language makes them easy to overlook.

However, more alterations occurred as additions in witness answers than as deletions. The most frequently added markers were uncertainty markers, emphasis markers, and evidential markers. The large percentage of additions of uncertainty markers can be explained by the cognitive role they play in helping interpreters maintain speech flow while interpreting. Emphasis markers, because they are not essential to the basic message, may thus be ignored by interpreters even in their own speech. Finally, the addition of evidential markers suggests that interpreters judge them as unimportant, unaware that the presence of these markers may disqualify an answer under The Opinion Rule.

Alterations to markers in direct examination and cross examination suggest the following explanations for interpreter alterations based on patterns of occurrence. There appears to be a relationship between the types of markers altered in direct and cross examination and the language characteristically used by lawyers and witnesses in these environments. This argument gains credence when we reflect on the distinct purposes of direct and cross examination. Thus, lawyer questions in direct examination reflected a high percentage of interpreter alterations to solidarity markers, typically used by lawyers in this environment to suggest a bond between themselves and the witness. In contrast, the high percent of alterations to

assessment markers as tags at the end of lawyer questions occurred in cross examination, reflecting their use by attorneys as a strategy to coerce hostile witnesses to produce the desired response.

In contrast, witness answers in cross examination contained a high percentage of alterations to emphasis markers and evidential markers. The use of emphasis markers suggests witnesses' attempt to emphasize their answers and appear more certain, while the use of evidential markers indicates an attempt to avoid a direct response that could be incriminating. Such high percentages of alterations suggest the prevalence of these markers in cross examination, once again reflecting a relationship between types of markers altered and types of markers characteristically used in a particular trial division.

Finally, in witness answers in direct examination, those markers with the highest frequency of alterations were uncertainty markers, markers of repetition, and false start markers. Such markers, because of their omnipresence in everyday speech, typically characterize the narrative answers encouraged by lawyers in direct examination, making it easy for interpreters to overlook them and produce errors.

CHAPTER 5: POSSIBLE EFFECTS OF INTERPRETER ALTERATIONS

5.1 Introduction

This chapter is divided into two parts. The first part (Section 5.2) presents examples of colloquies where interpreters made alterations to the 10 pragmatic markers analyzed in the study. A total of 57 examples, occurring in both lawyer questions and witness answers,²⁸ as well as in direct and cross examination, are offered. For each marker, 2 examples of additions, 2 examples of deletions, and 2 examples of substitutions are offered. The altered markers are set in italicized script.

²⁸ As discussed in Section 4.2, alterations to the following markers are only accounted for in witness answers and not lawyer questions: markers of repetition, uncertainty markers, false starts markers, agreement markers, evidential markers, and emphasis markers.

The second part of the chapter (Section 5.3) offers a descriptive analysis of alterations to these markers in colloquies selected from Section 5.2 and assesses the effect of these alterations on the pragmatic meaning of lawyer questions and witness answers. A final section (5.4) summarizes the descriptive findings.

KEY

W = witness answer

L = lawyer question

gloss = literal translation²⁹

I = interpreter rendition

5.2 The colloquies

5.2.1 Alterations to markers of repetition

Sections 5.2.1.1 to 5.2.1.3 present colloquies where interpreters added, deleted, or substituted markers of repetition. Markers of repetition reiterate lexical items or pragmatic markers at any point in an utterance.

5.2.1.1 Adding Markers of Repetition

- (1) W: No sé quien él era pero le llevaron aquí en la oreja de un botellazo.
gloss: I don't know who he was but he had his ear torn with a bottle.
I: I don't know *who he was who he was but they they* uh *tore tore* uh the ear with a bottle.
 (Trial 2, 23, direct examination)
- (2) W: Le sacó un puñal.
gloss: Produced a knife.
I: *Uhm uhm* produced a a a knife.

²⁹ This study does not use a morpheme-by-morpheme gloss of utterances. Instead, the gloss presents a literal representation which allows discrepancies between the original and the interpreted utterance to be understood.

(Trial 2, 121, direct examination)

5.2.1.2 Deleting Markers of Repetition

- (3) W: Por ocho semanas, por ocho semanas, ocho semanas, ocho semanas y media, nueve semanas, dos meses trabajé.

gloss: *For eight weeks, for eight weeks, eight weeks, eight weeks and a half, nine weeks, two months, I worked.*

I: Eight weeks, eight and a half, nine weeks, two months I worked

(Trial 5, 246, direct examination)

- (4) W: Y uno puede ver al frente del truck yo puedo ver al frente del truck porque eh porque el truck que yo llevo la pick uh la Bronco que yo llevo es una Bronco alterado alterado es que la la levantan y que veine alta que la lazan.

gloss: And one can see *in front of the truck* I can see *in front of the truck* because uh because the truck *that I take* the pick uh the Bronco *that I take* is an *altered altered* Bronco its that they lift it it and it comes high that they heighten it.

I: And anyone and especially myself on a road going down could see in front of the truck. That particular truck as I said was had been altered so that it would be taller so it was quite high and I could see. (Trial 4, 212, cross examination)

5.2.1.3 Substituting Markers of Repetition

- (5) W: Creo creo que era una van.

gloss: *I think I think* it was a van.

I: I think it was a van a kind of a van.

(Trial 4, 149, direct examination)

- (6) W: O articulada no sé si es la eh articula articulada articula articulada.

Gloss: Or articulate I don't know if its the uh *articula articulate articula articulate*.

I: *I I* uh *I I* believe it is articulate.

(Trial 4, 225, cross examination)

5.2.2 Uncertainty markers. Sections 5.2.2.1 to 5.2.2.3

present examples where interpreters added, deleted, or substituted uncertainty markers. Uncertainty markers signal

the speaker's uncertainty about the basic message when, in the context of a witness answer, these markers give the impression of uncertainty, rather than of any other discourse or cognitive function.

5.2.2.1 Adding Uncertainty Markers

- (7) W: Un suéter negro.
gloss: A black sweater.
I: The *uh* guy there in black.
(Trial 1, 5, direct examination)
- (8) W: Y ahí todos le gritaban que no le matara que no fuera cochino³⁰ que no fuera así.
gloss: And there everybody was yelling at him not to kill him not to be disgusting not to be like that.
I: Everybody was *uh* crying to him *uh* not to kill him *uh uh* not to be like that not to kill him.
(Trial 2, 25, direct examination)

5.2.2.2 Deleting Uncertainty Markers

- (9) W: Uh como de aquí a esta puerta
gloss: *Uh like* from here to this door.
I: From here to this door.
(Trial 2, 116, direct examination)
- (10) W: Yo creo que en mayo uh uh o junio no sé.
gloss: I believe in May *uh uh* or June I don't know.
I: I believe in May or June.
(Trial 3, 110, cross examination)

5.2.2.3 Substituting Uncertainty Markers

- (11) W: Estaba entre osea digamos que esta es la cera.
gloss: I was between *I mean* lets say that this is the sidewalk.
I: I was lets say that this is the *uh* sidewalk.
(Trial 3, 115, cross examination)
- (12) W: Porque el es eh el cuñado de mi esposa. Digo el hermano di mi esposa.

³⁰ While "no fuera cochino" literally means "not to be a pig," translating this expression as "not to be disgusting" more appropriately captures the source-language meaning (Rigney, email, 1999).

gloss: Because he is *uh* the brother-in-law of my wife. *I mean* the brother of my wife.

I: He is, *uh*, he is my wife's brother.

(Trial 5, 249, cross examination)

5.2.3 False start markers. Sections 5.2.3.1 to 5.2.3.3 present examples where interpreters added, deleted, or substituted false start markers. False start markers are unfinished words or phrases subsequently followed by a self-correction.

5.2.3.1 Adding False Start markers

(13) W: Bueno yo he recibido en España la educación, vamos a decir bachillerato superior.

gloss: Well I have received in Spain education, lets say, high school.

I: Well *when I uh I think* it was in Spain *the a what they* called there the high school.

(Trial 2, 10, direct examination)

(14) W: Bueno eh cuando usted se aproxima una vía del tren.

gloss: Well *uh* when you approach a train track.

I: Well *when you come uh uh uh approach* a *uh a a* crossing of the train.

(Trial 4, cross examination)

5.2.3.2 Deleting False Start Markers

(15) W: Fue el que me dió porque na...nadie, nadie, na ..nadie me tocó.

gloss: He was the one that hit me because *no... nobody, nobody no... nobody* touched me.

I: Well he's the one who hit me because nobody else touched me.

(Trial 1, 3, direct examination)

(16) W: We Weber.

gloss: *We Weber*

I: Doctor Weber.

(Trial 5, 91, direct examination)

5.2.3.3 Substituting False Start Markers

(17) W: Yo eh eh son impulsos instantáneos míos.

gloss: *I uh uh they are* my instananeous impulses.

I: That's uh an *instan/instantaneous* uh impulse.
(Trial 3, 35, cross examination)

- (18) W: Bueno yo lo conocí después, cuando, eh, me casé con mi esposa. No antes.
gloss: Well, I met him *after, when*, uh, I was married to my wife. Not before.
I: I might have met him *after he after I* married my wife, not before.
(Trial 5, 120, cross examination)

5.2.4 Assessment Markers. Sections 5.2.4.1 to 5.2.4.3 present examples where interpreters added, deleted or substituted assessment markers, which signal the speaker's assessment of the truth conveyed by the message. In courtroom discourse, they occur most frequently as tags at the end of questions.

5.2.4.1 Adding Assessment Markers

- (19) L: And during the course of Friday night you and your friend Ruth Sierra, her husband, and I guess some of the other guests drank that bottle.
I: Y durante la noche usted y su amiga Ruth Sierra, su esposo, y eh tal vez otras amistades se bebieron esa botella, correcto?
gloss: And during the night you and your girlfriend Ruth Sierra, her husband, and uh maybe other friends drank that bottle, *correct*?
(Trial 1, 2, cross examination)
- (20) L: But in your deposition, didn't you tell us that you would have, if you had a knife on you, you would have killed him?
I: Pero en la declaración, no es verdad que tú dijiste que si hubieras tenido una pistola o un cuchillo tú lo hubieras matado a él?
gloss: But in the declaration, *isn't it true* that you said that if you would have had a gun or a knife, you would have killed him?
(Trial 5, 56, cross examination)

5.2.4.2 Deleting Assessment Markers

In the following examples, the use of a period indicates that both the original and the interpreted questions were

spoken like declaratives, with falling intonation, rather than like interrogatives, with rising intonation, thus affecting their interpretation as questions.

- (21) L: And you never got a good look at any of the people who actually attacked you outside *did you*.
I: Nunca pudo ver bien a los que estaban afuera y lo atacaron a usted.
gloss: You never saw well the people who were outside and who attacked you.
(Trial 2, 34, cross examination)
- (22) L: You believe so but you're not sure, *right*.
I: No está seguro.
gloss: You are not sure.
(Trial 3, 11, cross examination)

5.2.4.3 Substituting Assessment Markers

- (23) L: No one approached you with a knife, *did they*?
I: Nadie se acercó a usted con un cuchillo verdad?
gloss: Nobody approached you with a knife *right*?
(Trial 2, 49, cross examination)
- (24) L: You weren't fired, You had a problem with the dispatcher, *isn't that true*?
I: No te botaron. Es verdad que tuviste un problema con el despachador?
gloss: You weren't fired. *Is it true* that you had a problem with the dispatcher?
(Trial 5, 65, cross examination)

5.2.5 Agreement markers. Sections 5.2.5.1 to 5.2.5.3 present examples where interpreters added, deleted, or substituted agreement markers. Agreement markers affirm or deny the basic message of the utterance; in addition, they signal *the manner in which* a speaker affirms or denies.

5.2.5.1 Adding Agreement Markers

- (25) W: No porque yo no iba a pelear yo iba viendo el carro.
gloss: No because I was not going to fight I was looking for my car.

I: Yes no because I I it wasn't my intention to fight. I just wanted to check my car.
(Trial 2, 16, cross examination)

(26) W: No que yo sepa.
gloss: Not that I know of.
I: Not to my knowledge no.
(Trial 3, 20, direct examination)

5.2.5.2 Deleting Agreement Markers

(27) W: No no no ok.
gloss: No no no ok.
I: OK.
(Trial 4, 64, direct examination)

(28) W: Sí es verdad.
gloss: Yes it is true.
I: That is true. (Trial 4, direct examination)

5.2.5.3 Substituting Agreement Markers

(29) W: Así es.
gloss: *It's like that.*
I: Yes indeed. (Trial 3, 34, direct examination)

(30) W: Bueno yo no lo ví.
gloss: *Well I didn't see it.*
I: No I didn't see it.
(Trial 3, 46, cross examination)

5.2.6 Emphasis markers. Sections 5.2.6.1 to 5.2.6.3 present examples where interpreters added, deleted, or substituted emphasis markers. Emphasis markers emphasize the force of an answer by including information not sought or not necessary.

5.2.6.1 Adding Emphasis Markers

(31) W: No.
gloss: No.
I: *No I don't remember.*
(Trial 3, 11, cross examination)

(32) W: No no carros.
gloss: No no cars.
I: *No no no no cars stopped.*
(Trial 4, 50, direct examination)

5.2.6.2 Deleting Emphasis Markers

(33) W: Mire sí sí.
gloss: I looked yes yes.
I: I was looking yes.
(Trial 3, 47, cross examination)

(34) W: Sí, sí, sí.
gloss: Yes, yes, yes.
I: Yes.
(Trial 5, 58, direct examination)

5.2.6.3 Substituting Emphasis Markers

(35) W: Sí sí cambió.
gloss: Yes yes it changed.
I: Yes it *did* change.
(Trial 3,30,direct examination)

(36) W: Sí cómo no.
gloss: Yes *why* not.
I: Yes *of course*.
(Trial 4, 56, cross examination)

5.2.7 Evidential markers. Sections 5.2.7.1 to 5.2.7.3 present examples where interpreters added, deleted, or substituted evidential markers. Evidential markers signal the speaker's degree of confidence in the truth of the basic message.

5.2.7.1 Adding Evidential Markers

(37) W: Yo no puedo decir ni que sí ni que no.
gloss: I can't say either yes or no.
I: I can't tell you yes or no *I don't know*.
(Trial 3, 19, cross examination)

(38) W: Cuando yo me acosté me senté yo me apoyé así entre los dos coches.
gloss: When I laid down I sat I leaned like this in between the two cars.
I: *I believe* that uh when I sat I sat like this in between the two cars.
(Trial 3, 18, cross examination)

5.2.7.2 Deleting Evidential Markers

(39) W: Yo caí no sé.
gloss: I fell *I don't know*.
I: I fell I know I fell.
(Trial 3, 23, cross examination)

- (40) W: Yo creo que en mayo uh uh o junio no sé.
gloss: I believe in May uh uh or June *I don't know*.
I: I believe May or June.
(Trial 3, 24, cross examination)

5.2.7.3 Substituting Evidential Markers

- (41) W: Uh yo creo que habían.
gloss: Uh *I think* that there were.
I: I uh *would say* that there were. (Trial 5, cross)
- (42) W: Uh donde estaba la pierna, you know.
gloss: Uh where my leg was, *you know*.
I: Uh but where my leg is *I don't know*.
(Trial 5, 28, cross examination)

5.2.8 Report markers. Sections 5.2.8.1 to 5.2.8.3 present examples where interpreters added, deleted, or substituted report markers. Report markers signal that the basic message is a report.

5.2.8.1 Adding Report Markers

- (43) W: Que no lo respetaba, y que no lo respetaba.
Cogió una botella y me la rompió en la cabeza,
cogió un vaso y me lo rompió en la cabeza y con
un teléfono también me dió.
gloss: That I didn't respect him, and that I
didn't respect him. He took a bottle and broke it
on my head, he took a glass and broke it on my
head and also hit me with a phone.
I: *He said* I didn't respect him, and *he said* I
didn't respect him and he took a bottle and he
broke it on my head with a glass and also with a
telephone.
(Trial 1, 3, direct examination)
- (44) L: Ok now when you walked from the store when
you came out you were not in a hurry.
I: Para cuando usted alió de la tienda usted dice
que no iba apurado.
gloss: When you came out of the store
you say that you were not in a rush.
(Trial 3, 12, cross examination)

5.2.8.2 Deleting Report Markers

- (45) L: At these Latin dances *you said* that you identified Franklin Munos as the DJ?
I: En los bailes latinos identificó al señor Munoz como el disc-jockey?
gloss: In the Latin dances *you identified* Mr. Munoz as the disc-jockey?
(Trial 2, 7, cross examination)
- (46) L: When you left the hospital *you said you had* a cast on your leg, right?
I: Cuando usted alió del hospital tenía un yeso en su pierna verdad?
gloss: When you left the hospital *you had* a cast on your leg right?
(Trial 3, 10, direct examination)

5.2.8.3 Substituting Report Markers

- (47) L: *You testified* that there was a disturbance downstairs.
I: Usted dice que hubo un altercado abajo.
gloss: *You say* there was an altercation downstairs.
(Trial 2, 9, cross examination)
- (48) L: *You said* that you couldn't see when the impact occurred, is that right?
I: Dice que tú no pudistes ver cuando pasó el impacto, eso es verdad?
gloss: *He says* that you were not able to see when the impact happened, that is right?
(Trial 5, 17, cross examination)

5.2.9 Degree of adequacy markers. Sections 5.2.9.1 to 5.2.9.3 present examples where interpreters added, deleted, or substituted degree of adequacy markers. Degree of adequacy markers ask the hearer to measure his/her degree of certainty about the message.

5.2.9.1 Adding Degree of Adequacy Markers

- (49) L: And can you describe for the jury what the bone scan consisted of?
I: Y puede, si usted se recuerda, usted le puede decir al jurado de que consistía esa, esa prueba que le hicieron?
gloss: And can you, *if you remember*, can you

tell the jury of what consisted that, that test that they took?

(Trial 5, 10, direct examination)

- (50) L: For how long?
I: Por cuánto tiempo, si se recuerda?
gloss: For how long, *if you remember*?
(Trial 5, 7, direct examination)

5.2.9.2 Deleting Degree of Adequacy Markers

- (51) L: Well did anyone from Farcher's Grove the bartender or anyone else get involved *in any way, shape, or form* in that altercation that was taking place in the basement?
I: Alguien de Farcher's Grove usted vió que interviniera en esta pelea?
gloss: Anybody from Farcher's Grove you saw that intervened in this fight?
(Trial 2, 2, direct examination)
- (52) L: Nobody was injured inside *to the best of your knowledge* were they?
I: Nadie eh resultó uh herido en esa pelea verdad?
gloss: Nobody uh was uh hurt in that fight right?
(Trial 2, 4, cross examination)

5.2.9.3 Substituting Degree of Adequacy Markers

- (53) L: Do you know *of your own recollection* what the color of the light was at Van Buren Street at the time you might have crossed?
I: Cuando usted cruzó recuerda usted de que color estaba la luz en el semáforo?
gloss: When you crossed *do you remember* what color was the light in the traffic light?
(Trial 3, 1, cross examination)
- (54) L: And they *fairly and accurately depict* your condition at that time?
I: Y muestran en forma exacta como estaba usted en ese momento?
gloss: And they *show in exact form* how you were at that moment?
(Trial 2, 3, direct examination)

5.2.10 Solidarity markers. In the data, all the alterations to solidarity markers, which signal a message suggesting

solidarity between the speaker and the hearer, occurred as deletions.

5.2.10.1 Deleting Solidarity Markers

- (55) L: Roy would you stand up please?
I: Párese por favor.
gloss: Stand up please. (Trial 2, direct examination)
- (56) L: How about - how you feel Roy. How do you continue to feel? Do you have any physical discomfort remaining at this time?
I: Eh tiene alguna cosa que le moleste físicamente en ese momento?
gloss: Um do you have anything that bothers you physically at this time?
(Trial 2, 4, direct examination)
- (57) L: Jose the first place that you tried to work was at Mecca is that right?
I: El primer lugar que trató de trabajar fue Mecca verdad?
gloss: The first place you tried to work was Mecca true? (Trial 5, 11, direct examination)

5.3 The descriptive analysis

The second part of the chapter presents a descriptive analysis of selected colloquies taken from Section 5.2. The analysis examines whether the pragmatic markers were added, deleted, or substituted in the interpreted version, considers the significance of their occurrence in direct examination or in cross examination, and looks at the way alterations to these markers could influence the admissibility of witness testimony. Finally, the analysis assesses the potential harm of these alterations to the lawyer question, the witness answer, and the credibility of the witness.

In addition, the examples are divided into the following categories³¹ which reflect the nature of the alteration.

1. Semantic alterations: those additions, deletions, and substitutions whose alteration is based on the feature not being part of the semantic meaning. The semantic meaning is understood, here, to convey the propositional content of the utterance. The propositional content indicates a representation of what the utterance is about, that is, the basic message devoid of speaker intention.

2. Cultural alterations: those additions, deletions, and substitutions whose alteration reflects culturally-based language norms. For example, Spanish speakers have a preference for direct requests (e.g., the imperative construction) while English speakers favor indirect requests, that is, the imperative construction prefaced by a polite form (Hale, 1997b, Berk-Seligson, 1990).

3. Grammatical alterations: those additions, deletions, and substitutions whose alteration reflects a lack of grammatically equivalent structures in the source and the target language. For example, Spanish does not permit the auxiliary form of the verb to be copied in the tag part of a question.

4. Errors: those additions, deletions, and substitutions whose alteration reflects an incorrect interpretation.

³¹ These categories reflect the primary, but not necessarily exclusive, explanation for the alteration.

acknowledging the defendant's presence in court, the addition of an uncertainty marker can suggest doubt not present in the original answer.

In contrast, the interpreted version recasts the witness response from a clear and unambiguous description of what the defendant is wearing to a vaguely worded answer in which the defendant is offhandedly referred to as a "guy." Thus the presence of the uncertainty marker *uh*, along with the lack of specificity in describing the defendant, has the effect of making the witness' identification of the defendant appear less credible.

- (2) W: Y ahí todos le gritaban que no le matara que no fuera cochino que no fuera así.
gloss: And there everybody was yelling at him not to kill him not to be disgusting not to be like that.
I: Everybody was *uh* crying *uh* not to kill him *uh uh* not to be disgusting not to be like that not to kill him.
(Trial 2, 25, direct examination)

Example 2 is taken from cross examination. Here the interpreter has once again added uncertainty markers. Under the glare of interrogation in cross examination, witnesses are particularly vulnerable and any suggestion of uncertainty may help discredit them. In this case the stakes are particularly high, since the witness, who is also the plaintiff, describes an event critical to his version of the alleged assault.³⁴

³⁴ Although this case involved criminal activity, it was considered a civil trial because the plaintiff sued the establishment for injuries incurred on the premises.

However, the presence of two uncertainty markers (*uh* and *like*) in the original answer suggests that the witness has some doubt about how far away he was from the fight. In contrast, the interpreted version deletes both uncertainty markers. Without these signals of doubt, the witness now appears more certain. Thus the lawyer's attempt to have the witness appear confident of the facts is unwittingly achieved by the interpreter's failure to render a pragmatically accurate interpretation.

5.3.1.3 Additions of Markers of Repetition in witness answers

- (4) W: No sé quien él era pero le llevaron aquí en la oreja de un botellazo.
gloss: I don't know who he was but he had his ear torn with a bottle.
I: I don't know *who he was who he was* but *they they uh tore tore uh* the ear with a bottle. (Trial 2)
- (5) W: Le sacó un puñal.
gloss: Produced a knife.
I: *Umm umm* produced a a a knife.
(Trial 2, 121, direct examination)

Examples 4 and 5 illustrate what happens when markers of repetition, which are not part of the semantic content of the utterance, are added to the witness answer. *Markers of repetition* involve the reiteration of lexical items or pragmatic markers at any point in an utterance. In Example 4, three different instances of markers of repetition occur (*who he was who he was, they they, and tore tore*), while in Example 5, the article *a* is reiterated three times.

Furthermore, in each example, the interpreter adds and then repeats the uncertainty markers *uh* and *umm*, respectively.

London's (1973) experimental study examining the relationship between jury decision-making and persuasiveness in jurors' speech analyzed the use of repetition and "paralinguistic features" such as *uh* and *ah* in jurors' language. His results indicated that the use of these features was associated with a lack of persuasiveness in jury decision-making. Elaborating on London's findings, Berk-Seligson (1990) argues that the presence of these features in witness answers would, similarly, "give jurors the impression that the witness is not persuasive" (p.136).

Reflecting these researchers' findings, Examples 4 and 5 illustrate how the presence of two uncertainty markers, along with the use of markers of repetition, creates answers that lack both certainty and persuasiveness. Thus the addition of these markers could potentially harm the credibility of the witness. Moreover, these additions make it possible for the opposition to object that the testimony is inadmissible under the Uncertainty Rule.

5.3.1.4 Deleting Markers of Repetition in witness answers

- (6) W: Por ocho semanas, por ocho semanas, ocho semanas, ocho semanas y media, nueve semanas, dos meses trabajé.
gloss: *For eight weeks, for eight weeks, eight weeks, eight weeks and a half, nine weeks, two months, I worked.*
I: Eight weeks, eight and a half, nine weeks, two months I worked.

(Trial 5, 246, direct examination)

In Example 6, taken from direct examination, the witness, also the plaintiff, presents background information important to establishing the facts. However, the reiteration of "for eight weeks" suggests that the witness is unsure of how long he had worked.

In contrast, the interpreted rendition omits the marker of repetition, thus removing everything which is not part of the semantic content of the message. Without this marker, the witness sounds considerably less tentative, thereby appearing potentially more credible to the jury.

5.3.1.5 Adding False Start Markers in witness answers

- (7) W: Bueno yo he recibido en España la educación, vamos a decir bachillerato superior.
gloss: Well I have received in Spain education, lets say, high school.
I: Well when I uh I think it was in Spain the a what they called there the high school. (Trial 2)

Example 7, taken from direct examination, shows what happens when *false start markers* (unfinished words or phrases subsequently followed by a self-correction), which are not part of the semantic content of the message, are added to witness answers. Here the lawyer has asked the witness to describe his level of education. Establishing background information can be critical to effectively presenting the facts. As Keeton (1973) points out, "...more cases are won by evidence on direct examination than by that on cross-examination...[since] the original development of all

elements of the plaintiff's claim depends almost entirely upon direct examination" (p.10).

In Example 7, there is a significant discrepancy between the pragmatic delivery of the original utterance and the interpreter's rendition. While the witness appears sure of himself in the original answer, the addition of two false start markers (*when I uh I think* and *the a what they called*) in the interpreted version makes the witness' delivery incoherent and, by implication, uncertain. Moreover, the presence of the evidential marker *I think* suggests the witness lacks confidence in the testimony. Paradoxically, since the answer is the witness' comment on his educational background, such disfluency creates the impression that he is not well educated and, by inference, lacks intelligence. As a result, the lawyer's strategic attempt to establish the witness' version of the facts as credible is damaged by the interpreter's inaccurate rendition.

5.3.1.6 Deleting False Start Markers in witness answers

- (8) W: We Weber.
 gloss: *We Weber.*
 I: Doctor Weber. (Trial 5, 91, direct examination)

In Example 8, taken from direct examination, the witness, also the plaintiff, is asked the name of the doctor he saw following his accident. Like Example 7, the question asks information important to establishing the plaintiff's version of the facts. In the original answer, the witness

begins to state the doctor's name but instead produces a false start marker.

In contrast, the interpreter omits the false start marker and adds the title *doctor*, creating an answer that is both polite³⁵ and fluent. Thus the interpreted answer presents important foundational information with more coherence than the actual response, making the witness appear more credible.

5.3.1.7 Adding Evidential Markers to witness answers

Examples 9 and 10 once again illustrate the effect of adding markers which are not part of the semantic content of the utterance. Here the interpreter has added the evidential markers *I don't know* and *I believe*, respectively. *Evidential markers* signal the speaker's degree of confidence in the truth of the basic message. The fact that the witness in both examples is the plaintiff heightens the significance of the testimony.

- (9) W: Yo no puedo decir ni que sí ni que no.
gloss: I can't say either yes or no.
I: I can't tell you yes or no *I don't know*.
 (Trial 3, 19, cross examination)

- (10) W: Cuando yo me acosté me senté yo me apoyé así entre los dos coches.
gloss: When I laid down I sat I leaned like this in between the two cars.

³⁵ We could speculate that the reason for adding the title of "doctor" is motivated by the cultural conventions of Spanish speakers which dictate the use of the polite address form in the formal setting of a courtroom.

I: *I believe* that uh when I sat I sat like this in between the two cars. (Trial 2,18, cross examination)

In Example 9, the witness' original response appears non-committal and neutral (*I can't say either yes or no*). However, the addition of *I don't know* in the interpreted version erroneously suggests that the reason the plaintiff didn't say yes or no is that he doesn't know the answer. Smith and Clark (1993) suggest that speakers use phrases such as *I don't know* to save face when they are uncertain about how to answer. In addition, Keeton (1973) claims that, in cross examination, the presence of *I don't know* in witness answers indicates that the witness is attempting to conceal facts. Thus the addition of these evidential markers in this example has the potential to make the witness appear evasive, affecting the credibility of his answer.

In Example 10 the witness, also the plaintiff, attempts to explain what happened after he was allegedly hit by the defendant's car. In the original answer, the witness describes the events with directness and confidence. However, the addition of the evidential marker *I believe* in the interpreted answer suggests the witness may be avoiding a direct response, resulting in an answer that sounds evasive.

Moreover, the addition of the evidential marker may affect the admissibility of the answer under The Opinion Rule. This rule states that a response is an opinion rather than an answer when "the basis for the opinion has not been

shown" (Keeton, 1983, p.213). Since the "basis for the opinion" in Example 10 is stated by the interpreter as belief which "has not been shown" (i.e., "I believe"), the answer may be judged inadmissible. Thus we see how the interpreter's addition of this evidential marker could seriously affect the evidentiary validity of the testimony.

5.3.1.8 Deleting Evidential Markers in witness answers

- (11) W: Yo creo que en mayo uh uh o junio no sé.
gloss: I believe in May *uh uh* or June *I don't know*.
I: I believe May or June.
 (Trial 3, 24, cross examination)

In Example 11, taken from cross examination, the interpreted version deletes the evidential marker *I don't know* as well as the two uncertainty markers *uh*. In the original answer, the presence of these markers suggests a lack of belief in the facts which, along with the markers indicating uncertainty, gives the impression that the witness is evading a direct response.

By omitting both of these markers, the interpreted version recasts the original answer into one which makes the witness appear considerably more certain, and hence, believable.

5.3.1.9 Substituting Evidential Markers in witness answers

- (12) W: Uh donde estaba la pierna, sabe.
gloss: Uh where my leg was, *you know*.
I: Uh where my leg is *I don't know*.
 (Trial 5, 28, cross examination)

In Example 12, taken from cross examination, the phrase *you know* is rendered as *I don't know* in the interpreted version, significantly altering what the speaker intended to say. In the original response, *you know* functions as a solidarity marker "expressing solidarity with the addressee" (Fraser, 1996, p.186). The witness's use of this marker, along with the familiar form of *sabe*,³⁶ suggests that an understanding exists between himself and the cross examining lawyer and that the answer will be accepted by the lawyer as true.

However, the interpreted version replaces the solidarity marker with the evidential marker *I don't know*. As a result, the witness response is transformed from one that appears confident to one that appears evasive and uncertain. Thus the testimony is weakened, potentially affecting the way the jury perceives the witness.

5.3.1.10 Additions of Report Markers to lawyer answers

Similar to other markers discussed in this section, alterations to *report markers* are semantic in nature, since these markers are not part of the basic message of the utterance. Pragmatically, however, report markers have meaning, signaling that the basic message is a report.

Moreover, the presence of report markers in a witness answer can make the answer inadmissible under The Hearsay

³⁶ In Spanish, there are two forms of second person address: the familiar *tu* form and the more formal *usted* form. Because the pronoun is indicated grammatically in the verb ending, it is not necessary to reproduce it in the utterance.

between themselves and the witness, a tactic particularly critical when the witness is the defendant or plaintiff.

In Examples 15 and 16, taken from direct examination, the lawyer addresses the witness by his first name. According to Berk-Seligson (1990), when the relationship between a speaker and addressee is one of unequal power and status, such as that between a lawyer and a witness, the appropriate address form for Spanish speakers would be polite and formal (e.g., *señor*). An English-speaking attorney's use of solidarity markers, then, would conflict with the linguistic norms of Spanish-speaking witnesses.

Thus, in both Examples 15 and 16, the omission of solidarity markers suggests the interpreters' alignment with the witnesses. These omissions also suggest that interpreters are unaware of the important strategic role these markers play in lawyer questions, reflecting Berk-Seligson's (1990) observation that interpreters generally consider lawyer questions less important than witness answers. As these examples illustrate, omitting solidarity markers can undermine an attorney's ability to portray a witness sympathetically. Thus the interpreter's attempt to preserve the level of formality and politeness of the source language norms conflicts with producing a pragmatically correct interpretation of the lawyer's question.

5.3.3 Alterations based on interpreter errors_

Sections 5.3.3.1 through 5.3.3.7 discuss pragmatic features whose alterations reflect interpreter errors. In the data examined, two markers fall into this category: *agreement markers*, which affirm or deny the basic message as well as signal the manner in which the speaker affirms or denies, and *emphasis markers*,³⁸ which emphasize the force of an answer by including information not sought or not necessary.

5.3.3.1 Adding Agreement Markers to witness answers

- (17) W: No porque yo no iba a pelear yo iba viendo el carro
gloss: No because I was not going to fight I was looking for my car.
I: Yes no because I I it wasn't my intention to fight. I just wanted to check my car.
(Trial 2, 16, cross examination)

In Example 17, taken from cross examination, the witness, also the plaintiff, responds to a question by the lawyer suggesting he had gone out to the parking lot to instigate a fight. In the original answer, the witness defends himself against the coerciveness of this question effectively, using the agreement marker *no* followed by a clear and convincing rebuttal of the lawyer's question.

In contrast, the interpreter, in the target language version, incorrectly produces a response of *yes* before self-correcting to *no*. As a result, the witness appears confused and uncertain. Moreover, the repetition of *I*, along with the addition of the hedge *just*, diminishes the force of the

³⁸ Substituting emphasis markers will not be discussed here, since the findings (See Section 4.4.24) do not offer examples which, according to this researcher, would critically affect the witness testimony.

- (24) L: You weren't fired. You had a problem with the dispatcher, *isn't that true?*
I: No te botaron. Es verdad que tuviste un problema con el despachador?
gloss: You weren't fired. *Is it true* that you had a problem with the dispatcher?
 (Trial 5, 40, cross examination)

In Examples 23 and 24, the interpreter substitutes the original tag with one that is not pragmatically equivalent. In the first example, *did they* is replaced by *right*. As discussed in Section 2.4.4, Spanish has fewer options for tag questions than English and the most commonly used Spanish tags (e.g., *¿verdad?*, *¿correcto?*) do not adequately capture the coercive nature of the English auxiliary tag.

Thus, in Example 23, substituting *right?* for *did they?* does not produce a pragmatically accurate interpretation.⁴⁰ As a result, the coercive force of the original question is diminished, affecting the lawyer's ability to control the witness response.

Example 24 reflects a different problem; here the interpreter, while attempting to maintain the grammatical structure of the English tag (*isn't that true?*), produces an interpretation that distorts both the semantic and pragmatic meaning of the original question. This distortion is a result of two grammatically-based alterations: 1) the interpreter transposes the tag into sentence-initial position and 2) the interpreter eliminates its negation. As a result of

⁴⁰ However, according to Rigney (1999), the Spanish tag *¿no?* is more coercive than *¿verdad?* and would allow a more pragmatically equivalent interpretation for English auxiliary tags.

repositioning the tag, the leading question is transformed into an argumentative one. According to Keeton (1973), argumentative questions often begin with phrases such as "isn't it a fact" and "isn't it true," followed by a statement which more explicitly states the lawyer's theory of the facts than leading questions (p.141).

Secondly, by eliminating the negation in the phrase and rendering *isn't it* as *is it*, the interpreter transforms the coercive question into an information-seeking one. At the same time, omitting the negative marker alters the semantic meaning of the question, since the tag is now embedded in the basic message (i.e. "is it true that..."). As a result, the lawyer's apparent intention, to compel the witness to produce an affirmative answer by using a leading question, becomes impossible to achieve.

This example illustrates how grammatical alterations can critically change the pragmatic meaning of a question, affecting its coercive force. As a result, the control of the testimony shifts from the lawyer to the witness, potentially producing an entirely different, and unpredictable, response.

5.3.4.3 Deleting degree of adequacy markers in lawyer questions

- (25) L: Well did anyone from Farther's Grove the bartender or anyone else get involved *in any way, shape, or form* in that altercation that was taking place in the basement?

I: Alguien de Farcher's Grove usted vió que interviniera en esta pelea?

gloss: Anybody from Farcher's Grove you saw that intervened in this fight?

(Trial 2, 2, cross examination)

In Example 25, taken from cross examination, the lawyer uses the degree of adequacy marker *in any way, shape, or form* to ask the witness to measure his knowledge of the events: mainly, if anyone from Farcher's Grove was involved in the fight that occurred in the basement of the dance hall. *Degree of adequacy markers* ask the hearer to measure his/her degree of certainty about the message. In Example 25, this marker functions as a strategic device to compel the witness to identify individuals involved in even a minor way in the incident.

The interpreted version, however, deletes the marker, along with information suggesting who might have been involved in the fight ("the bartender or anyone else"). As an adversarial tactic, degree of adequacy markers such as this one attempt to prevent a witness from hedging, since they require that the witness be very certain about what did or did not happen. Thus omitting the degree of adequacy marker alters the force of the question, allowing the witness to elude the issue of certainty.

(26) L: Nobody was injured inside *to the best of your knowledge* were they?

I: Nadie eh resultó uh herido en esa pelea verdad?

gloss: Nobody *uh* was *uh* hurt in that fight right?

(Trial 2, 4, direct examination)

the witness to affirm that the evidence presented meets this evidentiary condition.

Example 27, taken from direct examination, shows what happens when the interpreter replaces the degree of adequacy marker with a phrase which is neither grammatically nor pragmatically equivalent. In this example, the original degree of adequacy marker, *fairly and accurately*, reflects the purpose of the Real Evidence Rule, asking the witness to affirm that the photographs presented are a close approximation of his physical condition at the time.

The interpreted version, however, substitutes the degree of adequacy marker with the phrase "in exact form." Replacing the marker with a prepositional phrase which, unlike the marker, is not constructed to reflect a particular evidentiary condition, alters the pragmatic meaning of the question. It asks the witness to determine whether the pictures are exact representations rather than approximations of his condition at the time. The substituted phrase places stricter conditions on the physical evidence, demanding greater certainty on the part of the witness.

As a result, the evidentiary rule may no longer apply to the witness answer, since the ambiguous wording of The Real Evidence Rule ("some knowledge or understanding") permits more latitude in the witness' degree of knowing than the phrase "in exact form."

5.4 Summary of effects of interpreter alterations

What patterns emerge from these examples? In the category of markers whose alterations are semantic in nature, the addition of uncertainty markers, evidential markers, markers of repetition, and false start markers makes the witness appear less confident of the testimony. When the witness is the defendant or plaintiff, the situation potentially becomes more critical as to how the jury perceives the testimony.

In contrast, deleting these same markers from answers removes disfluencies, making the witness appear *more* confident. Hence, he/she may be perceived by the jury in a more favorable light.

Interpreter alterations can also seriously affect the evidentiary validity of witness answers. Interpreter additions of evidential markers, for example, may exclude a witness answer under The Hearsay Rule. Similarly, adding and deleting report markers might affect the admissibility of witness testimony under this same rule. Addition of report markers may cause an answer to be excluded as hearsay, while deleting them might cause an answer to be precluded from being considered as hearsay.

In the category of markers whose alterations reflect interpreter error, deleting agreement markers and emphasis markers from witness answers, for example, affects the force of the testimony. In the former case, such deletions appear to alter the confidence with which the witness affirms or

denies the lawyer's question, while in the latter, they appear to alter the degree of intensity with which the witness responds.

In the category of markers whose alterations reflect culturally-based usage, the deletion of solidarity markers from lawyer questions suggests that interpreters tend to align with the linguistic norms of the Spanish-speaking witness, choosing a culturally appropriate interpretation at the expense of faithfully rendering the lawyer's question. As a result, the attorney's ability to suggest a bond between himself and the witness may be diminished.

We have also seen how deleting and substituting assessment markers and degree of adequacy markers from lawyer questions can undermine an attorney's strategy, weakening his/her ability to control the testimony and unwittingly giving the advantage to the opposing side. At the same time, Rules of Evidence, which control the use of these markers, may be jeopardized when interpreters delete or substitute the markers.

To sum up, interpreter additions, deletions, and substitutions of pragmatic markers have the potential to alter the original utterance of both the lawyer question and the witness answer, possibly affecting the admissibility of testimony. As a result, these alterations may affect the credibility of the witness. Finally, interpreter alterations may give an advantage to the opposing lawyer's case,

interfering, as Hale (1997b) says, "with the delicate balance of the adversarial system" (p. 208).

CHAPTER 6: WITNESS FOR THE DEFENSE: The testimony of Rosa Lopez in the O.J. Simpson murder trial

6.1 Introduction

This chapter looks at the testimony of Rosa Lopez, a Spanish-speaking defense witness in the O.J. Simpson murder case and examines it as a high-profile trial where interpreters might have been expected to be of expert caliber and make few serious alterations. But was this the case? It is this question that the chapter addresses.

Looking at interpreter alterations to selected pragmatic markers taken from the set examined in Trials 1-5, this chapter assesses whether these alterations could have produced critical changes in Rosa Lopez' testimony. The analysis of the Lopez testimony differs from that of the previously discussed trials in that it focuses only on the effect and not the cause of interpreter alterations.⁴¹

In addition, the alterations examined in the Lopez testimony (markers of repetition, uncertainty markers, assessment markers, evidential markers, agreement markers, and solidarity markers) are organized into categories which reflect both their significance to this particular trial as well as their significance in comparison to Trials 1-5. The data is organized according to the following categories: 1)

⁴¹ This focus reflects the purpose of the chapter: namely, to consider whether interpreters in this high-profile case would make serious alterations that could have a deleterious effect on the testimony.

those markers altered frequently in the testimony 2) those markers which, while altered relatively infrequently, nevertheless produced critical changes 3) those markers whose alterations reflect significantly different patterns from the first five trials.

The analysis is based on 805 colloquies taken from 13 hours of testimony using three different interpreters. All three interpreters held state certification from California.⁴² Two were native Spanish speakers and one was an American who was bilingual in Spanish. Of the two native Spanish-speaking interpreters, one spoke El Salvadoran Spanish, the dialect of Rosa Lopez. The examples examined represent alterations made by all three interpreters, suggesting that, regardless of their individual backgrounds, each made errors in interpreting.

The significance of Rosa Lopez' testimony resides in the fact that she offered the only eyewitness account of O.J. Simpson's whereabouts the night of the murders. Lopez, the live-in maid of the Salingers, the family who lived next door to the Simpson's, claimed to have seen O.J. Simpson drive off in his Rolls Royce with another man the night of the murders⁴³ and, shortly after, to have heard a prowler outside the Simpson residence (OJ4, Videotape 2). Her testimony, if it

⁴² See Footnote 2 in Section 3.2 for California State certification requirements for court interpreters.

⁴³ Rosa Lopez also claims she saw Simpson's white Ford Bronco, the alleged get-away car, parked in the same spot it had been parked earlier that evening after Simpson drove off in the Rolls Royce (OJ5, Videotape 2).

had proven credible, would have provided Simpson with an alibi that he was not home when the murders occurred. However, due to inconsistencies⁴⁴ in her pre-trial statements, as well in interviews with television reporters brought out during cross examination, her testimony, which had been videotaped out of turn during the prosecution's case with only the judge present, was ultimately not shown to the jury.⁴⁵

According to legal experts interviewed by the media during the coverage of the trial, time and memory were pivotal issues in the Lopez testimony, since her significance as a witness centered around her recollection of events the night the murders occurred. Thus, legal experts claimed, the strategy of the defense would be to establish Rosa Lopez' ability to accurately recall time and dates, while the prosecution would attempt to show her lack of competence in this area.

6.2 Features most frequently altered

Section 6.2 looks at markers altered most frequently in the Lopez testimony. Markers of repetition reflected the highest percentage of alterations, accounting for 27% or 80

⁴⁴ Inconsistencies were revealed in two separate pre-trial statements Rosa Lopez had made to defense investigator Bill Pavelic in recounting her version of the events the night of the murders (OJ1 and OJ2, Videotape 1).

⁴⁵ The defense argued that Rosa Lopez, due to media harassment, would be returning to El Salvador, and thus would not be available to testify before the jury when the defense presented its case. As a result, Judge Ito granted the defense lawyers' request that the testimony be presented to the court as a preliminary hearing, to be shown to the jury at a later date.

the original response and suggesting that Ms. Lopez is unsure about the sound the shoes made. As a result of these alterations, her answer to this critical question becomes tinged with uncertainty, potentially undermining her credibility.

Another marker in the Lopez testimony which had a high occurrence of interpreter alterations, at 18% (54 out of the total number of 293 markers altered) was uncertainty markers, which signal the speaker's uncertainty about the basic message. The following example, taken again from Rosa Lopez' account of the night of the murders, shows how omitting uncertainty markers may have made her appear *more* credible.

- (2) W: Como alrededor de las- *uh uh* nueve - un poquito *como a las nueve*, ví a Mr. Simpson que se fué en el carro negro, que iba con otro pasajero yo no sé quien es, *que que*.
 gloss: Like around -*uh uh* nine - a little bit like at 9:00, I saw Mr. Simpson who left in the black car, who was with another passenger I don't know who it was, who who.
 I: A little around 9:00, *a little* after 9:00, I saw Mr. Simpson who left in the black car with another passenger. I don't know who. (OJ4, Tape 2)

In Example 2, the defense attorney Johnny Cochran attempts to elicit an answer crucial to the defense's case: namely, that Ms. Lopez had seen O.J. Simpson drive off in a car with another man⁴⁷ the night of the murders, thus providing Simpson with an alibi.

⁴⁷ According to Rosa Lopez' testimony, she was outside walking the Salinger's dog on property adjacent to the Simpson's house when she saw O.J. Simpson leave.

Ms. Lopez' original response is punctuated by the reiterative use of the uncertainty markers *uh* and *like* as she attempts to recall the hour she saw Mr. Simpson drive off (*like around -uh-uh nine...like around nine*). Here, the presence of *uh* and *like* not only cast doubt on her ability to remember the time Simpson left but, by inference, on the truth of her claim that she saw him leave. Thus the use of uncertainty markers in this critical response has the potential to dramatically diminish the credibility of Ms. Lopez' version of the facts.

In contrast, the interpreted version sanitizes the answer, omitting disfluencies such as *what what* along with the uncertainty markers *uh* and *like* which are replaced by the more semantically robust item "a little," making Rosa Lopez appear considerably more certain. Thus we see how omitting pragmatic markers which suggest uncertainty may have unwarrantedly aided the defense's case, portraying Rosa Lopez' critical testimony with more conviction than her actual account.

Assessment markers (which signal the speaker's assessment of the truth conveyed by the message and occur as tags at the end of lawyers questions) were also altered nearly 20% of the time (54 times out of the total number of 293 markers altered). As the following example shows, when these markers were deleted from prosecuting attorney Chris

Darden's questions, they significantly diminished his ability to control Ms. Lopez' answers.

- (3) L: Well, during that 25-or 30 minute period you told her that you did not want to go back to El Salvador, *didn't you?*
I: Pero en esos 25 o 30 minutos usted le dijo que no quería regresar a El Salvador?
Gloss: But in those 25 or 30 minutes *did you tell her* that you wanted to go back to El Salvador?
(OJ1, Videotape 1)

In Example 3, Darden attempts to coerce Rosa Lopez into admitting that, in a televised interview with a reporter from KMEX, she had stated that she had no intention to return to El Salvador. Darden's question reflects one of the prosecution's key strategies for discrediting Ms. Lopez: namely, to suggest that she had lied about her plans to return to El Salvador. One of the main contentions of Rosa Lopez' testimony was that she had made plane reservations to return to El Salvador and thus would not be available to testify before the jury when the defense presented its case (Media discussion of trial, Videotape 1).

In the example above, the use of the tag *didn't you?* in Darden's original question implies that the basic message of the utterance "you told her that you did not want to go back to El Salvador" is true and so warrants a "yes" response.

However, the interpreted version omits the English auxiliary tag, transforming Darden's coercive question into one that seeks confirmation. Since Spanish allows both SV (subject-verb) and VS (verb-subject) word order in questions,

the interpreter's rendition *usted le dijo* can either be interpreted in English as a statement seeking confirmation (*you told her?*) or as an information-seeking question (*did you tell her?*).

However, neither interpretation successfully captures the coercive nature of the English auxiliary tag question. Thus omitting the tag diminishes Darden's ability to control Rosa Lopez' answer, allowing her to counter his claim with the response "I never told her I didn't want to go back" (OJ1, Videotape 1). As a result, the balance of power shifts from Darden to Lopez.

6.3 Infrequent alterations which produced critical changes

Section 6.3 looks at alterations to markers which, while accounting for less than 10% out of the total of 293 alterations produced, nevertheless resulted in changes that were potentially serious. Two markers, evidential markers and agreement markers, fall into this category.

Evidential markers signal the speaker's degree of confidence in the truth of the basic message. While only 2% of these markers were altered (5 occurrences out of the total number of 293 alterations made), the following example illustrates that these changes could nevertheless be critical.

- (4) W: No me recuerdo específicamente *no me recuerdo exactamente. Creo que fue en el 88. No estoy muy seguro creo que fue en el 89.*

gloss: I don't remember specifically. *I don't remember exactly.* I believe it was 'in 88. *I am not sure I believe it was in '89.*

I: I don't remember specifically but I think it was '88 or '89. (OJ4, Videotape 2)

In Example 4, taken from direct examination, Rosa Lopez responds to Johnny Cochran's question asking her to confirm when she had applied for status as a resident alien. This question reflects the defense's attempt to demonstrate Ms. Lopez' ability to accurately recall time and dates (media discussion, Videotape 1). However, the presence in her answer of 3 evidential markers (*I believe, I am not sure, and I believe*) casts doubt on her ability to remember when this pivotal event occurred.

In contrast, the interpreter's version sanitizes the response, deleting 2 of the 3 evidential markers. In addition, while the original answer contains two separate and contradictory messages (*I believe it was in '88 and I believe it was in '89*), the interpreter compresses these messages into one utterance (*I think it was '88 or '89*). By deleting evidential markers, as well as compressing information, the interpreted version becomes coherent, making the witness appear considerably more confident. Thus the defense's attempt to establish Ms. Lopez as a credible witness is unwarrantedly achieved through the interpreter's unfaithful rendition.

Finally, while only 6% of agreement markers were altered, accounting for only 17 out of the total number of

293 alterations in the colloquies, they nevertheless produced critical changes in Rosa Lopez' account of events the night of the murders.

Agreement markers affirm or deny the basic message; in addition, they signal *the manner in which* a speaker affirms or denies the message. Example 5 illustrates how an error in interpreting Ms. Lopez' use of an agreement marker produced changes which could have potentially harmed the original testimony.

(5) W: No, sí era.

gloss: No, yes it was.

I: Yes it was.

(OJ5, Videotape 2)

In Example 5, Rosa Lopez responds to Johnny Cochran's question asking her to confirm that the dog she heard barking around 12 AM the night of the murders belonged to Mr. Simpson. This question is critical, since Ms. Lopez claims that, at the same time the dog was barking, she also heard men's voices she did not recognize. The inference here is that Mr. Simpson's dog was barking because the men talking were *strangers* and Mr. Simpson was not present. Thus Ms. Lopez' claim that the dog who was barking belonged to O.J. Simpson is crucial to his alibi that he was not home when the murders were committed.

As we see, Ms. Lopez' original answer vacillates between affirming and denying the basic message, suggesting she is uncertain that the dog she heard barking was Mr. Simpson's. In contrast, the interpreter eliminates the marker *no*,

retaining only the marker yes. As a result, Ms. Lopez now sounds quite sure that the dog belonged to Mr. Simpson. Thus the interpreter's error in omitting the agreement marker "no" from Ms. Lopez' answer is serious, since the resulting answer incorrectly gives greater credibility to Ms. Lopez' claim that Simpson was not home when the murders occurred.

6.4 Features altered in the Lopez testimony that reflect different patterns from those in Trials 1-5

While the same features altered in the Lopez testimony were also altered in Trials 1-5, there are three noticeably different ways these alterations patterned: 1) solidarity markers were altered in cross examination rather than in direct examination 2) all alterations to assessment markers occurred as substitutions rather than as deletions 3) seven types of markers were altered in Ms. Lopez' answers during cross examination as compared to only three types altered in witness answers in cross examination in Trials 1-5.

As previously discussed, solidarity markers (which signal a solidarity between the speaker and hearer) are found most often in direct examination, where they function as a strategy to suggest a bond between the attorney and the witness. However, in the Lopez testimony, all occurrences of these markers, as well as alterations to these markers, were found in cross examination.

Moreover, whereas in Trials 1-5, alterations to these markers occurred exclusively as deletions, in the Lopez

testimony they occurred exclusively as substitutions. Interestingly, the interpreters did not use solidarity markers to address the witness but, rather, to refer to Ms. Lopez' lawyer, Mr. Jones, in familiar terms, as the following example illustrates:

- (6) L: Okay, and have you been paying *Mr. Jones*?
I: OK. le ha estado usted pagando al Sr. *Johnnie*?
gloss: OK. Have you been paying *Mr. Johnnie*?
(OJ 1, Videotape 1)

As Berk-Seligson has suggested, the linguistic norm for social interaction in Latin America is the polite form of address, particularly in formal settings such as the courtroom. However, contrary to normative usage, instead of using the name "Mr. Jones," the interpreter in Example 6 substitutes the solidarity marker *Mr. Johnnie*, the term Ms. Lopez herself uses to refer to her lawyer (OJ 1, Videotape 1). The use of the solidarity marker suggests the interpreter's alignment with the witness, an alignment, Pym (1999) claims, endorsed by Judge Ito, who had replaced two previous interpreters with one from El Salvador, Rosa Lopez' country of origin.

However, as Example 6 illustrates, the result of this alignment is to subvert the cross-examining lawyer's ability to suggest distance between himself and the witness. Moreover, the informal address form raises an objection from the prosecutor Marcia Clark who, claiming to "essentially...speak Spanish" (Pym, 1999, p.276), notices

this irregularity in cross examining procedure (OJ2, Videotape 1).

Another feature that reflects a different type of patterning in the Lopez testimony from that of Trials 1-5 is the use of assessment markers as tags at the end of lawyer questions. While, in Trials 1-5, the majority of alterations to assessment markers, 65%, occurred as deletions (58 out of a total of 89 alterations to this marker) in the Lopez testimony, the majority of alterations to assessment markers, 59%, occurred as substitutions (32 out of a total of 54 alterations to this marker). This finding is noteworthy because it suggests that interpreters in the Lopez testimony may have had more linguistic knowledge about the pragmatic differences between Spanish and English questions, allowing them to find more pragmatically equivalent forms when interpreting English tags into Spanish. For example, instead of omitting the English auxiliary tag, interpreters in the Lopez testimony substituted forms which, while less coercive than the English tag, nevertheless attempted to capture its intent.

The following two examples, taken from Chris Darden's cross examination of Rosa Lopez, offer illustrations.

- (7) L: You lied to us, *didn't you?*
I: Nos mintió, no es así?
gloss: You lied to us, *isn't it like that?*
(OJ1, Videotape 1)
- (8) L: Well, you discussed the money with The Enquirer,
didn't you?

I: Bien, usted hablo de dinero con el Enquirer, *no?*
gloss: Well, you talked about money with the
 Enquirer, *no?*

(OJ1, Videotape 1)

In Example 7, the Spanish phrase *¿no es asi?*, while considered less forceful than *didn't you?* (Rigney, 1999), nevertheless reflects the interpreter's attempt to reproduce the negative aspect of the English auxiliary tag and maintain a degree of pragmatic equivalence.⁴⁸

Example 8 illustrates another option for interpreting the English auxiliary tag. According to Rigney (1999), the Spanish tag *¿no?* is more coercive than both *¿verdad?* (*true?*) and *¿no es asi?* (*isn't it like that?*) and is a better option for capturing the force of the English auxiliary tag.

What these substitutions suggest is that, unlike Trials 1-5, interpreters in the Simpson trial made a greater attempt to conserve the pragmatic force of the English auxiliary tag. As a result, leading questions were more accurately interpreted, allowing cross examining lawyers to maintain control of the testimony.

Finally, in Trials 1-5, while only three types of markers were altered in witness answers in cross examination, over twice that number, seven, were altered in witness answers in cross examination in the Lopez testimony. In

⁴⁸ Although the use of intonation might help the interpreter raise the level of coerciveness of tags such as "*¿no es asi?*," this study does not explore the effect of intonation on the force of questions.

Trials 1-5, the markers altered were emphasis markers, evidential markers, and report markers. In the Lopez testimony, in addition to these markers, the following five markers were also altered: uncertainty markers, false starts markers, markers of repetition, agreement markers, and assessment markers.

This large number of alterations is unexpected, given the high-profile attention that interpreters in the Simpson trial received. For example, both the defense and the prosecution frequently called attention to interpreting errors that they themselves found. Marcia Clark, the chief prosecuting attorney, insisted that the first interpreter was "interpreting instead of translating...changing words and cleaning up her language." (OJ2, Videotape 2).

In another instance, defense attorney Johnny Cochran interrupted the interpreter during his questioning of Rosa Lopez to tell the court that the interpreter had incorrectly referred to Mark Fuhrman as "Mike Fuhrman" (OJ1, Videotape 1).

Finally, Judge Ito himself queried an interpreter about how the term "animated" was rendered into Spanish (OJ1, Videotape 1). Later in the trial, when Ito replaced the previous two interpreters with one from El Salvador, Marcia Clark commented that a Spanish-speaking source had indicated that "this... [interpreter] is really translating and not interpreting" (Videotape 2). Clark's statement suggests that

interpreters who do not stick closely to the original text are "interpreting," while those that present a literal rendition are "translating."⁴⁹

It seems possible, then, that with the quality of interpretation under such scrutiny, the large number of pragmatic markers altered in Rosa Lopez' answers in cross examination was due less to poor interpreting than to Ms. Lopez' knowledge of English, which made the process of interpreting more complex.

According to language professor Alexander Rainof, a linguistic expert interviewed by the media during the televised broadcast of the trial, "one of the problems is that...[Rosa Lopez] has been here for many years. so she'll start answering before the interpreter has had a chance to translate. Now that throws the interpretation off right there" (OJ2, Videotape 2). Since consecutive interpreting necessitates waiting for the speaker to complete an utterance before rendering it into the target language (Gonzalez et al., 1991), interruptions during the process of interpreting might have affected the accuracy of the interpretation.

However, one question remains: why did alterations to these markers occur in such disproportionately high numbers in cross examination? An explanation may lie in the role Rosa Lopez played as a high-profile witness for the defense. As a

⁴⁹ As discussed in Section 2.1.1, translation pertains to reproducing written texts in another language, while interpretation pertains to reproducing speech in another language.

result, she was given much latitude during direct examination to explain her version of the facts the night of the murders. Thus we can hypothesize that she would have had little need to interrupt interpreters during the well-rehearsed question-answer exchange of direct examination.

However, during cross examination, Rosa Lopez' version of the facts was examined with scrutiny. With less latitude to answer as she chose, and given some ability to understand Darden's English questions, she might have felt more pressure to interrupt before the interpreter had completely processed the question into Spanish. Thus the flow of source language utterances would have been disrupted, possibly resulting, for example, in additions of markers of repetition in the target language rendition, suggesting backtracking on the part of the interpreter to correct for interruptions.

Rosa Lopez' knowledge of English is, itself, a focus of Chris Darden's cross examination. At one point, Darden confronts Lopez, saying "[b]y the way, you understand everything I'm saying to you in English, don't you?" Rosa Lopez, evasive in her response, answers: "No le puedo atender a usted porque le tengo que poner atención a la Sra. aqui" (gloss: *I can't pay attention to you because I have to pay attention to the lady [the interpreter] here* (OJ1, Videotape 1)).

At several other points during cross examination, Darden attempts to get Ms. Lopez to admit she knew English well

enough to use it in her daily life. He suggests she had talked to Johnny Cochran in English earlier that day and, in her interaction with the Salingers, had also spoken English. To both questions, Rosa Lopez evades a direct response. To the first, she admits only that it was Johnny Cochran who had spoken English in their conversation: "Sí, habló" (gloss: *yes, he talked*). To the second, she states that she didn't want to speak English to the Salingers: "No, nos peleabamos porque me decian que hablara en Ingles y yo le decia que no" (gloss: *No, we would argue because they would tell me to speak in English and I would say no* (OJ1, Videotape 1).

Finally, when Darden asks her directly "and in fact you do speak English?," Rosa Lopez replies: "Yo digo que no porque no lo hablo bien" (gloss: *I say I can't because I don't speak it well* (OJ1, Videotape 1).

These question-answer exchanges reinforce the hypothesis that, although English was not Lopez' native language, her ability to understand it caused problems for interpreters.

6.5 Summary

The previous discussion reveals that, contrary to expectations, even in a high profile case which received national attention, interpreters made errors which altered critical testimony.

Interpreter alterations in the Lopez testimony fell into

3 categories: 1) those features that were altered frequently 2) those features altered infrequently which nevertheless produced critical changes 3) those features whose alterations reflected patterns different from those of Trials 1-5.

In the first category, the features with the highest percentage of alterations were repetition, uncertainty markers, and assessment markers. What makes these alterations particularly serious is that they occurred during Ms. Lopez' account of the events the night of the murders. Thus, whether these features were added, deleted, or substituted, such alterations could have affected the meaning of critical answers.

In the second category, we saw examples of alterations to both evidential markers and agreement markers that, while occurring infrequently, nevertheless had potentially serious consequences for the credibility of Rosa Lopez' testimony. For example, when evidential markers were omitted from her answers, they sanitized the response, making her appear more certain in her recollection of events and possibly aiding the defense's case.

In another instance, the interpreter's omission of the agreement marker *no* from an answer which also contained the agreement marker *yes* produced a critical error since, without the first marker, the interpreted answer made Ms. Lopez appear more certain, incorrectly affirming the possibility that Simpson was not home when the murders occurred.

Finally, while only three features were altered in witness answers in cross examination in Trials 1-5, over twice that number were altered in cross examination in the Lopez testimony. Given the scrutiny that interpreters received during the Simpson trial, it is possible to hypothesize that the problem lay not with the quality of the interpreters but, rather, with Rosa Lopez' ability to understand English and with her tendency to answer lawyer questions before the interpreter could completely render them into Spanish. As a result, such interruptions, which occurred primarily in cross examination, might have interfered with the process of interpreting, possibly explaining the high frequency of interpreter alterations to witness answers in this division of the trial.

CHAPTER 7: CONCLUSION

7.1 The purpose of the study

Due process, which assures "a fair hearing before an impartial jury of peers, or before a judge..." (Gonzalez et al., 1991, p.158), is probably the most fundamental

constitutional right for persons tried in US courts. While the right to an interpreter in a trial when a defendant, plaintiff, or witness is a non-native English speaker has been recognized in the Fifth, Sixth, and Fourteenth amendments (Gonzalez et al., 1991), the right to quality interpreting assuring due process has no similar mandate.

Motivating the current study was the suspicion that failure to render a pragmatically accurate interpretation of lawyer questions and witness answers in trial testimony could deny non-English-speaking witnesses and defendants their right to due process.

Based on data taken from audio and videotapes of 6 court trials covering 15 hours of testimony and involving 8 Spanish-speaking witnesses, 13 English-speaking lawyers, and 9 interpreters, the dissertation examined interpreter alterations to a set of 10 pragmatic markers in the lawyer-witness colloquy of trial testimony. Looking at patterns that emerged when the frequency of additions, deletions, and substitutions to each marker in lawyer questions, witness answers, direct examination, and cross examination were analyzed, the study discussed the causes of interpreter alterations and assessed the effect of these alterations on the pragmatic meaning of the original utterances. The study also considered how altering these markers might influence the admissibility of witness answers controlled by particular Rules of Evidence.

In addition, the dissertation looked at the testimony of Rosa Lopez, a Spanish-speaking defense witness in the O.J. Simpson murder trial, considering it as a high-profile case where interpreters might have been expected to make few serious changes. The effect of interpreter alterations were discussed and evaluated for their potential to critically alter the pragmatic meaning of Ms. Lopez' testimony.

7.2 Findings and significance

Based on the results of Trials 1-5, the study yielded a number of potentially significant findings. First, interpreters added uncertainty markers (e.g., *uh*, *umm*) 158 times out of a total of 278 alterations to these markers, potentially incorrectly conveying uncertainty on the part of the witness. Furthermore, the addition of these uncertainty markers made witness answers vulnerable to exclusion under The Uncertainty Rule (which disqualifies answers indicating that the witness is uncertain), possibly resulting in testimony being ruled inadmissible.

Second, interpreters added evidential markers (e.g., *I guess*) 17 times out of a total of 30 alterations to these markers, thus incorrectly suggesting that the witness lacked confidence in the testimony. At the same time, the addition of these markers made answers vulnerable to exclusion under The Opinion Rule (which limits opinions in answers to those

based on a witness' direct perception), potentially resulting in the testimony being ruled inadmissible.

Third, interpreters deleted assessment markers (e.g., tags at the end of questions) 58 times out of a total of 89 alterations to these markers, thereby weakening the force of the question and potentially diminishing the lawyer's ability to coerce the witness to produce the desired response. Moreover, the finding that 82 of these 89 alterations occurred in cross examination resulted in interpreters inadvertently interfering with The Leading Question Rule, which allows the use of coercive questions in cross examination.

Fourth, interpreters deleted degree of adequacy markers (e.g., *to the best of your knowledge*) 4 times and substituted them 6 times out of a total occurrence of 12 alterations to these markers in direct examination, thereby diminishing the lawyer's ability to establish that the foundational basis for the case was based on witnesses' direct knowledge of the facts. Moreover, such alterations made witness answers vulnerable to exclusion under The Hearsay Rule (which prohibits witnesses from using the speech of other to prove their testimony), potentially resulting in answers being ruled inadmissible.

Fifth, interpreters added report markers (e.g., *he told me*) to witness answers 8 out of a total of 17 alterations to these markers, thereby incorrectly suggesting that these

answers were based on the information of others rather than on personal knowledge. This finding takes on particular significance since additions of report markers could make witness answers vulnerable to exclusion as hearsay, potentially resulting in the testimony being ruled inadmissible.

In addition, the analysis of the Rosa Lopez testimony in the O.J. Simpson trial revealed that, contrary to expectations, potentially serious alterations were made, suggesting that interpreters of high-profile trials who should have been highly qualified were largely unaware that altering pragmatic markers could change the interpretation of lawyer questions and witness answers.

However, these numbers by themselves do not tell the whole story. Factors such as the distribution of alterations to markers across trials as well as the context in which these alterations occurred are also significant in assessing their potential to harm the meaning of utterances. Alterations concentrated in a few trials would tend to be more readily noticed than those distributed across all 6 trials, thus having a potentially greater impact on jury impression-formation.

For example, alterations to solidarity markers occurred exclusively in one of the 6 trials, while emphasis markers occurred in only two of the 6 trials. Although solidarity markers accounted for a mere 1% of all alterations to the

total markers examined, 100% of them were omitted from lawyer questions that occurred during direct examination of a single trial. While these markers were deleted from the interpreted Spanish question, suggesting that they would not be noticed by jurors, nevertheless the repeated omission of markers functioning as a strategy lawyers use to create a rapport with their own witnesses could serve to distance the witness, potentially affecting the responses produced and influencing the jury's judgment.

Alterations to agreement markers in witness answers (which affirm or deny the basic message and signal *the manner* of affirmation or denial), while accounting for only 9% of the total alterations to all markers, were found exclusively in two trials. The interpretation of these markers is particularly notable in one of these trials. During cross examination, in all six instances where the witness used the indirect and not very forceful Spanish affirmation marker "asi es" (it's like that), the interpreter substituted the more emphatic and confident-sounding English form "yes indeed." Thus it is possible that the concentration of such alterations in this trial foregrounded them for jurors, potentially influencing the way they perceived the witness.

Another factor determining the significance of interpreter alterations was the context in which they occurred. Thus, for example, additions of uncertainty markers to crucial answers in cross examination or to critical

testimony in direct examination (such as that of Rosa Lopez) may have a greater potential to alter the way jurors perceive a witness than additions of these same markers in routine answers to questions about the witness' identity (i.e., yes *uh* my name is Jose Fernandez).

7.3 Contribution of the study and implications for training

The contribution of this study lies primarily in two areas: its methodology and the practical applications of its findings. First, it offers a model which uses the categories of additions, deletions, and substitutions as a way of systematically analyzing interpreter alterations to a set of pragmatic markers in trial testimony.

Moreover, the model used in this study is also relevant for other aspects of the trial process, such as preliminary hearings, arraignments, and depositions. It could also be used to examine the effects of interpreter alterations in other courts, such as juvenile and immigration court, as well as in legal proceedings which occur outside the courtroom, such as police interviews. Furthermore, the model has possible applications beyond the legal area in doctor/patient interviews which require the services of an interpreter.

The findings of this dissertation also have a practical application, suggesting areas in which both interpreters and lawyers should be educated about their role in insuring an accurate interpretation. There is a very real need, as others

have mentioned,⁵⁰ for interpreter training and certification programs to address the importance of conserving the pragmatic aspects of language.

Current training programs in Spanish/English court interpreting typically offer courses that stress the fundamentals of interpreting in legal settings, such as the role of the interpreter in U.S. courts, an overview of legal proceedings, and instruction in consecutive interpretation, simultaneous interpretation, and sight translation. Five of the best known programs in court interpreting include two intensive summer certificate programs (The University of Arizona's Institute for Court Interpreting and The Monterey Institute of International Studies' Introduction to Court Interpreting), two year-long certificate programs (New York University's Program in Court Interpreting and The University of Southern California at Los Angeles' Program in Legal Translation and Interpretation), and one Master's degree in court interpreting (College of Charleston's Master of Arts in Bilingual Legal Interpreting).⁵¹

These programs take a similar approach to interpreter preparation, with course content focusing primarily on lexical and grammatical aspects of language such as

⁵⁰ See, for example, de Jong (1995), Edwards (1992), Gonzalez et al. (1991), Berk-Seligson (1990), Hewitt (1995).

⁵¹ The Master of Arts in Bilingual Legal Interpreting, the only such program in the United States, is more comprehensive than certificate programs. In addition to the basic courses, the Master's program includes classes in Interlingual Communication, Language and Culture, and Special Topics in Legal Interpreting.

vocabulary acquisition, contrastive syntax, and legal terminology. With the exception of a course on Register at The University of Arizona's Institute for Court Interpreting and one on Regionalisms and Slang at both The Institute for Court Interpreting and The court Interpreting Program at Monterey Institute of International Studies, none of these programs addresses directly, through formal classes, the importance of pragmatic considerations in producing an accurate interpretation.

At the same time, pragmatic issues may be addressed informally in teacher feedback to students during interpreting exercises. However, the degree to which the pragmatic aspects of interpreting are discussed is likely to depend on the individual instructor's awareness of and concern for such issues.

Results of the current study suggest that interpreter training programs should include instruction which demonstrates to interpreters how adding, deleting, and substituting pragmatic markers, while seemingly unimportant, have the power to alter what both the lawyer and witness intend to say. Based on the dissertation's findings, the study recommends incorporating the following instructional goals into its course offerings:

I. Examining court colloquies where uncertainty markers and evidential markers were added to witness answers in the English interpretation, interpreters should:

a) be shown how these alterations could affect the meaning of the utterance, making witnesses appear less certain.

b) develop strategies which allow them to monitor their own speech for additions of these markers. Although, as researchers have suggested, such additions may function as cognitive devices interpreters use to gain time while processing from the source to the target language, awareness that adding these markers can potentially alter the meaning of the utterance may help interpreters reproduce the original utterance without these elements.

II. Examining court colloquies where assessment markers and solidarity markers were deleted when lawyer questions were rendered into Spanish, interpreters should:

a) be shown how these deletions can alter strategies lawyers use to control witness testimony, potentially resulting in an unintended witness response.

b) develop methods for conserving these markers by finding pragmatically equivalent forms in the target language (Spanish).

III. Examining court colloquies where degree of adequacy markers such as "to the best of your knowledge" were deleted or substituted in the Spanish version of the lawyer question, interpreters should:

a) be shown how such alterations may produce witness answers that are vulnerable to objection under The Hearsay Rule.

(b) develop strategies to conserve these markers by finding equivalent forms in Spanish that approximate as closely as possible the pragmatic meaning of the English markers.

IV. Interpreters should become familiar with those Rules of Evidence that intersect with pragmatic markers and understand how adding uncertainty markers, evidential markers, and report markers to witness answers could potentially result in testimony being ruled inadmissible under these rules.

V. Interpreters should be made aware that pragmatic markers used in direct examination tend to differ from those that occur in cross examination, reflecting the specific role that particular markers play in each trial division. Such findings have a predictive value, allowing interpreters to foresee errors and produce a more accurate interpretation.

In addition to developing training goals for interpreters, lawyers need to be educated about the way interpreters can alter the dynamics of the adversarial trial. It is important, through outreach to local and national trial lawyer associations, to make attorneys aware of how interpreter alterations can affect their ability to control witness testimony. Attorneys would then have the opportunity

to develop strategies (such as simplifying the length or complexity of their questions) that could help insure an accurate interpretation. Both lawyers and interpreters must understand how pragmatic alterations to the lawyer/witness exchange can distort the original testimony, inadvertently tampering with the spoken evidence and potentially affecting the credibility of the witness in the eyes of the jury.

7.4 Suggestions for future research

This study opens up avenues for further research on the effect of pragmatic alterations in interpreted trial testimony. Using the same descriptive approach, much could be gained by looking at alterations to pragmatic markers in trials involving languages such as Haitian Creole, Arabic, Mandarin Chinese, and others, where there is a clear and ever-present need for quality interpreting in U.S. courts.⁵²

At the same time, while results of the current study are provocative, further research is needed to provide evidence that altering pragmatic markers does make a difference in the way jurors perceive witnesses. For example, experimental studies, modeled after those of Berk-Seligson (1991) and O'Barr (1982), could offer a quantitative analysis of the

⁵² See Berk-Seligson (1990) and Gonzalez et al. (1991) for a complete list of the languages represented by the Court Interpreting Services in U.S. District Courts. While there is no similar compilation for municipal and state courts readily available, the demographics of languages interpreted in Federal courts could be taken as a standard reflecting similar needs in the lower courts.

impact of pragmatic markers on mock jurors' assessment of witnesses. Mock jurors, listening to tapes based on actual interpreted trial testimony, would be asked to judge a witness' credibility according to the presence or absence of specific pragmatic markers added or deleted by interpreters. Results of such a study would offer proof that altering these markers influenced the way mock jurors made decisions about witnesses.

An empirical rather than experimental approach might involve interviewing actual jurors at the conclusion of trials where non-native speakers were witnesses. Questionnaires could be developed which asked jurors to assess their reasons for finding witnesses credible or not credible. If particular pragmatic markers such as false starts were consistently mentioned as determining factors by the majority of jurors (e.g., *I didn't believe the witness because he often started to say one thing and then changed his mind*), this information would serve as evidence that the presence of these markers (and, by inference, alterations to them) did, in fact, affect jurors' perception. One possible drawback to this approach is its reliance on jurors' ability to accurately recall and articulate with precision the factors that influenced them.

Similarly, single-trial judges could be given questionnaires asking them to describe the criteria they used to evaluate non-native-speaking witnesses. Interviewing

judges could offer more dependable results since, as seasoned legal professionals, judges might be more likely than jurors to accurately evaluate and describe the specific factors that influenced their judgment. Certainly a combination of judge and juror questionnaires would be optimal and go a long way towards offering empirical evidence that faithfully reproducing pragmatic markers in utterances does make a difference in the way a jury forms its opinion about a witness.

7.5 Summation

The importance of conserving pragmatic markers in interpreted testimony is dictated by an aspect fundamental to adversarial trial law and due process: mainly, that jurors must be convinced beyond a reasonable doubt in order to find a party guilty.

The power of pragmatic markers to affect jurors' perception of reasonable doubt in witness testimony ought not to be underestimated. When the witness is a non-native English speaker, the interpreter, as the only voice heard, has the potential to alter the way a jury perceives reasonable doubt, ultimately affecting the administration of justice in trials.

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PROFESSIONAL ORGANIZATIONS

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