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Police Interpreters in the United States: Hearsay, Agent, Conduit, Accuracy, and Interpreter Accountability

by

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Abstract

Accurate translation by a language interpreter is crucial to ensure due process in interpreter-mediated judicial procedure, particularly at its most upstream stage, i.e., during police investigations. The translated statements obtained here later become crucial trial evidence, despite that the translations are rendered behind closed doors, unlike interpreting in public court. Under these circumstances, how have the courts in the U.S. ensured and verified police interpreters' translation accuracy? Are their methods effective? Are language interpreters affected by these methods? If the methods are ineffective but nevertheless continue to be used, what possible factors lie behind such attitude of the U.S. courts? These are what the present thesis explored, initially prompted by a 2013 appellate ruling by the 11th Circuit.

This court ruled that a statement obtained through an interpreter during an investigative interview was inadmissible *hearsay* unless the interpreter testified in court. This view is commonly shared by criminal defense lawyers. They argue that translation is fundamentally unreliable, subjective, unscientific, and replete with inaccuracy, and that, therefore, interpreters should be required to testify and be cross-examined by the defendant who has a Sixth Amendment constitutional right to confront a witness who testifies against her/him.

The majority of U.S. courts, on the other hand, continue to rule that statements translated by interpreters during police interviews do not become hearsay because interpreters are *agent and/or conduit*. For example, in 2015, the 9th Circuit ruled that the defendant's statements obtained through a telephone interpreter who did not testify did not become hearsay because the interpreter was a conduit.

When the defendant appealed to the U.S. Supreme Court in 2016, however, two amicus opinion briefs were submitted by interpreting professionals: one from the then professors of the Middlebury Institute of International Studies at Monterey (MIIS), and

the other from the Massachusetts Association of Court Interpreters. While the latter clearly denied the *conduit theory* and argued that interpreters should testify in court to fulfill their professional accountability, the former remained silent on the hearsay/conduit dichotomy. However, the two MIIS professors did call for a unified case law and clear instructions on what kind of testimonies should be required, as they would create practical as well as ethical issues. Except for these two rather ambivalent voices, interpreters seem to remain silent on this issue, caught between two equally unacceptable choices, hearsay or conduit. Interpreting profession is usually a product of rigorous training to achieve faithful translation under time pressure. Thus, hearsay allegation would be equal to a denial of such training only as practice that produces unreliable statements. At the same time, although the term conduit is a largely misinformed metaphor about language interpreting, since it also denotes accuracy, its denial becomes difficult as accuracy is the core of interpreters' professional accountability.

Furthermore, notwithstanding such dilemma of language interpreters, how effective the courts' use of hearsay or conduit actually is in ensuring and/or verifying translation accuracy also seems unclear. Still, no empirical inquiry had yet been conducted to investigate this issue from interpreting studies' perspective, which is what the present thesis undertook.

By naming the current impasse as *hearsay/conduit polarity*, the thesis addressed two main inquires: what kind of hearsay circumvention theories, based on what kind of views or notions about language interpreters, the courts in the U.S. developed; and how effective the current hearsay/conduit polarity is in ensuring and/or verifying police interpreters' translation accuracy and in enabling the interpreters to fulfill their professional accountability.

The thesis comprises eight chapters, with Chapter One introducing the thesis's overview. In Chapter Two, which is a literature review, the thesis first presented an analytical review of the literature to explore how legal professionals and interpreting

professionals were perceiving the thesis's three key concepts: conduit, agent, and interpreter accountability. Three semantic properties for each were deduced as: *conduit 1* (verbatim translator), *conduit 2* (accurate translator), *conduit 3* (one who only translates); *agent 1* (independent decision-maker), *agent 2* (empowerer), *agent 3* (legal representative); and *accountability 1* (for content), *accountability 2* (for accuracy), *accountability 3* (for doing the job).

Based on Hale's (2008) concept of a judicial interpreter as a faithful renderer, the thesis observed that the only viable option for judicial interpreters acting as *agent 1* (independent decision-maker) would be to remain only as *conduit 2* (accurate translator) and *conduit 3* (one who only translates), so their accountability would be only *accountability 2* (for accuracy), without invoking *accountability 1* (for content). In addition, interpreters acting as *agent 1* (independent decision-maker) seemed to be held with *accountability 3* (for doing the job) as their conscious choice.

Consequently, the existing studies on judicial interpreting primarily made two inquiries: how translation accuracy is compromised and how it can be improved, the former commonly conducted as micro-level discourse analyses such as Berk-Seligson (1990; 2009) and Hale (2004). The present thesis, in contrast, conducted a macro-level analysis to delineate possible sociological issues underneath the hearsay/conduit polarity.

In Chapter Three, the thesis presented its approach and methods. The research questions were explored through the theoretical framework of Mason's (2015b) argument on three kinds of power relations that take place in interpreter-mediated activities: power relations between languages, institutionally pre-determined power disparities, and interpreters' interactional power advantage. This theoretical lens was applied macroscopically, within the Dialogic Interactionist/Discourse-in-Interaction (DI) Paradigm in interpreting studies (Pöchhacker, 2022).

The present thesis was an exploratory study, based on court rulings collected from LexisNexis Academic, a legal search engine. Mixed methods were used: chronological

analyses of legal theories with empirical data, and quantitative analyses with three different data operationalizations on: (a) interpreter qualifications, (b) interpreting issues, and (c) interpreters' in-court testimonies.

Chapter Four presented the analyses of the legal theories used by the U.S. courts to circumvent hearsay, classifying them into six main categories: *present sense impression*, *catch-all/residual,* other *hearsay exceptions*, *agent theory*, *conduit theory*, and *agent and/or conduit theory*. All of them, however, were not only uninformed of the real nature of language interpreting, but they also deprioritized accuracy. This was particularly prominent with the latter three, invented specifically for the purpose of hearsay circumvention.

The *agent theory* placed the entire burden of ensuring and/or verifying translation accuracy on the service user, i.e., the suspect, during the on-going interpreter-mediated interview, which would be impossible as the interpreter is usually the only bilingual participant in the discourse. The *conduit theory* was hardly a legal theory, based solely on a self-authenticating circular logic. The *agent and/or conduit theory*, a fusion of these two, was created as an all-purpose hearsay circumvention tool to enable an even more expansive application. Accuracy seemed deprioritized over presumably more important needs, such as exigency and/or *substantive justice*, e.g., crime convictions. An expansive application of the theories followed once the floodgate opened, while requiring police interpreters' testimonies also seemed problematic and ineffective for accuracy verification.

Chapter Five presented the results of the quantitative analyses. They revealed: (a) largely insufficient qualifications of the 243 police interpreters surveyed, which also was not a significant factor in evidentiary admission decisions, (b) the limitations of accuracy detection and the courts' interpreting issue assessment without the use of audio/video recording, and (c) ineffectiveness of interpreters' in-court testimonies to verify accuracy without the aid of audio/video-recording. Nevertheless, a majority of U.S. courts

continue to use the *agent and/or conduit theory*, while the introduction of mandatory audio/video recording still lags behind.

Thus, Chapter Six explored possible underlying causes of this continuous impasse through a macroscopic application of Mason's (2015b) theoretical lens. The analyses showed possible power relations between languages, which sacrificed the users of socially less powerful languages being forced into becoming both service users and service providers of ad hoc interpreting of substandard quality during the most upstream, critical stage of criminal investigations. In addition, the interpreter's interactional power advantage was in direct conflict with the *agent theory*, which stipulates that the service user bears responsibility for interpreter's translation, including errors. Finally, the courts' institutional power seemed to be exerted on interpreters through their power to *define* interpreters as: *hearsay*, *present sense impression*, *agent*, *conduit*, and *agent and/or conduit*, as well as the power *not to define*, particularly the most crucial term in the discussion: *conduit*.

The purpose of the elusive and expansive definition of the term *conduit* seemed to be to maintain an ample latitude for the courts to use their discretion to prioritize their agenda: *substantive justice* over *procedural justice* (accuracy) and to approve the use of ad hoc interpreters to pursue substantive justice, particularly of officer interpreters. This tendency was observed in the examination of the offense types and the interpreter profiles in charge of those offenses. The examination also indicated that even when a qualified interpreter may have rendered an accurate translation, it may have been ruled as hearsay, i.e., not conduit (accurate), if the court's discretion tilted toward procedural justice, sacrificing a qualified interpreter who is without a means of self-protection, i.e., audio/video-recording.

Thus, the thesis contended in Chapter Seven that in the age of available technology, knowledge, and resources, the continued use of the hearsay/conduit polarity is no longer justifiable and proposed the introduction of mandatory audio/video-recording based not

on the Sixth Amendment Confrontation Clause but on the Fifth Amendment due process to ensure and verify police interpreters' translation accuracy, as the only means to protect not only criminal defendants but also interpreters as a third stakeholder.

In Chapter Eight, the thesis presented a summary, the thesis's contributions, and implications for future research. Three possible research areas would be: forensic discourse analytic research to create a base for police interpreter training; collaborative research among stake-holding parties on practical implementation issues; and further sociological inquiries into possible power execution on putatively bilingual officer interpreters.

要旨

司法通訳、特に非公開で行われる警察の事情聴取での通訳の正確性の担保は、公平な裁判を行う上で常に最重要課題である。本論文は、米国の裁判所がその正確性をどのように担保してきたのか、その効果はどれほどであったのか、また仮に担保能力の無い手法を敢えて維持してきていたとするならば、その背後にはどのような要因があったのか、について実証的に分析するものである。1850 年から 2018 年までの関連判例全 228 件で事情聴取に関わった 243 名の通訳者に関して、判例分析及び判例に記載された情報の量的分析を資格・訳出・証言内容の 3 分野で行った上で、Mason（2015b）の通訳に伴う 3 種類の権力関係という視座から考察を加えた。

コモンローに基づく米国では、事情聴取時の通訳者の法廷証言がなければ訳出は伝聞（hearsay）とする判例が古くから多くみられた一方、通訳者を使用者の代理人（agent）と見なし、被疑者に使用者責任を負わせることで伝聞を回避する手法も見られた。20 世紀後半からは通訳者は導管（conduit）であるとする判例が現れ、代理人かつ導管（agent and/or conduit）である通訳者の訳出は伝聞にあらずとする判例が一般化した。検証した 243 名の通訳者に関わる判例でも、大方そのような判決が下された。しかし、その殆どが警官、家族、偶然居合わせた者、共犯者等で、最低限の通訳者資格基準も満たしておらず、特に警官が行った通訳では多くの問題が検証された。また法廷証言を行った通訳者 96 名のうち、訳出の正確性に関して具体的な証言ができたのは 6 名で、うち 3 名が訳出時に録音録画されていた。

この様な現状に対し、人権弁護士は、通訳者の法廷証言がなければ伝聞であり、かつ憲法修正第 6 条に基づき被告には通訳者を反対尋問する権利有り、と主張するが、通訳者は導管、故に問題なしと一蹴する判例が現在も大多数である。唯一担うべき説明責任（accountability）は訳出の正確性であるはずの有資格の通訳者にとっては、「伝聞か導管か」の二項対立論（hearsay/conduit polarity）は到底受け入れがたい。

本論文は伝聞も導管も訳出の正確性の担保機能がないことを実証した上で、米国の司法が「通訳者は導管」という見方に固執する理由を、Mason（2015b）の枠組みで考察した。司法の使用言語である英語と「少数」言語の力関係、両言語を介する唯一の存在である通訳者が被疑者の支配下にあるとする判例の矛盾、かつそのような明らかな論理的矛盾を可能にし得る制度的力関係を、データに基づき考察をした上で、

本論文は、被疑者のみならず有資格の通訳者を保護する唯一の手段は事情聴取の全面可視化であるとの結論に至った。

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Abbreviations and Acronyms

General

ACTFL: American Council on Teaching of Foreign Languages

AIIC: International Association of Conference Interpreters (by the French acronym)

ANOVA: analysis of variance

ATA: American Translators Association

ATF: Alcohol, Tobacco, and Firearms (*U.S. v. Sanchez-Godinez*, 8th Cir., 2006)

CBP: Customs and Border Protection

CPS: Child Protective Services (*Diaz v. State, Texas*, 2010)

Cir.: Circuit

Dep't: Department

DEA: Drug Enforcement Administration

DHS: Department of Homeland Security

DUI: Driving Under the Influence (of alcohol and/or drugs)

DV: domestic violence

FCICE: Federal Court Interpreter Certification Examination

FRE: Federal Rules of Evidence

ICCPR: International Covenant on Civil and Political Rights

ILR: Interagency Language Roundtable (proficiency level conversion chart)

IOM: International Organization of Migration (*U.S. v. Vidacak*, 4th Cir., 2009)

K-12: K through Twelve (from Kindergarten to Twelfth Grade)

MANS: Multi-Agency Narcotics Squad

MIIS: Middlebury Institute of International Studies at Monterey

NAATI: National Accreditation Authority for Translators and Interpreters Ltd.

NAJIT: National Association of Judiciary Interpreters and Translators

NCSC: National Center for State Courts

pts: points

PACE: Police and Criminal Evidence Act (of 1984)

PEACE: Planning & Preparation, Engage & Explain, Account, Closure, and Evaluation

RID: Registry of Interpreters for the Deaf

SAMs: Special Administrative Measures

U.K.: the United Kingdom

U.N.: the United Nations

U.S.: the United States (of America)

50 States of the United States: Two-Letter Abbreviations

AL: Alabama

AK: Alaska

AR: Arkansas

AZ: Arizona

CA: California

CO: Colorado

CT: Connecticut

DE: Delaware

FL: Florida

GA: Georgia

HI: Hawaii

ID: Idaho

IL: Illinois

IN: Indiana

IA: Iowa

KS: Kansas

KY: Kentucky

LA: Louisiana

ME: Maine

MD: Maryland

MA: Massachusetts

MI: Michigan

MN: Minnesota

MS: Mississippi

MO: Missouri

MT: Montana

NE: Nebraska

NV: Nevada

NH: New Hampshire

NJ: New Jersey

NM: New Mexico

NY: New York

NC: North Carolina

ND: North Dakota

OH: Ohio

OK: Oklahoma

OR: Oregon

PA: Pennsylvania

RI: Rhode Island

SC: South Carolina

SD: South Dakota

TN: Tennessee

TX: Texas

UT: Utah

VT: Vermont

VA: Virginia

WA: Washington

WV: West Virginia

WI: Wisconsin

WY: Wyoming

Two-Letter Abbreviations of U.S. Territories Used in the Thesis

GU: Guam

MP: Northern Mariana Islands

PR: Puerto Rico

VI: U.S. Virgin Islands

Chapter One: Introduction

1.1 Background of the Study

The present thesis is about *interpretation* of *interpreters*. More precisely, it examines how the courts in the United States (U.S., hereafter), who are the *interpreters of law*, have *interpreted* the *interpreters of a foreign language*,[1] with a specific focus on police interpreters. These interpreters translate between the law enforcement, such as police officers, and a suspect, a victim, or other witnesses. Their role, which takes place in the most upstream stage of the criminal procedure, can be more critical than that of in-court interpreters, as the statements they translate later become crucial, often decisive trial evidence (Berk-Seligson, 2009, p. 1; Brief for the Massachusetts, 2016, p. 17; Fowler et al., 2016, p. 315; González et al., 2012, pp. 446–447; Hale et al., 2019, p. 107; Laster & Taylor, 1994, p. 136; Mason, 2020, p. 2; Mikkelson, 2017, p. 59; Mizuno & Naito, 2015, p. 101). Lee Epstein and Thomas G. Walker (2013), constitutional law scholars in the U.S., also noted that "many scholars and lawyers consider this part of the process to be of the utmost importance" (p. 460).

In spite of their crucial role, however, not very much is known about police interpreters in the U.S. Unlike in-court interpreters whose qualifications are clearly stipulated by federal or state statutes such as the Court Interpreters Act of 1978, no such provision yet exists for police interpreters (Schofield & Alston, n.d., Language assistance services, paras. 1–2).[2] What exists instead is recurring but limited literature

[1] The data analyzed by the present thesis includes both signed and spoken language data. *Foreign language* interpreters in the present thesis, therefore, more correctly refers to interpreters of both "spoken" and "signed" languages (Pöchhacker, 2022. p. 10), i.e., languages which are different from the language used by the court and thus are *foreign* or alien to the court.

[2] The Court Interpreters Act of 1978 is for federal courts, which led to the establishment of the rigorous Federal Court Interpreter Certification Examination (FCICE) (see González et al., 2012, pp. 1159–1180). As for state courts, efforts also have been made to consolidate a similar certification system by the National Center for State Courts (NCSC), though qualification standards vary by jurisdiction, especially with "languages for which certification is not readily available" (Mellinger et al, 2023, p. 146). Still, an important distinction that must be made here upfront is that court

on their qualification issues (Berk-Seligson, 2000, 2002a, pp. 225–227, 2002b, 2009; Brief for the Massachusetts, 2016, p. 20; González et al., 2012, pp. 443–530) and on the harm caused by their interpreting accuracy and impartiality issues (Berk-Seligson, 2009; Hale et al., 2019, 2020; O'Laughlin, 2016b). Most importantly, no sufficient awareness yet seems to exist about the complex hearsay issue that may arise if these police interpreters do not later appear in court and take the witness stand.

1.1.1 Police Interpreters Create Hearsay?

Police interpreters' hearsay issue, the detail of which is discussed in Chapter Four, is actually a two-century-long controversy in U.S. courts, though it did not receive much attention even in the U.S. judicial community until a 2013 appellate court ruling in the 11th Circuit[3] (Benoit, 2015; Bolitho, 2019; Klubok, 2016; Kracum, 2014; Ross, 2014; Xu, 2014). This case, *U.S. v. Charles* (11th Cir., 2013),[4] was about a Creole-speaking Haitian woman named Manoucheka Charles, who was convicted of an intentional use of a fraudulent entry document. Charles arrived at the Miami International Airport from Haiti and was stopped and interrogated by a Customs and Border Protection (CBP, hereafter) officer about her entry document through a telephone interpreter. The CBP officer later testified in court to what Charles had told him through the interpreter, stating that "when she sat down [on the plane]…she noticed that the document," which a man

interpreters are hired based on their qualifications and translate in public court after taking an oath, while police interpreters work behind closed doors without an oath, for whom no clear qualification system yet exists.

[3] The jurisdictions in the United States are divided into 50 state (state courts) and 11 federal circuits (federal courts). The 11th Circuit is one of the 11 federal circuits and comprises Florida, Georgia, and Alabama.

[4] While the APA-style parenthetical in-text citation of court rulings does not include a jurisdiction (American Psychological Association, 2020, pp. 358–362), the present thesis includes the jurisdiction in each citation for the reasons that the thesis discusses a multitude of cases across all of the 11 circuits and 50 states, and that jurisdictions carry one important factor in the thesis's discussions.

had helped her obtain free of charge, "was illegal because it didn't fit her profile" (*U.S. v. Charles*, 11th Cir., 2013, p. 1321).

The interpreter did not testify at trial, and the ruling has no mention of whether or not the interrogation had been audio-recorded, which either way was not mandatory (Dep't of Justice,[5] 2015, p. 1552; Recording of custodial interrogations, 2017, p. 6). Thus, while the only dispute at this trial was whether Charles "knew" the document was fraudulent, the defense counsel had no way of finding what expressions Charles had actually used in Creole when she said that "she noticed that the document was illegal because it didn't fit her profile" (*U.S. v. Charles*, 11th Cir., 2013, pp. 1321–1322). Accordingly, the appellate court ruled that because the CBP officer was only testifying to what the interpreter had told him in English as to what Charles had told the interpreter in Creole, the officer's testimony was hearsay (*U.S. v. Charles*, 11th Cir., 2013, p. 1330).

Hearsay, whether in a civil or criminal trial, is a testimony made by a witness who did not actually see or hear what she/he is now testifying to in court. In common-law courts, i.e., in courts of the English-law tradition, a hearsay testimony is fundamentally inadmissible as evidence because: (a) second-hand information is considered less reliable; (b) except in a few circumstances such as depositions in the U.S., out-of-court statements, i.e., statements that were not made in court during the present trial, do not require an oath, and thus cannot be charged for perjury;[6] (c) the jury has no opportunity to directly determine the reliability of the original witness who does not testify in court; and (d) the defendant has no opportunity to cross-examine and confront the original witness to challenge her/his reliability (Fenner, 2013, pp. 4–5; Fishman, 2011, pp. 3–4). The last, fourth reason becomes especially crucial in criminal cases as a defendant's

[5] "Dep't" is an abbreviation of "Department," which follows the original wording of the source title.

[6] Perjury, which is an act of "willfully" stating, under oath, what a witness "does not believe to be true," is a felony subject to a maximum of five years' imprisonment (United States Code, 2018 Edition, Supplement 2, Title 18).

right to cross-examine and confront a witness who testifies against her/him is one of the paramount criminal defendants' *due process* rights.[7] It guards them against a potentially unjust, arbitrary exercise of the government's power, i.e., convicting a defendant based only on some second-hand, unreliable information. For this reason, the Sixth Amendment of the U.S. Constitution explicitly guarantees this confrontation right to all criminal defendants.[8]

In a typical police interview between an English-speaking law enforcement officer and a foreign-language-speaking suspect who cannot communicate with each other directly, an interpreter is used who translates back and forth between them. The officer later testifies in court to what the suspect told the officer. Legally, this is where a difficult hearsay issue arises. It is not easy to determine whether this officer is now testifying to what the defendant said or to what the interpreter said the defendant had said. If it is the latter, then the officer only has indirect, second-hand knowledge about what the suspect had really stated in a foreign language. In short, the officer's testimony becomes a typical hearsay testimony, which also violates the defendant's Sixth Amendment confrontation right.[9] In *U.S. v. Charles* (11th Cir., 2013) mentioned above, too, the court ruled that since the CBP officer's testimony was mere hearsay, the defendant, who had no opportunity to cross-examine the interpreter, also had her Sixth Amendment confrontation right violated (p. 1330).

However, an important question still remains as to whether foreign language

[7] *Due process* is one of the key concepts of the present thesis and is discussed in Chapter Seven, Section 7.1. Here, the thesis defines the term broadly as ensuring criminal procedure to be fair and just (Bergman & Berman, 2013, p. 358).

[8] "In all criminal prosecutions, the accused shall enjoy the right…to be confronted with the witnesses against him…" (The United States Constitution, Sixth Amendment, underlined by the present author).

[9] The Sixth Amendment confrontation right issue accompanies a hearsay issue in criminal cases only. Civil cases involve only a hearsay issue. In criminal cases, police interpreters create two issues in a package: a hearsay issue and a constitutional confrontation right issue (Fishman, 2011, p. 101).

interpreters are the same as ordinary hearsay messengers. Thus, if the prosecution can argue that statements obtained through an interpreter do not become hearsay because interpreters create no extra layer, then the officer will be deemed as only testifying to what the suspect stated. This way of thinking seems to have become the mainstream in most U.S. courts over the past few decades. The most representative case law is *U.S. v. Nazemian*, a 1991 ruling by the 9th Circuit, a strong legal authority which continues to influence both federal and many state courts up to this day.[10]

1.1.2 *Agent and/or Conduit* Interpreter?

The ruling in *U.S. v. Charles* (11th Cir., 2013) came out as the first strong antithesis to the above *U.S. v Nazemian*, a 1991 ruling on international drug trafficking by the 9th Circuit, a federal jurisdiction with the largest immigrant population in the U.S. (Percentage of foreign-born, 2023).[11] *U.S. v Nazemian* (9th Cir., 1991) ruled that an interpreter-mediated out-of-court translation created no extra layer of hearsay if the trial judge determined, on a case-by-case basis, that an interpreter was merely an "agent" and/or "conduit"[12] based on the four-tier criteria: (a) which party supplied the interpreter; (b) whether the interpreter had any motive to mislead or distort; (c) the interpreter's qualifications and language skill;[13] and (d) whether actions taken subsequent to the conversation were consistent with the translated statements; i.e., no

[10] Major federal and state appellate rulings on this issue continue to cite *U.S. v. Nazemian* (9th Cir., 1991) as legal authority, e.g., *State v. Lopez-Ramos*, (Minnesota, 2019, pp. 420–421) and *Commonwealth v. Delacruz* (Massachusetts, 2020, p. 3), to mention a few.

[11] The 9th Circuit consists of such states as California, Arizona, Oregon, and Washington.

[12] "Agent" and/or "conduit" (*U.S. v. Nazemian*, 9th Cir., 1991, pp. 527–528), which sounds an apparent terminological contradiction in interpreting studies, as is discussed in Chapter Two, is a valid case law in U.S. courts. How this concept emerged is explained in Chapter Four.

[13] *U.S. v. Nazemian* (9th Cir., 1991) used "language skill" in a singular form (p.527), though in the domain of foreign language teaching and learning, usually the term is used in a plural form, which is further elaborated in Chapter Three, Section 3.6.

inconsistency appeared between them (pp. 527–528). Thus, *U.S. v. Nazemian* (9th Cir., 1991) as a case law now rules that if a trial judge, in her/his single-handed pre-trial assessment, determines that there was no problem about the reliability, i.e., accuracy,[14] of the interpreter's translation, then the interpreter is deemed as an agent and/or conduit who created no extra layer of hearsay.

The dominance of *U.S. v Nazemian* (9th Cir., 1991) is best described in a more recent ruling, *U.S. v. Aifang Ye* (9th Cir., 2015), a case of a Chinese woman, Aifang Ye, convicted of passport forgery in Saipan. In September 2011, Ye and her husband, both Chinese citizens, travelled to Saipan on a tourist visa. Her husband soon returned to China, but Ye overstayed her visa and gave birth to their second child, who became a U.S. citizen.[15] In order to obtain a U.S. passport for the baby without drawing attention at home, they had the husband's brother travel to Saipan and pretend as Ye's husband to accompany her to the passport office, which, however, was caught by the Department of Homeland Security (DHS, hereafter). The DHS obtained their statements through "Language Line"[16] interpreters,[17] following which Ye was indicted and convicted. Ye appealed (*U.S. v. Aifang Ye*, 9th Cir., 2015, p. 398).

Ye argued that one of the telephone interpreters translated what her brother-in-law had originally phrased as "copied" into "forged," which was a highly loaded word he would not have used (Petition, 2016, p. 12a; *U.S. v. Aifang Ye*, 2015, p. 401). This

[14] As was noted in Section 1.1.1, one of the reasons why hearsay is excluded is that there is a *reliability* issue with second-hand information. As the present thesis demonstrates in Chapter Four, Sections 4.5.1, 4.6.1, and 4.6.2, however, U.S. courts began using the term *conduit*, which denoted translation *accuracy*, and which became synonymous with reliability.

[15] The 14th Amendment of the U.S. Constitution stipulates "All persons born...in the United States…are citizens of the United States."

[16] The ruling only stated "Language Line," and it is not clear as to whether it refers to "LanguageLine Solutions ®," which is a language interpreting service company based in Monterey, California, now operating globally via telephone or video. (LanguageLine Solutions, 2023).

[17] Audio-recording was not mandatory (Dep't of Justice, 2015, p. 1559; Recording of custodial interrogations, 2017, p. 6), and Ye's appellate brief submitted to the U.S. Supreme Court noted that this telephone-interpreter-mediated interview had not been audio-recorded even though the government had the capacity to do so (Petition, 2016, p. 9, p. 35).

evinced, according to Ye, that their interpreters were biased and thus had not acted as their agent and/or conduit as stipulated by *U.S. v. Nazemian* (9th Cir. 1991), which Ye was unable to challenge because her interpreter did not testify before the jury, which also violated her confrontation right guaranteed by the Sixth Amendment.

The prosecution argued that the interpreter had native fluency in Mandarin with extensive training and experience. In addition, during the interview, Ye, the DHS officer, and the interpreter together checked the accuracy of the translation through "line-by-line read-backs," and the interpreter even inserted "intentional inaccuracies," each one of which Ye identified and corrected (*U.S. v. Aifang Ye*, 2015, p. 402). After the appeal in the Ninth Circuit failed, Ye appealed to the U.S. Supreme Court (Petition, 2016), which, nevertheless, was denied.

1.1.3 Two Briefs and Interpreting Professionals' Dilemma

When Ye appealed to the U.S. Supreme Court, however, two major amici, i.e., interested parties' opinion briefs, were submitted by interpreting professionals, both in support of Ye. One was from Holly Mikkelson and Barry Olsen, then interpreting professors at the Middlebury Institute of International Studies at Monterey (MIIS, hereafter) (Brief of interpreting and translation professors, 2016), and the other was from the Massachusetts Association of Court Interpreters (Brief for the Massachusetts, 2016).

In the former brief, the two interpreting professors called for: (a) a uniform case law in all U.S. courts (Brief of interpreting and translation professors, 2016, pp. 4–7); (b) the judicial community's understanding that accurate translation never means mechanical word-switching but is a faithful rendition of what a speaker has "meant"[18]

[18] What constitutes *accurate translation*, in fact, is one of the fundamental questions in translation and interpreting studies, which is discussed in Chapter Two. What MIIS professors are referring to here generally denotes what Danica Seleskovitch (1968/1998) postulated in her interpretive theory commonly known as *théorie du sens*, which contended that "total accuracy ['*fidélité absolue*' in the original French]" (p. 89) in interpreting entailed transfer *not* of *words* but of the *sense* of a message, or a faithful rendition of what the source-language speaker meant or intended (Pöchhacker, 2022, p. 61–62). The notion of *accurate translation* held by the courts in the U.S., on

(pp. 7–11); and (c) clear testimony requirements, as they will have an impact on interpreters' confidentiality and impartiality codes as well as on interpreter training, because an interpreter may now have to remember "exact words of the defendant" and "her own words" (pp. 11–13). The brief, however, contained no opinion as to whether an interpreter is a language conduit, or whether an interpreter would create an extra layer of hearsay for the reason that interpreting is never an act of mechanical word-switching.

In contrast, the brief by the Massachusetts Association of Court Interpreters clearly and decisively criticized the language conduit theory long employed by the 9th Circuit as "wrongly presume[ing] that language interpretation is an objective and precise process" (Brief for the Massachusetts, 2016, pp. 6–7). They contended that: (a) interpreter-mediated police interview statements are fundamentally hearsay because an interpreter is not a language conduit who produces translations through an objective and precise process, as interlingual translation involves numerous subjective judgments; (b) even professional interpreters with abundant training and experience are never free from the possibility of making mistakes; and therefore, (c) interpreters should be required to testify in court and be cross-examined. (p. 2, pp. 6–7).

This tone disparity between the two amici epitomizes how exactly interpreters feel about police interpreters' hearsay issue, which presents them with only two equally unacceptable choices: *hearsay* or *conduit*. The former denounces interpreters with a hearsay allegation. Interpreter training generally requires years of rigorous practice (e.g.,

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the other hand, is inferred from the code of ethics of the NAJIT (National Association of Judiciary Interpreters and Translators), which dictates that: interpretation preserve the syntactic and semantic patterns of the source language while also sounding natural in the target language; contain no additions, omissions, explanations, or paraphrasing; and maintain all subtle pragmatic markers such as hedges, false starts, and repetitions, as well as the same register, style, and tone (Benmaman & Framer, 2015, p. 141; NAJIT, 2016b). While the code technically applies only to NAJIT members, still a note must be made that "the world's largest association of judiciary interpreters" (NAJIT, 2016a) has instituted such a highly rigid code, which may even seem detached from the reality of interlingual translation, as it requires preservation of syntactic and semantic patterns of the source language while making the target language rendition sound natural, which would seem an impossible demand in light of interlingual "non-isomorphism" (Setton, 2015, p. 162) and the dichotomic concept of *equivalence* in translation studies discussed in Chapter Two.

Setton and Dawrant, 2016, p. 53, p. 59; *U.S. v. Romo-Chavez*, 9th Cir., 2012, p. 964), designed for the trainees to develop skills to achieve "total accuracy ['*fidélité absolue*' in the original French]" (Seleskovitch, 1968/1998, p. 89) or a faithful rendition of what the source-language speaker meant or intended (Pöchhacker, 2022, pp.61–62) in a split of a second. Thus, discrediting these interpreters' practice as *hearsay*, requiring their in-court testimony and cross-examination would be tantamount to demoting the product of such professional training into statements rejected by courts as unreliable.

On the other hand, the latter also creates a frustration for interpreters because of the fundamental conceptual disparity between the judicial community and the interpreting community regarding the term *conduit*. The judicial community seems to be using the term conduit as an antithesis of hearsay, a concept which denotes no extra layer between the source language and the target language, and thus implying the existence of accuracy. However, as is discussed in Chapter Two, the term conduit has been a highly problematic concept for the interpreting community. It is commonly deemed as a metaphor that misconstrues interpreting and translation process as a falsely mechanical, word-for-word conversion by a non-thinking machine. This metaphor is not only dehumanizing but represents exactly what interlingual translation is *not* (e.g., Morris, 1995, p. 26, p. 32; Morris, 1999, p. 6; Tsuda et al., 2016, p. 84, p. 95; Yoshida, 2007). On an interactional communication level, too, many researchers argued that interpreters in a dialogic discourse do more than just translate, far from being a conduit (Angelelli, 2004b, p. 19; Clifford, 2004, pp. 90–96; Roy, 1989, p. 1, 2000, p. 102; Wadensjö, 1995, pp. 113–114, 1998, p. 8).

At the same time, as was already noted, for every interpreter the rendition of faithful, accurate translations (Pöchhacker, 2022, p. 141; Seleskovitch, 1968/1998, p. 89) would always be of crucial importance, without which interpreters' raison d'être would be lost. Consequently, the judicial community's use of the term conduit to denote accurate translation makes its forfeiture extremely difficult for interpreters, which makes

this dichotomic hearsay/conduit (non-hearsay) polarity an impossible dilemma for interpreting professionals.

While the Massachusetts Association of Court Interpreters' decisive position to renounce the conduit status and argue for the need to require police interpreters to testify in court (Brief for the Massachusetts, 2016, pp. 6–7) demonstrates their determination to uphold professional accountability, the questions posed by the then MIIS professors also remain valid. For example, what kind of testimonies would police interpreters be required to make? If their testimonies are necessary because the officers' testimonies alone would constitute hearsay, would this mean that interpreters would now have to testify in place of these officers to the statements made by the defendants as prosecutorial witnesses? Would making such testimonies be realistically possible for interpreters from a memory and/or record-keeping standpoint? Even if it is, how would such testimonies reconcile with interpreters' professional code of confidentiality and impartiality (Brief of interpreting and translation professors, 2016, p. 12)?

Most importantly, if police interpreters' ultimate professional responsibility is to provide faithful, accurate translations (Pöchhacker, 2022, p. 141; Seleskovitch, 1968/1998, p. 89), would having or subpoenaing police interpreters to testify in court many months or even years after the interview be the most effective way for these interpreters to fulfill their professional accountability? In this day and age, wouldn't it be a much more realistic approach simply to require audio/video-recording of all interpreter-mediated police interviews, so that accuracy verification can be made if and when necessary? These questions, unfortunately, continue to remain unanswered.

1.2 Problem Statement: Hearsay/Conduit Polarity for Police Interpreters

This impasse created by the continued use by U.S. courts of the dichotomic *hearsay/conduit polarity* is what the present thesis addresses as a problem. The thesis defines *hearsay/conduit polarity* as a dichotomic concept of either hearsay or conduit

(non-hearsay)[19] which a majority of U.S. courts continue to apply in the determination of police interpreters' translation accuracy. The polarity continues to rely on the notion of hearsay to determine translation accuracy, so while one end of the polarity contends that accuracy cannot be verified unless police interpreters testify and be cross-examined in court, the other end contends that since interpreters are a language conduit (accurate), they create no hearsay and thus no in-court testimony is necessary.

The current approach, however, seems not only ineffective to ensure and/or verify translation accuracy but also harmful, both for criminal defendants and for interpreters. Whether in court or out of court, what criminal defendants need most from interpreters would be an accurate and faithful translation. Thus, if ensuring accuracy is of foremost importance, a clear statutory legislation requiring the use of qualified interpreters, e.g., certified interpreters, for police interviews would be a more logical first step (Ebashi, 1990, p. 23). This is exactly what the U.S. did with their federal court interpreters with the legislation of the 1978 Court Interpreters Act, which, however, has not yet been extended to police interpreters as of today (Schofield & Alston, n.d., Language assistance services, paras. 1–2). Also, if accuracy verification is important, then implementation of audio/video-recording would seem essential. Instead, a majority of U.S. courts continue to rely on the hearsay/conduit polarity to ensure and/or verify police interpreters' translation accuracy.

More importantly, if this hearsay/conduit polarity can neither ensure nor verify translation accuracy, it is detrimental also to the language interpreting profession. The current approach not only confines interpreters within the hearsay/conduit dilemma but also compromises interpreters' professional accountability to ensure and/or verify translation accuracy by depriving what would seem a more logical and effective means, e.g., audio/video-recording. In addition, since even professional interpreters are never

[19] *Non-hearsay* is actually a legal term, which must be distinguished from *hearsay exceptions*, but the details are explained later in Chapter Four, Sections 4.2 and 4.3.

free from unintended mistakes and unnoticed errors[20] (Benmaman & Framer, 2015, p. 166; Brief for the Massachusetts, 2016, p. 2), police interpreters would need to be protected with a safeguard, i.e., a means not only to review and correct one's translations but also to have their translations verified and authenticated, ideally by a check interpreter. Unfortunately, the current approach by U.S. courts to continuously rely on the hearsay/conduit polarity seems largely incapable of providing such means to interpreters.

1.3 Purpose of the Study

The purpose of this thesis, therefore, is to empirically examine the validity of the current dichotomic hearsay/conduit polarity based on the Sixth Amendment Confrontation Clause from interpreting studies' perspective (Pöchhacker, 2022, p.53). Through an investigation into the chronological development of this hearsay/conduit polarity, the present thesis aims to explore what kind of hearsay circumvention theories the courts in the U.S. developed, based on what kind of views or notions about language interpreters, and how and why these theories became the current dominant case law in the U.S. The thesis then aims to examine, based on the empirical data collected, how effective the law actually is in ensuring and/or verifying police interpreters' translation accuracy and in enabling interpreters to fulfill their professional accountability. Finally, based on the above investigations and their findings, the thesis aims to explore possible causes of the current impasse, analyzing how language interpreters are viewed by the

[20] The terms *mistakes* and *errors* are used following the distinction made by Corder (1967), in which a *mistake* was used synonymously as a performance-based error, whereas an *error* was used to refer to a more systematic competence-based error (Chomsky, 1965, pp. 3–4). In actual legal interpreting practice and in court rulings, however, the term error is more commonly and widely used to refer to both types: (a) unintended careless mistakes often caused by external factors such as fatigue; and (b) more systematic, internal, competence-based errors that go unnoticed (Benmaman & Framer, 2015, pp. 166–168). The present thesis also follows this convention hereafter and primarily uses the term *error* for errors caused by both internal and external factors. If an error made by an interpreter is of the latter type, then only a different interpreter could hopefully identify such an error, which attests to the need to have a check interpreter to verify and authenticate translation accuracy.

judiciary, and suggest possible alternatives to improve the status quo.

1.4 Significance of the Study

The first contribution by the present thesis would be an empirical analysis of police interpreters' hearsay issue from interpreting studies' perspective (Pöchhacker, 2022, p.53). As is mentioned in Chapter Two, no in-depth empirical research on this issue has yet been conducted by interpreting researchers, despite the fact that the issue poses critical questions about police interpreters' legal role and professional accountability. Even the term *agent and/or conduit* used by lawyers to refer to police interpreters is a clear oxymoron to interpreting professionals, both practitioners and researchers. Nevertheless, its use continues as a valid case law, never having been scrutinized from the interpreting studies' standpoint. Even if it is a result of conceptual disparities between the two disciplines, a thorough examination of the relevant legal concepts and their consequences to interpreters, i.e., their legal role and professional accountability, would be of critical importance to the interpreting community. This is what the present thesis aims to contribute, elucidating how the interpreters of law have interpreted the interpreters of a foreign language and empirically exploring the possible reasons.

1.4.1 Why U.S. Cases?

Hearsay exclusion is one of the fundamental principles of the common law, which the U.S. court system is based on, as was noted in Section 1.1.1. This means that police interpreters' hearsay issue has arisen in other common-law countries, too (Ebashi, 1990). However, as is explained in Chapter Four, Sections 4.1.2 and 4.1.3, the United Kingdom (U.K., hereafter) and Australia, two other major common-law jurisdictions, do not seem to be seeing recurring appellate cases, at least on the hearsay issue. This could be a result of their relatively early implementation of mandatory audio/video-recording (Ibusuki, 2016, p. 241; National Association of Criminal Defense Lawyers, 2019), an area in

which the U.S. seems to lag behind. As of 2019, police interview recording was legally required only in 25 out of all the 50 states, including the District of Columbia (Bang et al., 2018, pp. 10–15; Gross et al., 2020, pp. 162–163).[21] Its enforcement also varies (Recording of custodial interrogations, 2017, p. 7) and is moving rather slowly due to the law enforcement's reluctance and insufficient legal accountability (del Carmen & Hemmens, 2017, p. 349; Dep't of Justice, 2015, p. 1559). As to whether the delay of mandatory audio/video-recording is being the cause of this never-ending hearsay issue, or whether the persistence of a powerful case law such as *U.S. v. Nazemian*, (9th Cir., 1991) is causing the delayed introduction of mandatory audio/video-recording, it is not certain. Both may be the case.

In addition, the investigation style could be another factor. The U.K., New Zealand, and Australia now use information-gathering style (Filipović & Vergara, 2018, p. 63). For example, after the introduction of the 1984 Police and Criminal Evidence Act (PACE) and mandatory audio/video-recording, the U.K. started using an interview method called the PEACE model (Shepherd & Griffiths, 2013, p. 25),[22] which uses an information-gathering interview discourse. In contrast, the U.S. uses what is known as the Reid technique, developed in the 1940s and 1950s, the primary purpose of which is to "persuade a suspect to confess" (Mulayim et al., 2015, p. 41; also see Inbau et al., 2013; Jirard, 2020, pp.249–252). In short, the current U.S. police interrogation system, which uses the Reid technique in the absence of mandatory audio/video-recording and a means to ensure and/or verify interpreters' translation accuracy, would seem to run a constant risk of potential due process rights infringements in which language interpreters also become implicated. The present thesis regards this situation as critical, requiring a

[21] Thereafter, the total number became 27 states, including the District of Columbia (Bang et al., 2018, p. 10), and then 29 states (Gross et al., 2020, p. 163, fn. 339), though with varying levels of conditions.

[22] PEACE is an acronym for Planning & Preparation, Engage & Explain, Account, Closure, and Evaluation.

thorough empirical examination, and at the same time to also bear much resemblance to the status quo in Japan, as is discussed in Section 1.4.3 below.

1.4.2 Interpreters' Perspective

Equally important are the rights and the stakes of language interpreters, who so far have been placed into the hearsay/conduit dilemma in silence. As is reviewed in Chapter Two, police interpreters' hearsay issue so far has been discussed primarily by criminal defense lawyers focusing on foreign-language-speaking defendants' due process rights. This issue, however, inevitably involves the rights and the stakes of interpreters who must work caught between two adversarial parties. This is especially the case in police interviews, as there is no judge-like arbiter in the middle but only the officer and the suspect, with the interpreter situated in-between, all behind closed doors. In such highly charged situations, interpreters inescapably are forced to make many critical judgments, often beyond simple semantic or pragmatic translation decisions (Inghilleri, 2011, p. 52). Despite such predicament, their legal role and professional accountability remain in the dark in the U.S. police interpreting context, with no legal safeguards to help interpreters assume their professional accountability, i.e., no institutionalized system to assist them with an objective means to check their own translations and make timely corrections if necessary, and/or to have their translations checked, verified, and authenticated.

Notwithstanding, there is a general absence of voices from the interpreting community, i.e., interpreting practitioners and researchers, on this two-century-long police interpreters' hearsay issue in the U.S. Just as Pym (1999) described how lawyers continued their discussion on interpreting issues during O.J. Simpson's trial with almost complete exclusion of interpreters who were physically present in court (Pym, 1999, p. 280; also see Tamura, 2021a, p. 28, p. 41), interpreting professionals seem neither invited to nor participating in the discussion on this issue. The two amici briefs submitted in 2016 to the U.S. Supreme Court for Ye (*U.S. v. Aifang Ye*, 9th Cir., 2015), one from the

then MIIS professors (Brief of interpreting and translation professors, 2016) and the other from Massachusetts court interpreters (Brief for the Massachusetts, 2016) noted in Section 1.1.3, were practically the first public voices on this issue from the interpreting community. Even then, the amicus from the then MIIS professors did not quite voice their position about the most critical question as to whether or not interpreters are conduit, stating only the need for a uniform case law across all U.S. courts (Brief of interpreting and translation professors, 2016, pp. 4–7), implying that such determination was to be made not by interpreters but by lawyers (court rulings) and/or law-makers (legislation).

Also, while the Massachusetts court interpreters did voice their position (Brief for the Massachusetts, 2016, pp. 6–7), this was only from just one single state out of all the 50 states and 11 federal circuits. As of this day, no clear position has yet been expressed by nationwide professional interpreters' organizations such as the National Association of Judiciary Interpreters & Translators (NAJIT, hereafter), the American Translators Association (ATA), among others. This makes a clear contrast with how the NAJIT and eight professors of interpreting and translation studies in the U.S. voiced their unanimous opinion at *Taniguchi v. Kan Pacific*, a 2012 U.S. Supreme Court ruling on the difference between interpreters and translators (Brief of amici curiae: interpreting and translation professors, 2012; Brief of the National Association of Judiciary Interpreters and Translators, 2012; also see Tamura, 2021a).[23] Also, as is reviewed in Chapter Two, no substantial research has yet been conducted by interpreting researchers on this issue, even though it presents most fundamental and crucial questions about interpreters: their legal role and professional accountability. Clearly, in-depth research on police interpreters' hearsay issue from interpreters' perspectives seems long overdue, to which the present thesis hopes to make a contribution, if only a small step.

[23] *Taniguchi v. Kan Pacific* (2012) was a U.S. Supreme Court decision which ruled that interpreters and translators are not the same (see Tamura, 2021a).

1.4.3 Relevance to Japan

Finally, the present thesis may hopefully provide useful insights for Japan as well. As was mentioned at the end of Section 1.4.1 above, Japan, just like the U.S., has lagged behind in the introduction of mandatory video-recording. The practice finally commenced in June 2019, but it covers only a very limited percentage of the total offenses, especially those involving foreign-language-speaking defendants.[24] Japan's situation is similar to that of the U.S. in this respect.

Regarding judicial interpreters' qualification system, whether in-court or out-of-court, none yet exist in Japan, while the U.S. at least implemented the Court Interpreters Act of 1978, though the law does not cover police interpreters. Just as the use of unqualified police interpreters in the U.S. were criticized by Berk-Seligson (2000, 2002a, pp. 225–227, 2002b, 2009), González et al. (2012, pp. 443–530), and Brief for the Massachusetts Association of Court Interpreters (2016, p. 20), to mention a few, anecdotal reports on problematic police interpreting have also appeared in Japan (Ōki et al., 2014, p. 155; Ueda, 2017, pp. 57–58)[25] though the extent of its actual reality is largely unknown.

As to the interrogation procedures, Japan not only uses the accusatorial method to obtain confessions (Filipović & Vergara, 2018, p. 63; Inbau et al., 2013; Mulayim et al., 2015, p. 41) but also continues to use the system of police detention cells, called *daiyo*

[24] The new law covers offenses the highest penalty for which is capital/life or subject to statutory panel trials. In 2017, out of all the 10,828 foreign nationals arrested in Japan, only 89 fell in this offense category, which could mean that only 0.82% (89/10,828) of all the interviews of foreign suspects were actually video-recorded in Japan (*Heisei 29-nen ni*, 2018, p. 1; *Heisei 29-nen no*, 2018, p. 533).

[25] Ōki et al. (2014) described a 1999 Sapporo District Court ruling which revealed that the translation given by an officer interpreter, who had only taken a 9-month crash course in Tagalog before serving in 30 interpreting assignments, was more like a "simple list of Tagalog vocabulary," instead of meaningful sentences in the form of a translation (p. 155). Ueda (2017) noted on an interpreter-mediated interview of a Chinese murder suspect, which later revealed more than 120 errors, including "you have the right to an attorney" just translated as "you have that" (pp. 57–58).

kangoku [substitute prison],[26] long criticized by the international community (Croydon, 2021, pp. 170–173; JFBA, 2013b, pp. 8–9; JFBA Committee, 2008), accompanied by what has also been criticized as *hitojichi shihō* [hostage justice], a system that institutionally enables the police and the prosecution to detain pre-indictment arrestees or pre-trial defendants until they confess (Takano,[27] 2021; Wingfield-Hayes, December 31. 2019).

Japan's Code of Criminal Procedure was enacted in 1948 soon after World War II, based on the new post-war constitution promulgated in 1946, which primarily followed the U.S. model (Gordon, 1997, pp. 103–125; Matsui, 2011, pp. 13–16). Accordingly, Japan's current criminal procedure law incorporated many of the features of the U.S. common-law system, such as the adversarial system, the warrant system, as well as the rule of hearsay exclusion (Gotō & Shiratori, 2013, p. 1). Even the nation's court trial system which for a long time had followed the continental panel judge system was changed to a new common-law-style lay-judge (quasi-jury) system from May 2009 (NHK Broadcasting, 2010). Thus, reform has been taking place, though slowly, mostly following the examples overseas, especially those of the U.S., Japan's closest ally.

When the discussion started in Japan on the need for legislation of a court interpreter certification system, the Japan Federation of Bar Associations cited the Court Interpreters Act of 1978 and the Consortium for State Court Interpreter Certification in the U.S. as a model (JFBA, 2013a, pp. 4–6). This denotes that the system used in the U.S. is still one of the first examples Japan looks into in obtaining hints for reform

[26] *Daiyo kangoku* (substitute prison) refers to pre-indictment detention cells found in most police stations in Japan, which enable the detention of arrestees up to a maximum of 23 days under the direct supervision by the interrogating police forces rather than by professional prison guards. The system has been criticized for creating an environment leading to coerced confessions (JFBA Committee, September 1, 2008).

[27] Takashi Takano, an attorney based in Tokyo, Japan, was a member of the defense team which worked to obtain the bail of Carlos Ghosn, a former CEO of Nissan Motor Corporation, after Ghosn's 130-day post-arrest and pre-trial detention, during which Ghosn continued to claim his innocence to the prosecutors (Takano, 2021, p. 60).

(Suzuki, 2016, p. 245). However, as Izumi Suzuki, a long-time certified Japanese court interpreter in the U.S., contended, in so doing, Japan should critically discern successful and unsuccessful examples of the U.S. and carefully assess which may or may not work in Japan (Suzuki, 2016, p. 263). While it is beyond the scope of the present thesis to make a systematic comparison of the two countries' criminal justice systems, each having its own "strengths and weaknesses" (Aronson, 2020, para. 13), the information this thesis offers as factual accounts of how police interpreting has been dealt with by U.S. courts may hopefully provide useful hints for all parties involved in or implicated by the issue of police interpreting in Japan.

1.5 Research Questions

The research questions the present thesis addresses, therefore, are as follows:

1. What kind of hearsay circumvention theories, based on what kind of views or notions about language interpreters, did the courts in the U.S. develop which led to the creation of the current hearsay/conduit polarity applied to police interpreters?
2. How effective is the current hearsay/conduit polarity in ensuring and/or verifying police interpreters' translation accuracy and in enabling them to fulfill their professional accountability?

In an interpreter-mediated dialogic communication, the interpreter is usually the only person who understands both languages (Mason, 2015b, pp. 315–316). For other, monolingual participants, there is usually no way of ascertaining translation accuracy, whether in court (Santaniello, 2018) or out of court. While in court, other participants, such as the defense counsel, the prosecutor, or the judge, could ask the interpreter directly on the spot if any accuracy-related questions arise, at least theoretically,[28] the problem becomes compounded when an interpreter who translated out of court is absent

[28] Santaniello (2018) argues on this point, however, that even in court, timely objections to court interpreters' potential translation errors are virtually impossible for other trial participants as court interpreters are usually the only ones who understand both languages (p. 19).

from the present trial. Thus, as a solution, common-law traditionally resorted to hearsay exclusion, requiring police interpreters' in-court testimony, which also invokes the Sixth Amendment Confrontation Clause to protect criminal defendants' due process rights. This is the *hearsay* end of the polarity.

Nevertheless, it would also seem true that interpreters are not the same as ordinary hearsay messengers, because interpreters' fundamental role is to render what was said in the source language, *not* what was *not* said in the source language. Also, if interpreter-mediated statements unconditionally become hearsay, justice may be jeopardized. Thus, to overcome all-encompassing, rigid application of hearsay exclusion to interpreters, U.S. courts began to develop hearsay circumvention theories, which became the other, *conduit* end of the polarity.

The problem, however, is that neither end of the polarity seems to truly reflect the reality of language interpreting and interpreters or effective for ensuring and/or verifying translation accuracy. The thesis, therefore, examines the validity of this hearsay/conduit polarity, by first asking what kind of hearsay circumvention theories the courts in the U.S. developed, based on what kind of views or notions about language interpreters, exploring how and why these theories became the current dominant case law in the U.S. The thesis then asks, based on the data collected, how effective the current case law actually is in ensuring and/or verifying police interpreters' translation accuracy and in enabling interpreters to fulfill their professional accountability.

Finally, based on the findings from the above two research questions, the thesis explores possible macro-sociological (Pöchhacker, 2022, p. 57) factors causing the current impasse and suggests possible solutions to improve the status quo.

1.6 Theoretical Framework

The present thesis examines the validity of both ends of the current hearsay/conduit polarity, basing its approach on Ian Mason's argument on power relations in interpreter-

mediated discourse (Mason, 2015b, pp. 314–316; Mason & Ren, 2012) as a theoretical framework. Interpreting, according to Mason (2015b), is a "socially situated activity" involving "power and control" (p. 314) exercised by multiple parties, each coming with different, often conflicting, goals and interests. A most typical example would be judicial interpreting, where opposing parties engage in adversarial discourse. Mason (2015b) contended that three types of power are constantly at play in interpreter-mediated discourse: power relations between languages, institutionally pre-determined power disparities, and interpreters' interactional power advantage (pp. 314–316).

If the hearsay/conduit polarity based on the Sixth Amendment Confrontation Clause, which most U.S. courts continue to use, is ineffective in ensuring and/or verifying police interpreters' translation accuracy, while it continues to confine language interpreters within a dichotomic dilemma in silence, then there may be some potential power relations being at work enabling its continued use by the courts, whether they are between languages, institutionally pre-determined power disparities, or interpreters' interactional power advantage. The thesis particularly pays close attention to the institutional power disparity between the judicial community (*interpreters of law*) and the interpreting community (*interpreters of a foreign language*). In so doing, the present thesis uses a "macro-level" sociological "lens" (Roy et al., 2018, p. 10–11, p. 110) to question and empirically explore the validity of the hearsay/conduit polarity.

1.7 Limitations

As is explained in detail in Chapter Three, the thesis based its analyses on the U.S. appellate court rulings which specifically dealt with the hearsay issue of police interpreters, using LexisNexis case law search engine.[29] The collection method was made as exhaustive as possible, starting from 1850, the earliest possible accessible date

[29] LexisNexis is a legal research database, provided by a company with the same name, LexisNexis, based in New York City.

with this search engine, all the way up to 2018. Accordingly, it would be safe to contend that the accumulated information would reasonably cover the criteria used by U.S. courts, both federal and states, on the hearsay issue of interpreters who translated for the law enforcement.

There is, however, one important research limitation, which comes from the fact that the entire analyses of the obtained data were conducted by the present author alone, as single-person research. The thesis's approach and methods are explained in Chapter Three, as to how the data were collected, classified, and analyzed, with examples to substantiate the methods' reliability and validity. Still, it must be noted that the analyses inevitably are accompanied by the limitation of single-person or "single-coder" research (Pöchhacker, 2022, p. 225).

1.8 Delimitations

The major delimitation of the present research is that the data collection focus was on the *hearsay* issue of *interpreters* who translated for the *police* or *law enforcement*, not on the entire cohort of police interpreters in the U.S. in general. Therefore, police interpreter issues which were debated and resolved without involving the hearsay issue were not covered by the present research. The police interpreters covered in this research were only those with whom the appellants found a hearsay issue, though the lower courts had ruled otherwise. For this reason, the interpreters examined by the present research were only a limited portion of the entire police interpreter population in the U.S.

What the present research did instead, however, was to delineate the criteria created by U.S. courts on the qualifications of police interpreters whom these judges determined would pass the constitutional due process muster, as well as the courts' judgments on how and why the interpreters' in-court testimonies, when they did testify, verified the accuracy of their out-of-court translations.

1.9 Organization of the Study

This thesis comprises a total of eight chapters. This chapter, Chapter One, presented the background, the problem statement, the purpose, the significance, the research question, the theoretical framework, the limitations, and the delimitations of this thesis. Chapter Two is a literature review which is divided into four main sections. The first section presents a critical review of existing interpreting studies with a focus on *conduit*, *agent*, and *accountability*, three key concepts of this thesis. The second section presents a review of the existing studies on court interpreting and the third section on police interpreting. The final, fourth section presents lawyers' views on the police interpreters' hearsay issue. Chapter Three explains the approach and methods used by the present thesis, starting from its theoretical perspectives and framework to the details of the specific methods used by the present thesis, explained with examples. Chapter Four examines the hearsay circumvention theories which U.S. courts developed over the past 170 years, which led to the formation of one end of the current hearsay/conduit polarity. The chapter examines their validity, i.e., whether these theories with their stipulated criteria are effective in ensuring police interpreters' translation accuracy. Chapter Five presents an empirical examination of both ends of the hearsay/conduit polarity based on the data obtained from the court-ruing texts, which were operationalized for quantitative analyses. The chapter examines whether the hearsay/conduit polarity based on the Sixth Amendment is effective in ensuring police interpreters' qualifications and/or verifying police interpreters' translation accuracy. Based on the results of the examinations and analyses shown in Chapters Four and Five, Chapter Six explores possible reasons why the use of the hearsay/conduit polarity for police interpreters continues, using Ian Mason's (2015b) lens on power relations in interpreter-mediated discourse. In Chapter Seven, the thesis presents a proposal to end the current impasse and to protect police interpreters' professional accountability, and the conclusion of this thesis is presented in Chapter Eight.

Chapter Two: Literature Review

This chapter is divided into four main literature reviews on: (a) interpreters' role issues of *conduit* and *agent* in relation to *accountability*; (b) studies on court interpreting; (c) studies on police interpreting; and (d) law reviews on police interpreters' hearsay issue.

The first section is a critical review of literature on conduit, agent, and accountability, to identify where the judicial and interpreting communities disagree on the notion of conduit in relation to accuracy, and to delineate unresolved issues within the interpreting community regarding the concept of conduit and agency in relation to interpreter accountability. The second section reviews studies on court interpreting, starting with two seminal discourse analytical studies on pragmatic issues: Berk-Seligson (1990) and Hale (2004). The third section reviews studies on police interpreting, including a critical review of Berk-Seligson (2000, 2009), which delineates differences between her approach and that of the present thesis.

As for police interpreters' hearsay issue, no substantial research yet exists in the field of interpreting studies, indicating that for interpreting researchers, this may have seemed a distant legal issue. Thus, the final section of this chapter reviews existing legal research on this issue, which reveals how lawyers' views on language interpreting and interpreters differed from those commonly held by the interpreting community.

2.1 *Conduit*, *Agent*, and *Accountability* in Interpreting Studies[30]

As was noted in Chapter One, the expression that keeps recurring in U.S. courts to circumvent police interpreters' hearsay issue is *agent and/or conduit*. From interpreting studies' standpoint, however, the expression *agent and/or conduit* sounds erroneous and self-contradictory, as these two terms are mutually exclusive concepts. Interpreters could

[30] Section 2.1 is a revised version of the discussion presented in Tamura (2021b).

not possibly become an agent and a conduit at the same time, nor is it a matter of an opportunistic, case-by-case determination of interpreters being an agent at certain times and a conduit at other times (Williams, 2013, pp. 102–103). Rather, the issue in interpreting studies is whether an interpreter is a conduit or an agent, with many researchers negating the former (e.g., Morris, 1995; Morris, 1999; Yoshida, 2007; Tsuda et al., 2016, p. 84, p. 95) and attempting to empirically demonstrate the latter (e.g., Roy, 1989; Wadensjö, 1998; Angelelli, 2004a, 2004b). Nonetheless, even within the interpreting community, unresolved gray zones continue to exist regarding conduit and agent, especially when the discussion moves from intertextual translation issues to an interpreter's participatory role issues in a dialogic interaction, which also involves another key issue, accountability.

In Chapter Four, the thesis presents an analysis of how the legal community defined (or failed to define) *agent* and *conduit* when they applied them to language interpreters. In order to pre-empt potential confusion in inter-disciplinary discussion on these two concepts, this section reviews how these two interpreter role concepts, *conduit* and *agent*, were defined or described by interpreting researchers, particularly in relation to another key concept, interpreter *accountability*.

2.1.1 *Conduit* as Translation *Accuracy* Issue

The interpreting community generally suspects that the judicial community resorts to the term conduit because it denotes no extra linguistic layer added to the original statements, and thus implying accuracy to enable their evidential admissibility (Pöchhacker, 2022, p. 177). While accuracy is vital for any interpreting work, judicial or non-judicial, e.g., conference interpreting (Seleskovitch, 1968/1998, p. 89; Setton, 2015, p. 162; Pöchhacker, 2022, pp. 140–141), it is of most critical importance in judicial interpreting as it is the statements translated by interpreters that directly become evidence in trials. Therefore, judicial interpreters' code of ethics generally dictates that

interpretation contain no additions, omissions, explanations, paraphrasing, alterations, or summaries (e.g., NAJIT, 2016b; Benmaman & Framer, 2015, p. 141) and maintain all subtle pragmatic markers such as hedges, false starts and repetitions, as well as the same register, style and tone (NAJIT, 2016b).

This ethical code on accurate translation, however, is often (mis)understood by the judicial community, e.g., by lawyers, especially judges, as a production of word-for-word or verbatim translations, thus leading to such commands as "translate, don't interpret" (Morris, 1995, p. 26, p. 32) as a language conduit (Morris, 1999, p. 6), constantly creating challenges and predicaments for interpreters (Tsuda et al., 2016, p. 84, p. 95). These difficulties naturally derive from the fundamental discrepancy between what constitutes interlingual translation and the judiciary's rigid word-for-word edict which comes from an "outmoded" perception of what translation is (Mikkelson, 2010, p. 1). Though some legal specialists expressed understanding that "accuracy is not synonymous with literalism" (e.g., Laster & Taylor, 1994, p. 115), most lawyers are generally skeptical of interpreters who "cannot match dialogue word-for-word" (Laster & Taylor, 1994, p. 114).

For centuries, translators and translation scholars presented their views on what translation is or should be. Whether it is "word for word vs. sense for sense" (Jerome, 395/2012, p. 23), "metaphrase vs. paraphrase" (Dryden, 1680/1992, p. 17), "alienation vs. naturalization" (Schleiermacher, 1813/1992, p. 42), "formal equivalence vs. dynamic equivalence" (Nida & Taber, 1969, p. 14), "foreignization vs. domestication" (Venuti, 1995/2002), they all contended time and again that surface-level linguistic equivalence is not compatible with "fidelity to ideas and sense" due to "non-isomorphism" of languages (Setton, 2015, p. 162). Thus, except for certain special circumstances such as translating words of God, even St. Jerome himself (Jerome, 395/2012) professed that he would translate "sense for sense," not "word for word" (p. 23).

Of course, the primary concept here was *equivalence*, not *accuracy*, and the concept of equivalence itself also remains a controversy in translation studies (Kenny, 2009, p. 96; Pym, 2014, p.37–38, pp. 86–87; Kawahara, 2017, p.1), one extreme end of which is a categorical skepticism on translation itself, i.e., whether an accurate interpretation of the source language text is ever even possible to begin with (Pym, 2014, pp. 86–87). However, as has been and as will be, the fundamental concept of equivalence is what enables translation to function in society, the need for which is also globalizing rapidly (Pym, 2014, p. 87, pp. 117, pp. 129–130), and what continues to enable the increasing use of translation in society is the basic trust in equivalence (Pym, 2014, p. 40, p. 87), which is generally understood as having "equal value" (Pym, 2014, p.6; Kawahara, 2017, p. 17), with "value" being synonymous with "meaning; the signified; significance" (Kawahara, 2017, p. 17). As for interpreters, Pöchhacker (2022) noted that the concept of equivalence as a source-and-target-text relationship is generally understood as "accuracy, completeness, and fidelity" (pp. 140–141). Thus, it would not be unreasonable to argue that if the target-language rendition came out with a different, non-equivalent meaning, i.e., having a different "meaning" from what was "signified" (Kawahara, 2017, p. 17) by the source-language speaker, then the target language rendition could not possibly be regarded as accurate, and that therefore, achieving *equivalence* is critical to *accuracy*.

Meanwhile, the advent of the Skopos theory (Reiss and Vermeer, 1984/2014; Vermeer, 2012) moved the classic dichotomic equivalence debate to a new stage (Pym, 2014, p. 44), where the purpose of the translation could determine the most desirable approach. For example, as Snell-Hornby (1988) maintained, if being faithful to the original verbatim wording becomes crucial as in the field of biblical hermeneutics or analyses of the great works of classic literature (p. 10), then word-for-word approach accompanied by annotations or footnotes might best serve the purpose. However, what makes interpreting work differ greatly from written translation is that interpreting is

fundamentally "ephemeral," rendered orally for "hear and now" for immediate use (Pöchhacker, 2022, pp. 10–11) while "under time pressure" (Kade, 1968, as cited in Pöchhacker, 2022, p. 10). Thus, as Seleskovitch (1968/1998) noted, the cornerstone of "total accuracy ['*fidélité absolue*' in the original French]" (p. 89) in interpreting work becomes faithfulness to the "sense" (Pöchhacker, 2022, pp. 61-62), which is a faithful rendition of what the source-language speaker meant or intended.

Therefore, if a word-for-word translation following the judicial community's dictum does not express what was really meant by the source language speaker, the interpreter's translation would result in *inaccuracy*. Accordingly, a crucial job for an interpreter becomes how to accurately interpret, i.e., understand or discern, what the speaker meant to say, and faithfully reformulate this intended meaning in the target language. In this process, an interpreter inevitably must make judgments to overcome the interlingual "non-isomorphism" (Setton, 2015, p. 162). While such interlingual navigations interpreters undertake to arrive at a corresponding meaning in the target language at various linguistic levels are commonly called "shifts" (Catford, 1965, pp. 73–82), as to what kind of shifts should be made is in the domain of translation strategies (Vinay & Darbelnet, 1958/1995). From among possible choices, each interpreter decides the best one in each given context and situation, ranging from a single vocabulary level, e.g., the English translation of a Japanese onomatopoeia "*barin*" when the glass broke (Mizuno & Naito, 2015, p. 91), to more subtle pragmatic-level issues (Berk-Seligson, 1990, 1999; Hale, 1997a, 1997b, 1997c, 2004, 2008, p. 118), where even additions or omissions often become necessary to achieve pragmatic accuracy (Hale, 1997b, p. 211), and onto speech-act related judgments.

For example, a Japanese businessperson upon arrival at a client's office may greet the client, with a starting phrase "*itsumo* (always) *taihen* (very much) *osewa ni natte orimasu* (you take care of us)." However, a seasoned interpreter would never translate this into English verbatim, i.e., "You always take good care of us," as it would not only

sound awkward but also may invite unintended misunderstanding or even suspicion. Judging that this remark was intended as a simple initial greeting, the interpreter might just translate it as "Good morning" or "Nice to see you again" (Tamura, 2010, p. 85). Similarly, when the meeting is over, the same businessperson may leave the client's office, saying "*oisogashī tokoro* (you were busy) *taihen ojama itashimashita* (I have bothered you very much)." The interpreter again would perceive this to be intended as a simple gratitude at departure and translate it as "Thank you very much for your time," never as an apology for intrusion (Tamura, 2010, p. 102), while not always consciously aware that such pragmatic judgments were in fact in concordance with the speech act theory (Austin, 1962; Searle, 1969).

Furthermore, interlingual, intercultural translation strategies would also have to incorporate social or cultural adjustments (Katan, 2009, p. 70), by means of "cultural filter" (House, 2018, p. 92), which is a translator's strategy to capture social and cultural differences between the source and the target "linguacultural communities" (House, 2018, p. 92). What this means is that in order to achieve *accurate* translation, interpreters would have to ensure that what was intended in the source language's social or cultural context would not be misunderstood in the target language's social or cultural context. For example, Yoshida (2007) presented an example of how a court interpreter in Japan made a quick translation decision when the Spanish-speaking defendant addressed the victim, a little girl he had sexually assaulted, at the witness stand. The defendant addressed the victim by her name, but the interpreter changed it to "the victim" in the Japanese translation so that her name would remain anonymous in a public court (pp, 31–33). In the defendant's source language culture, addressing the victim by the name would have been regarded as a proper manifestation of his sincere remorse, though in the target Japanese judicial context, addressing a minor victim by the name was against the norm and may even have been deemed offensive, which would never have been the defendant's intention (Yoshida, 2007, pp. 31–32). The translation was not verbatim but

achieved equivalence on the socio-cultural level, without creating unnecessary, unfortunate misunderstandings. If it had been verbatim, the defendant's statement, as had been intended by him, would *not* have been accurately communicated. Within the very narrow definition of conduit as a rigidly verbatim, word-for-word, translation, this interpreter did *not* act as a conduit (Yoshida, 2007). However, the interpreter made what she/he judged to be appropriate social and cultural shifts in a split of a second to achieve the best possible source-target equivalence to bring about the same, accurate meaning in the target language and culture.

In short, if the judicial community is using the term conduit as a metaphor for rigidly verbatim, word-for-word translation to achieve accuracy, then on this point the interpreting community would disagree and contend that an interpreter is *not* a conduit by this definition, as conduit in this definition would not lead to accurate translation. However, on the point that accuracy is of foremost importance in translation, both judicial and interpreting communities would concur, too. Thus, in confronting the conduit metaphor, it is imperative for the interpreting community to identify its precise definition as is used by the judicial community; i.e., whether conduit means "mechanical, verbatim translation" (*conduit 1*) which they (mis)believe will lead to accurate translation, or "accurate, faithful translation of the source language's meaning" (*conduit 2*) that would create no extra layer of hearsay, despite the judicial community's insufficient understanding of how accurate translation is achieved. In addition, the interpreting community itself must re-confirm how the term conduit has been understood and used by interpreting researchers themselves, because in fact this conduit notion in interpreting studies is used not just as a metaphor for simple intertextual word-for-word translation only but also to refer to an interpreter's participatory role in a dialogic interaction. Therefore, if the term conduit is used by the judicial community to also refer to an interpreter "who does no more than just translate only" (*conduit 3*), then could this

conduit metaphor for judicial interpreters also be repudiated by the interpreting community?

2.1.2 *Conduit* as Interpreter Role Issue

In an interpreter-mediated dialogic discourse, the interpreter always becomes the person "in the middle" as a mediator (Baraldi & Gavioli, 2015, p. 247; Knapp-Potthoff & Knapp, 1987, pp. 181–183). This interpreter is usually the only one who understands both languages (Mason, 2015b, p. 315), and because the interactional discourse may not always proceed with smooth turn-taking (Wadensjö, 2015, p. 116; Roy, 1989, 1992, 2000), intervention by the interpreter may become necessary (Avery, 2001). This reality inevitably presents difficult issues regarding an interpreter's role (Angelelli, 2004a, 2004b, 2015; Llewellyn-Jones & Lee, 2014; Mason, 2009/2014; Ozolins, 2015, 2016; Pöllabauer, 2004, 2015), particularly in judicial interpreting, where the codes tend to be "highly prescriptive and deontologically normative" (Hertog, 2015, p. 232).

Roy (1989), a doctoral dissertation at Georgetown University in the U.S., was the first substantial interpreting research that attempted to empirically challenge the conduit metaphor for an interpreter in an interactional, dialogic communication. Her research, however, was not about verbatim vs. non-verbatim translation issues nor about judicial interpreters. Its primary purpose was to demonstrate how a sign language interpreter in an educational setting played a role beyond being a mere language conduit (p. 1), actively engaging in discourse management, particularly in turn-taking management. As to why the conduit metaphor had become so persistent, however, Roy (1989) only noted the then prevalent image held by many people of monologic conference interpreters transferring a message simultaneously (pp. 2–3), while also referring to Reddy's (1979) "conduit metaphor" on numerous English expressions about words being a "container" of thoughts (Roy, 1989, pp. 42–50). Still, her dissertation moved the discussion on conduit from intertextual translation issues to interactional interpreter role issues, where,

however, interpreting researchers' views are not always unanimous, especially depending on whether the discussion is on judicial or non-judicial interpreting.

Wadensjö (1998), concurring with Roy's (1989) view on interpreting as a multi-participant interactional discourse, conducted a similar analysis on community interpreters in Sweden, referring to Goffman's (1981) theoretical framework which consisted of three speaker roles. The first one is *animator*, who is only a device for producing a speech (Goffman, 1981, p. 144), e.g., a newscaster reading a news script. The second is *principal*, who speaks on one's own, e.g., a newscaster, after reading aloud an unfamiliar foreign name, adding "if I pronounced that correctly" (p. 284), momentarily becoming oneself. The third is *autho*r, who expresses one's own ideas (p. 144), e.g., a newscaster adding one's own personal comment after reading the news script. Wadensjö (1989) regarded the first one, *animator*, closest to conduit and demonstrated that community interpreters in her research actively played the other two roles in interactional dialogic discourses, through which meaning would become co-constructed in collaboration with other interlocutors.

Angelelli (2004b) conducted a quantitative analysis using ANOVA[31] (p. 73) on a total of 293 interpreters' self-perceived role, in which Angelelli used the term *invisibility* synonymously with *conduit* (p. 1).[32] The survey classified the interpreters into three categories: conference, court, and medical, and asked them about their self-perception of *visibility* as interpreters on a scale ranging from 1 (least visible) to 6 (most visible). The results showed that conference interpreters perceived themselves the least visible, followed by court interpreters, and then medical interpreters (p. 70). There was a statistically significant difference between conference interpreters and medical

[31] ANOVA (analysis of variance) is a statistical method used to analyze whether significant differences exist, comparing more than two groups with one another.

[32] Angelelli (2015) also noted that while in translation studies the concept of *invisibility* as was introduced by Venuti (1995) primarily refers to fluency of the target language text, in interpreting studies it is used to refer to the same notion as *conduit*, as opposed to *agency* (Angelelli, 2015, p. 214).

interpreters, and between court interpreters and medical interpreters (p. 71). However, no significant difference was found between conference interpreters and court interpreters (p. 71). Thus, while medical interpreters perceived themselves with greater visibility, i.e., as non-conduit, conference and court interpreters generally considered themselves invisible or as conduit.

Angelelli (2004a) was another attempt to refute the conduit model, combining ethnography and discourse analysis on interpreters in medical settings to demonstrate their visibility and active participatory role. However, her research this time was focused solely on medical interpreters, and thus limiting the scope of her contention. Furthermore, even this contention for visibility or non-conduit-ness of medical interpreters is not necessarily endorsed by all researchers in the interpreting community. For examples, Ozolins (2015, 2016) presented rather critical views on Angelelli's endorsement of interpreters' active participatory role. Perhaps the main purpose of research such as Angelelli (2004a, 2004b) may have been to introduce the notion of *agency* to replace conduit for interpreters' role, by borrowing the sociological concept of *agency* (2004a, p. 29, 2004b, p. 27, p. 41) drawing on Bourdieu (e.g., Bourdieu, 1991; Bourdieu and Wacquant, 1992). Thus, the present thesis now moves onto the concept of agency as was used by interpreting researchers, also making comparisons with its use in the judicial community.

2.1.3 *Agency* in Interpreting Studies and in Legal Community

Agency is a term often used in interpreting studies as an antithetical concept of *conduit*. Since agency is another key term in the present thesis, which is also used by the judicial community to refer to police interpreters, it is imperative to review the definition of agency as is used by interpreting researchers. Barsky (1996) was one of the first scholars who used the term *agent* to refer to what he envisioned to be a more effective interpreter role in Convention refugee hearings in Canada, which he named an

"intercultural agent" (1996, p. 45). However, as to what kind of qualifications, responsibilities, as well as role boundaries this "intercultural agent" (Barsky, 1996, p.45) constituted seemed rather uncertain.

From around thereafter in 1990s, the use of the term *agent* to refer to interpreters (and translators) increased (Williams, 2013, p. 103), many borrowing the notion from sociology, e.g., Inghilleri (2003, 2005) drawing also on Bourdieu (Bourdieu, 1991; Bourdieu and Wacquant, 1992). Despite the increasing use of the term, however, the term *agent* as applied to interpreters has never been defined with utmost clarity. Even Pöchhacker (2015), the first comprehensive encyclopedia on interpreting studies, hailed as a "monumental achievement" by Turner (2017, p. 142), did not have an independent entry for *agent* or *agency*. The term *agent* appeared only as a headword, which referred the reader to the headword of *role* authored by Pöllabauer (2015, pp. 355–360), in which *agent* appeared without a definition within a broader discussion on interpreter roles.

It would seem, therefore, that the researchers began using the term agent or agency as was used primarily in the field of sociology or more broadly in social science, which, according to *Dictionary of the social sciences* (Calhoun, 2002), is defined as "the ability of actors to operate independently of the determining constraints of social structures." *The concise encyclopedia of sociology* (Ritzer & Ryan, 2011) explained agency as "the faculty for action" which is "unique to human" (Fuchs, in Ritzer & Ryan, 2011, p. 8), and which is "the seat of reflexivity, deliberation, and intentionality" (Fuchs, 2011, p. 9). It would seem, therefore, that in the field of sociology the concept of agency is generally understood to refer to the ability or capacity of a human being to act and make choices and decisions as an independent individual, which this thesis categorizes as its first semantic property as *agent 1* (independent decision-maker).

However, even in the field of sociology, the concept of agency itself is one major academic theme, often regarded as "elusive to pin down" and is "central to many sociological debates"(Campbell, 2009, p. 407). Campbell (2009) subdivided the notion

of agency as is used in the field of sociology into two further semantic properties, one of which was "an ability to act independently of constraining power of social structure" (p. 407), similar to how it was defined by Calhoun (2002) and Fuchs (2011, pp. 8–9) above. The other was "an ability to initiate and maintain action" (Campbell, 2009, p. 407), which was yet another semantic property but is closer to a more conventional use of the term agent and was the first definition presented by the *Oxford English Dictionary* (Oxford University Press, n.d.-b), often referred to as one of the most authoritative on the English language (Kasajima, 1986, p. 183; Oxford University Press, n.d.-c; *Taniguchi v. Kan Pacific*, 2012, p. 569), which is "a person who or thing which acts upon someone or something; one who or that which exerts power; the doer of an action" (Oxford University Press, n.d.-b). This could be regarded as the term's second semantic property as *agent 2* (empowerer).

In addition to the above sociological definitions of agent to refer to an interpreter's role, as the present thesis explains in Chapter Four, the legal community in the U.S. also uses the term *agent* to refer to a language interpreter who functions in exactly the same way as a legally appointed agent working for the appointer, i.e., *principal*, just like an employee working for the employer, bound by a fiduciary relationship (Munday, 2013, p. 11; Second Restatement of the Law of Agency, 1952; Third Restatement of the Law of Agency; 2006), with resulting legal consequences, such as the interpreter's (*agent*'s) words legally regarded as identical to the appointer's/employer's (*principal*'s) words (Benoit, 2015, p. 305; Binder, 2013, pp. 877–878; Ito, 2016, pp. 30-36; Tamura, 2018, p. 6, p. 13, 2019b, pp. 9–10).[33] This "legal agent or representative" would be yet another semantic property of agent as *agent 3* (legal agent or representative). Thus, with the sociological definitions combined with a conventional use, along with a legal definition, the term *agent* or *agency* would seem to have at least three different semantic properties:

[33] The legal concept of agency applied to language interpreters is explained in detail in Chapter Four, Sections 4.4.3, 4.4.4, 4.4.5, and 4.4.6.

agent 1 (independent decision-maker); *agent 2* (empowerer); and *agent 3* (legal agent or representative).

When Barsky (1996) advocated the need to change the status of interpreters in Canadian refugee conventions to be "legally recognized as active intermediaries between the claimant and the adjudicating body" (p. 46), the term initially seemed to denote *agent 3* (legal agent or representative), i.e., interpreters who could act on behalf of the claimants as their legal representatives, almost like attorneys. However, according to Hale (2008), Barsky (1996) was most probably pursuing a role of an interpreter more as *agent 2* (empowerer), an agent who can socially empower claimants who are at a linguistic and cultural disadvantage (Hale, 2008, p. 102).

When Angelelli (2004b) referred to interpreters as those who "channel information or act as gatekeepers by exercising agency" (p. 1), she, too, most probably meant *agent 2* (empowerer), who can exert power to bring about change or empower others, though she could also have meant *agent 3* (legal agent or representative), who acts on behalf of another. Furthermore, she might have also meant *agent 1* (independent decision-maker), who would make one's own decisions and act freely and independently. Similarly, when Angelelli (2004b) referred to interpreters as "vital agents between cultures and languages" (p. 1), did she mean an interpreter as *agent 3* (legal agent or representative), who can act on behalf of a client as a mediator between different cultures and languages, or *agent 2* (empowerer), who empowers a client facing cultural or linguistic disadvantages, or *agent 1* (independent decision-maker), who makes one's own decisions with autonomy and responsibility in the midst of various cultural and linguistic challenges? When Inghilleri (2005) referred to "interpreter agency" as "how interpreters position themselves and are positioned within interpreting context" (p. 76), this *agency* sounded more in the first meaning, *agent 1* (independent decision-maker), who strives to be a self-owned, independent thinker and decision-maker albeit caught in the middle of interpreter users' conflict of interest. However, Inghilleri (2005) also used *agency*

most probably in the second meaning, *agent 2* (empowerer), critically referring to Barsky (1996)'s notion of an "intercultural agent" (Barsky, 1996, p. 45) as an idealized image of an interpreter who would always know how much empowerment would be necessary to achieve or re-balance neutrality (Inghilleri, 2005, pp. 76–77). When she concluded that interpreters in U.K. asylum settings worked in the "zone of uncertainty" (Inghilleri, 2005, pp. 81–82), denoting a largely undefined role of interpreters, the concept of an interpreter's *agency* also seemed to have remained in a rather undefined state.

2.1.4 Role of Judicial Interpreter: Conduit and/or Agent?

While interpreting researchers' views on the interpreter role continue to remain in discord often on the "spectrum" (Mulayim et al., 2015, p. 2) between non-interventionist and active interventionist views, Hale (2008) classified judicial interpreter roles into five categories based on discourse data. They were: Role 1: advocate for the powerless; Role 2: advocate for the powerful; Role 3: gatekeeper with one's own agenda; Role 4: clarifier or advocate for both the powerless and powerful; and Role 5: faithful renderer, of which the only viable role for judicial interpreters, she contended, was the last one, Role 5, a faithful renderer (p. 114), a position also endorsed by Mulayim et al. (2015, p. 48).

Hale (2008) classified Barsky's (1996) "intercultural agent" as Role 1, an advocate for the powerless (p. 102). If so, then this interpreter in Role 1 would most probably be *agent 2* (empowerer). However, as was mentioned above, if what Barsky (1996) meant was interpreters as "legally recognized…active intermediaries" (p. 46), they could also be considered as *agent 3* (legal agent or representative). If so, then which one of Hale's (2008) five roles could a judicial interpreter as an *agent 3* (legal agent or representative) take up? Could this interpreter also take up Role 1 (advocate for the powerless) or Role 2 (advocate for the powerful)? For example, an officer interpreter who is employed by the police is clearly *agent 3* (legal agent or representative) for the police organization as

their employee. However, when an interpreter becomes *agent 3* (legal agent or representative) being hired by a client,[34] some clients may also expect this interpreter to act more like their advocate in Role 1 or Role 2, who always acts in their favor, i.e., more as *agent 2* (empowerer).

This could also work the other way round. Sometimes the party that hired an interpreter might suspect the interpreter might act in favor of the other party. A good example would be the complex three-tier interpreter monitoring system used for the Tokyo War Crimes Tribunal (Takeda, 2008, 2010). At the bottom of this three-tier system were Japanese local hires, acting as *agent 3* (legal agent) employed by the allied powers in charge of the tribunal. However, the allied powers feared that these local hires might take on Hale's (2008) Role 2 (advocate for the powerless) as *agent 2* (empowerer) for the Japanese defendants. Therefore, Japanese American (nisei) military staff were placed as monitors between the top-tier Caucasian U.S. military officers (language arbiters) and the bottom-tier local Japanese interpreters, though due to these nisei military staff's particular background, [35] they were also placed in an uncertain zone between "autonomous" and "heteronomous" (Cronin, 2002; Takeda, 2010, pp. 149–150), working between the top-tier Caucasian officers and the bottom-tier local Japanese interpreters.

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[34] As was mentioned in Section 2.1.3, this is based on the common law of agency (Second Restatement of the Law of Agency, 1952; Third Restatement of the Law of Agency, 2006; Binder, 2013, pp.877–878; Benoit, 2015, p. 305; Ito, 2016, pp. 30-36; Tamura, 2018, p. 6, p. 13, 2019b, pp. 9–10), which is explained in detail in Chapter Four, Sections 4.4.3, 4.4.4, 4.4.5, and 4.4.6.

[35] Following the attack on Pearl Harbor by Japan on December 7, 1941, President Franklin D. Roosevelt signed Executive Order #9066 on February 19, 1942, which led to a massive incarceration of Japanese immigrants (*issei* or first generation) and Americans of Japanese ancestry (*nisei* or second generation as well as *sansei* third generation) from their homes in the West Coast area to inland concentration camps. At first, many of the nisei were not even allowed to serve in the U.S. military for the reason that they were suspected to pose threat as enemy aliens (Blakemore, 2019; Daniels, 2004; Gruenewald, 2005; McNaughton, 2011). Furthermore, those who were capable of working as language monitors at this tribunal were primarily *kibei* Japanese-Americans, born in the U.S. of the first-generation Japanese parents but were educated back in Japan (Merriam-Webster, n.d.; Takeda, 2010, pp. 59–63), with their chief staff, Akira Itami, having spent from age 3 to 19 in his parents' hometown in Kogoshima, Japan (Takeda, 2010, pp. 59–61).

Thus, though an interpreter, when hired by a client, becomes *agent 3* (legal agent) from a legal standpoint, this does *not* necessarily guarantee that this interpreter would *not* also become *agent 2* (empowerer), taking on Hale's (2008) Role 1 (advocate for the powerless) or Role 2 (advocate for the powerful), with "nil" impartiality (p. 102). If this happens, however, they might actually end up hurting the client's interest, by compromising accuracy and impartiality. In addition, if the other party also has an interpreter, as in a legal deposition, who would constantly scrutinize the opponent's interpreter's translation accuracy (and vice versa) (Takeda, 1992), the only safe and viable role for interpreters working as *agent 3* (legal agent) would be Role 5 (faithful renderer) to prevent any accuracy disputes that may jeopardize one's client. Here, each interpreter would become *agent 3* (legal agent) for one's own party only, hired by each client (Party A or Party B).

Under these circumstances, however, if the other party does not have an interpreter, could an interpreter who is *agent 3* (legal agent) for Party A also become *agent 3* (legal agent) for Party B, especially if the situation is highly adversarial? In the same example of a police interview, an interpreter hired by or often working for the police force translates between an interrogating officer and a suspect (Berk-Seligson, 2009, pp. 28–30; González et al., 2012, p. 447). This is a markedly different situation from that of court interpreters, hired by the court (Party C) and working as *agent 3* (legal agent) for the court (Party C), creating no direct conflict of interest between Party A and Party B, unlike police interviews. This is what the present thesis explores in Chapter Four.

Going back to the concept of conduit, if the judicial community uses the term conduit to mean *conduit 1* (verbatim translator), then this *conduit 1* (verbatim translator) would not be able to perform any of these five roles in Hale (2008). However, if they use it to mean *conduit 2* (accurate translator), then only Role 5 (faithful renderer) in Hale (2008) would fulfill this definition. Of course, the interpreting community may disagree as to whether this interpreter would still be called a conduit, because producing accurate

translation, as was discussed in Section 2.1.1 above, requires interpreters' active engagement and decision-making, thus denoting *agent 1* (independent decision-maker). Similarly, if the term conduit means *conduit 3* (one who only translates), which the judicial community would also mean most definitely, while the interpreting community is not in unison (e.g., Angelelli, 2004a, 2004b; Ozolins, 2015, 2016), then Role 5 (faithful renderer) in Hale (2008) would also be the only one that meets this definition.

The problem, however, is that just as in the case of *conduit 2* (accurate translator), *conduit 3* (one who only translates) would also present a question in relation to *agent 1* (independent decision-maker), who is a free and independent individual making one's own decisions to "just translate only and do nothing else." In other words, if an interpreter as *agent 1* (independent decision-maker) makes a decision to become *conduit 3* (one who translates only), is this interpreter an agent or a conduit? Even when an interpreter is a faithful renderer in Hale's (2008) Role 5, acting as what the judicial community would regard as *conduit 2* (accurate translator) and *conduit 3* (one who only translates), this interpreter could also be acting as *agent 1* (independent decision-maker), making conscious decisions about one's own action.

More importantly, such conscious decisions an interpreter makes as *agent 1* (independent decision-maker) may also include an interpreter's initial decision to undertake an assignment, for which the interpreter may also be held *accountable* (Hess, 2012; Baker, 2013). Thus, the present thesis now reviews interpreting researchers' discussions on interpreter *accountability* to delineate how the first two role concepts, *conduit* and *agent*, become entwined with the third concept, interpreter *accountability*.

2.1.5 *Conduit*, *Agency*, and *Accountability*

Williams (2013) noted that this difficult or possibly gray area between conduit and agent, or more specifically between *conduit 3* (one who only translates) and *agent 1* (independent decision-maker), presented difficult issues in involving the notion of

interpreter *accountability* in Turkey when the government prosecuted the translators of anti-Turkish documents, a criminal offense in Turkey since 2005 (p. 102). The Association of Book Translators in Turkey argued that translators had acted as a mere conduit, and that therefore it was the authors who bore sole responsibility for the illegal nature of the content of the translated texts (Williams, 2013, p. 102). In other words, they insisted that the translators had played Role 5 in Hale's (2008) classification, staying as *conduit 3* (one who only translated), and thus were not *accountable* for the content. According to Williams (2013), however, while such an argument might exonerate a translator, it would also lead to a forfeiture of a translator's *agency*, which was increasingly viewed as an inherent property of a translator (pp. 102–103).[36]

Hess (2012) discussed a similar issue on an Arabic interpreter, Mohamed Yousry, whose conviction of violating anti-terrorism prison laws[37] was affirmed by the 2nd Circuit appellate court in 2009. Yousry had worked as an interpreter for Lynne Stewart, an attorney and the head of the defense team for Sheikh Omar Abdel-Rahman, an influential Muslim leader, who was serving a life sentence for terrorism-related offenses. Later, they were both arrested and convicted of passing messages from the Sheikh to his supporters (Preston, 2005). Although Yousry maintained that he had served only as an interpreter, he was perceived as having participated in the crime more actively than just as a mere language conduit, while the conviction may have been primarily due to the backdrop of what seemed a prevalent anti-Muslim climate (Hess, 2012, p. 30). Regarding this case, however, a discourse analysis conducted later by Osman and Angelelli (2011) revealed that during a prison visit, Yousry had indeed acted more as a

[36] A somewhat similar example was also presented by Pym (2012) on Günter Decker, a German who, after interpreting for an American giving an "Auschwitz lies" speech, an offense in Germany, was tried in court, though in this example, Decker, a leader of a neo-Nazi party, may very possibly exploited the opportunity (p. 37).

[37] Special Administrative Measures (SAMs) was implemented following the 9.11 terrorist incidents in 2001, which was intended to strictly monitor communication between terrorism convicts inside prison and the outside world.

principal participant who directly engaged in an Arabic-centered discourse with the Sheikh (p. 19). For example, of the first 20 turns, Yousry occupied 45% of the total turns and the Sheikh 40%, both engaging in a primarily monolingual conversation in Arabic, leaving only 15% to the lawyer Stewart, marginalizing her participation (Osman & Angelelli, 2011, p. 7). In short, Yousry may have played Role 1 (advocate for the powerless) in Hale's (2008) chart, if inadvertently, becoming *agent 2* (empowerer) for the Sheikh, the imprisoned Muslim leader. Also, by not having been careful enough about the possible implications of undertaking this assignment as *agent 1* (independent decision-maker), who makes a conscious free choice, he may have become *accountable* for the consequences, though, unlike Stewart, he had signed no documents to abide by the prison-rules (Preston, 2005).

Most recently, Takeda (2021) presented an analysis of interpreters who were convicted of war crimes in British military trials after having served in the Japanese military during World War II. In these trials, too, one of the main defense arguments was that these interpreters had acted only as *conduits*, e.g., as a "medium," a "machine," a "parrot," a "messenger," etc. (Takeda, 2021, pp. 65–66), when assuming their linguistic intermediary roles during the commission of war crimes such as torture. Takeda (2021) observed, however, that these interpreters may very possibly have "exercised their agency" to assist their superiors' work (p. 112). These defendants, thus, may have assumed Role 2 in Hale's (2008) classification, being an advocate for the powerful. Thus, while serving as *agent 3* (a legal agent as an employee or deputy), they may very possibly have become *agent 2* (empowerer for the Japanese military) as well. If this was the case, they could not have fulfilled the condition for *conduit 3* (one who only translated). As to whether they were also *agent 1* (independent decision-maker) who freely and knowingly chose to partake in criminal activities of torture, was also another key defense issue (Takeda, 2021, pp. 68–69), though their attempted "superior orders defence" was

unsuccessful,[38] and the defendants were held *accountable* and convicted (p. 70).

Accountability, understood conventionally, is defined by the *Oxford English Dictionary* (Oxford University Press, n.d.-a) as "liability to account for and answer for one's conduct, performance of duties, etc.; responsibility," especially in one's professional capacity, such as politicians' accountability to the public or corporations' accountability to shareholders. In interpreting studies, too, Baker and Maier (2011) emphasized the growing need for interpreters to become more clearly aware of their professional accountability and what kind of consequences they may be held responsible for, and to always make careful "textual and nontextual" decisions (p. 3). Thus, interpreters' *accountability* here could be understood as interpreters' professional responsibility to the users of their services.

Then, what would judicial interpreters' *accountability* constitute? In the above examples of Williams (2013), Hess (2012), and Takeda (2021), all touched upon interpreters' (or translators in Williams, 2013) *accountability*, which was intrinsically entwined with the concept of *conduit* and *agency*. What kind of *accountability*, however, was the issue exactly? From the literature reviewed above, it is possible to infer three types of *accountability*. First, the above literature demonstrated that interpreters often have been (and often wrongly) accused of the content of what they had translated, and thus *accountability 1* can be "accountable for content." The only role that could exonerate interpreters from *accountability 1* (for the content) would be Role 5 in Hale (2008), which is a faithful renderer, who is also both *conduit 2* (accurate translator) and *conduit 3* (one who only translated). However, even if they have endeavored for accurate translation as *conduit 2* (accurate translator), carefully tried not to do anything other than just translate as *conduit 3* (one who only translates), and carefully avoided becoming *agent 2* (empowerer) for any party, they would still be held accountable for the accuracy

[38] Takeda (2021) noted that "superior orders" were only regarded as a sentence-mitigating factor (p. 96).

of the translation, which is *accountability 2* (accountable for accuracy). In addition, if all interpreters are fundamentally *agent 1* (free and independent one's own decision-maker), judicial interpreters may also have *accountability 3* (for agreeing to undertake the job in the first place), even if they were in Hale's (2008) Role 5, doing no more than just translate as *conduit 3* (one who only translates), being faithful, accurate renderers as *conduit 2* (accurate translator), and carefully avoided becoming *agent 2* (empowerer) for any party.

Among these three types of *accountability*: *accountability 1* (for the content), *accountability 2* (for accuracy), *accountability 3* (for agreeing to undertake the job in the first place), the only one that seems unarguably clear for judicial interpreters would be *accountability 2* (for accuracy), which is also the most crucial as it is their translations that would directly become evidence. Thus, judicial interpreters' primary *accountability* could be understood as their professional responsibility to achieve accuracy to the best of their ability and to explain or justify their translation decisions if and when necessary. Such dire responsibility, however, must also be accompanied by due legal protection, which would logically necessitate a system to assist these interpreters to review and verify their own translations in order to fulfill their professional accountability. This is what the present thesis discusses in Chapter Seven.

2.1.6 Role in Practice

With all the above attempted clarifications of semantic subcategories of *conduit*, *agent*, and *accountability*, what Mikkelson (2008) referred to as a "slippery slope" (p. 85) must be noted, which is that judicial interpreters are constantly forced to navigate "between Scylla and Charybdis"[39] (p. 73). This means that what this thesis attempted to clarify based on Hale's (2008) five judicial interpreter roles is only a mere classification

[39] "Being between Scylla and Charybdis" is an idiom that derives from the ancient Greek mythology, in which Scylla and Charybdis were equally dangerous sea monsters. The idiom is used to refer to a situation in which one has to choose a less evil one out of the two equally evil choices.

in theory. In practice, interpreters who consciously and carefully try to remain in Role 5 as faithful renderers (Hale, 2008) may often have to move from this role momentarily to resolve a problem that allows no other viable solution, e.g., misunderstandings or miscommunications that require an interpreter's explanations or suggestions. Still, this is always a "slippery slope" which even highly experienced court interpreters would hesitate to discuss with novices in order not to mislead them into making ethical misjudgments (Mikkelson, 2008, p. 85).

The Japanese court interpreter in Yoshida (2007) reviewed in Section 2.1.1 was an example of an interpreter making prompt social and cultural shifts to achieve what she/he judged to be the best possible source-target equivalence to bring about the same, *accurate* meaning in the target language and culture. By not translating the victim's name verbatim, the interpreter knew that the translation would go through the interpreter's own "cultural filter" (House, 2018, p. 92) to avoid unfortunate misunderstandings of what the interpreter, if subjectively, deemed as the defendant's original sincere intention. In this split-of-a-second decision-making time, it is possible to say that the interpreter moved from Hale's (2008) Role 5 (faithful renderer) to Role 1 (advocate for the powerless), and from *conduit 2* (accurate translator) and *conduit 3* (one who only translates) to *agent 2* (empowerer).

It is also possible to say, however, that this interpreter might have actually played Hale's (2008) Role 2 (advocate for the powerful) as *agent 2*, empowering the court and the prosecution by saving them from unnecessary confusion that might have obstructed justice, though the prosecution may have objected to such subjective discretion on the part of the interpreter. Furthermore, it is also possible to perceive that this interpreter in fact remained in Role 5 and *conduit 2* (accurate translator) by accurately rendering in the target language the social and cultural equivalence of what was intended in the source language. In addition, the interpreter may also very possibly have acted as *agent 1* (independent decision maker) during this one-or-two-second decision-making time,

while the interpreter consciously navigated through this "slippery slope" only with her/his experience-based judgment as a "handrail" (Mikkelson 2008, p. 85).

Finally, whichever role she/he may or may not have played or momentarily moved into, this interpreter would always be subject to *accountability 2* (accountable for translation accuracy), which is judicial interpreters' professional a*ccountability*, and if and when necessary, she/he would have to be held responsible for explaining or justifying her/his translation decisions, which, at the same time, can only be enabled and realized by the implementation of a system that could fully assist and protect them, as the present thesis contends in Chapter Seven.

2.1.7 *Accuracy* in Practice: Judicial Interpreting Research

If judicial interpreters' primary (or at least minimum) accountability is their professional responsibility to ensure accuracy to the best of their maximum capacity, it would seem only natural that judicial interpreting researchers' major focus has been to empirically examine and identify how accuracy could be compromised and/or more effectively ensured. Section 2.1.1 presented how the notion of translation accuracy seems to be (mis)understood by the judicial community, as well as how the interpreting community regards this notion, through a review of the traditional equivalence dichotomy, the Skopos of interpreting work, and "shifts" (Catford, 1965) as well as various translation strategies (e.g., Vinay & Darbelnet, 1958/1995).

The notion of accuracy discussed above, however, is also just a theoretical concept, i.e., accuracy in an ideal state. In practice, accuracy is constantly compromised due to various factors. Some seem more innate in the interpreters' (lack of) knowledge and skills, e.g., insufficient language and/or interpreting skills, insufficient knowledge about equivalence in interlingual translation, and insufficient knowledge about subtle pragmatic discourse markers, to mention a few. Performance-level accuracy issues may also derive from the interpreters' potential innate bias. Accuracy, however, could also be

hampered by other factors such as inadequate equipment as well as mismatch of the interpreting mode and the room/equipment arrangement, to mention a few. Furthermore, accuracy could also be jeopardized institutionally, e.g., by the knowing use of untrained ad hoc interpreters, insufficient accuracy check procedure, or through systematic institutional deprivation of due process to verify accuracy. At same time, accuracy could also be enhanced by training or collaboration among involved parties. The next two sections of this chapter, therefore, review how judicial interpreting researchers examined this *accuracy* issue in practice, which initially started with court interpreting research, which began to extend to police interpreting, if only slowly.

2.2 Court Interpreting Research as Forensic Linguistics

Berk-Seligson (1990) and Hale (2004) could be regarded as two seminal studies in the field of judicial interpreting. Both used discourse analytical methodology (Mason, 2015a, P. 111), in the same way as Roy (1989) and Wadensjö (1998), but their fundamental purpose differed from that of the latter two. As was reviewed in Section 2.1.4, the primary purpose of studies such as Roy (1989), Wadensjö (1998), and Angelelli (2004a, 2004b) was to refute the *conduit* model empirically by demonstrating a highly participatory role played by interpreters, who acted more as *agents*, i.e., as *agent 1* (free and independent decision-maker) and/or *agent 2* (empowerer). In contrast, both Berk-Seligson (1990) and Hale (2004), as representative studies on judicial interpreting, explored interpreting-related linguistic issues that seemed to influence procedural justice, thus taking a stance similar to that of forensic linguists such as Shuy (1997, 1998), Gibbons (1995, 1996), and Cooke (1996), to name but a few, whose ultimate goal is to, by describing and demonstrating powerful institutional practice, seek ways to "transform it" (Coulthard et al., 2017, p. 13).

Berk-Seligson (1990), using Hymes' (1971, 1974) ethnographic approach and drawing on O'Barr's (1982) theory of powerful vs. powerless speech styles (pp. 127–

135), analyzed 114 hours of tape-recorded court proceedings and conducted a mock-juror experiment with 551 participants (pp. 146–97). Her observations revealed high intrusiveness of interpreters (Berk-Seligson, 1990, p. 96) and numerous pragmatic feature alterations such as blame avoidance by changing verb voices (pp. 97–118), lengthening of target renditions (pp. 119–145), and changes from a powerful speech style to a powerless one, influencing mock jurors' evaluations of the witnesses (pp. 146–197). The purpose of her research was to alert the judicial community, court interpreters, and interpreter trainers about interpreters' linguistic behaviors and pragmatic feature alterations which she observed as being overlooked (p. 53).

Hale (2004) also conducted a discourse analysis of audio-recorded data from 13 English-Spanish local court hearings in New South Wales, Australia, making source-target comparisons to identify alteration patterns and to explore their possible reasons (p. 37). The results corroborated those found by Berk-Seligson (1990), such as interpreters' systematic omissions of discourse markers resulting in changes in the illocutionary force of the attorney's utterances, as well as interpreters' disregard for powerful vs. powerless speeches. In addition, referring to Foucault (1977) and Bourdieu (1991), Hale (2004) explored exercise of power (p. 159, p. 163), analyzing what kind of verbal behavior of interpreters and witnesses resulted in the counsel's loss of power and control, as well as how the counsel reacted to such loss of power (pp. 159–210).

Similar studies ensued thereupon, exploring how accuracy could be compromised. Some looked into similar pragmatic feature alterations. For example, Leung and Gibbons (2009) examined how Cantonese utterance-final particles were rendered in English in Hong Kong courts. Gallez and Reynders (2015) looked into the omission of rhetorical devices in the target renditions in Danish courts, and Marianne Mason (2015)[40] examined how an interpreter's treatment of active-passive voice and addition of clitics in Spanish changed the adjudication of blame in the target rendition.

[40] Marianne Mason is also a co-editor of *The discourse of police interviews* (2020), which also

Some focused more on ethical and protocol issues not only of interpreters but also of courts. For example, Cheung (2012) pointed out Hong Kong court interpreters' frequent use of reported speech only when translating into Cantonese and questioned these interpreters' neutrality and impartiality as well as the stance of bilingual legal professionals of the court who acquiesced such one-sided practice (p. 88–89). Merlini (2009) explored problematic unstable role shifts of an interpreter in asylum hearings in Italy (p. 86), and Jacobsen (2012) described interpreters in Danish courts switching to the whispering mode without note-taking, though the officially recommended mode was consecutive for the purpose of evidence production, a behavior also acquiesced by the courts even at the risk of information being lost (p. 236).

In addition to the above, some also conducted experiment-based research, such as Liu and Hale (2018) and Stern and Liu (2019), both of which were on legal interpreter training in Australia. Hale et al. (2017) was an experiment to explore how different interpreting modes affected jurors' witness credibility assessments. Experiment-based research was also conducted by Hale et al. (2019) for their major police interpreting research which took place in Australia upon request from the Federal Bureau of Investigation (FBI) of the U.S. government, which is discussed in Section 2.3.7.

2.3 Police Interpreting Research[41]

2.3.1 Discourse Analytical Research

The discourse analytical approach (Mason, 2015a, p. 111) used for studies on court interpreting mentioned above was largely enabled by the researchers' access to audio-

included Hale et al. (2020).

[41] Major empirical studies on police interpreting are still rather scarce, especially in the U.S., with Berk-Seligson (2009) being the only substantial one. Thus, the studies reviewed in this section came primarily from Australia and the U.K. This may possibly have some relevance to the fact that, as was noted in Chapter One, Section 1.4.2, as well as in a footnote at the end of Section 8.3.2 in Chapter Eight, both the U.K. and Australia have adopted a non-coercive, information-gathering interview style, accompanied by mandatory audio/video recording, and prohibits the use of officer interpreters, which may possibly have also created a more cooperative environment for data access.

recorded data, which is not very easy with police interpreting due to its unpublic nature. Still, some researchers gained access to such data. For example, Krouglov (1999) examined alterations of colloquialisms and omissions of hedges by a Russian interpreter in the U.K., and Gallai (2017) on interpreters' alterations of discourse markers, using data obtained from the Greater Manchester Police (p. 183).

Nakane (2014) also analyzed police interviews in Australia mediated by four Japanese interpreters (one professional, two paraprofessionals, and one at an unknown level) (p. 28). The purpose of her research, however, was sociolinguistic, focusing more on delineating interactional features of interpreters' linguistic behavior, similar to Roy (1989) and Wadensjö (1998). Drawing on Goffman's (1981) framework of *animator*, *principal*, and *author* (p. 144), Grice's (1975) theory of the Cooperative Principle (p. 45), and the conversation analysis theory by Sacks, Schegloff, and Jefferson (1974, pp. 700–701), Nakane (2014) analyzed turn-taking, repairs, overlaps, and even silence (p. 164). However, as Nakane (2014) herself noted, the purpose of this research was not to make source-target textual comparisons to examine how these interviews affected the evidential value of the obtained statements but to "investigate discourse processes in three-party interaction in real police interviews" (p. 28, p. 219). Also, unlike Hale et al. (2019) on trained and untrained police interpreters, the research did not make a comparative analysis of the interpreter performance based on their qualifications. This may denote a fundamental difference between studies exploring interpreting accuracy issues with a purpose similar to that of forensic linguistics (Coulthard et al., 2017; Coulthard et al., 2021), such as Berk-Seligson (1990) and Hale (2004), and other discourse analytical research that focused more on describing interpreters' participatory features, such as Roy (1989), Wadensjö (1998), and possibly Nakane (2014).[42]

[42] As was mentioned in Section 2.2, the present thesis regards studies such as Berk-Seligson (1991) and Hale (2004) as discourse analytical research with a purpose similar to that of forensic linguists, which aims to present an empirical explication as to how and why the discrepancy between the SL and TL renditions influenced the judicial process. In contrast, the conversation-analysis-type approach employed by Roy (1989), Wadensjö (1998), and possibly Nakane (2014) seemed to aim

Many of the phenomena described by Nakane (2014) such as problematic turn-taking, overlaps, side conversations as well as improperly conducted clarifications and confirmations all incur risks of potential verballing,[43] which is what exactly became the main issue in *Commonwealth v. Lujan* (Massachusetts, 2018) as is discussed in Chapter Seven. At the same time, however, clarifications and confirmations are an inevitable part of any interpreter's job in a dialogic police interview discourse, which is far less "ritualized" than court interpreting (Morris, 2015, p. 91), without a presiding judge in the middle as a referee. It would be a future task of judicial interpreting researchers, therefore, to examine and identify discourse features that may or may not lead to such verballing, an area that might benefit from an approach taken in forensic linguistics, e.g., Shuy (1997, 1998), Gibbons (1995, 1996), Cooke (1996), and Gaines (2018), among others, which the thesis revisits in Chapter Eight.

2.3.2 Production of Written Police Statements

Production of written statements at the conclusion of an interview is an important process of a police interview, especially in jurisdictions where a written document signed by the witness herself/himself is admitted as prosecutorial evidence.[44] In the U.S., too, production of a written document is regarded not only advisable (Inbau et al., 2013, p. 311) but also becomes vital when the officer prepares for her/his trial testimony many months after the interview (Inbau et al., 2013, p. 380). However, when composition of such documents that will be found admissible by the courts is already rather complex

more at delineating interpreter-mediated "triadic" interactions as a "socially grounded" (Mason, 2015a, p. 112) human behavior.

[43] As is explained in detail in Chapter Seven, Section 7.1.2, *verballing*, which typically occurs when the police manufacture or modify the suspect's statements into something that was not actually stated (Gibbons, 1990, p. 230), could also occur when an interpreter suggests certain words or expressions to the suspect while confirming or clarifying their meaning (*Commonwealth v. Lujan*, Massachusetts, 2018), not to speak of when an interpreter mistranslates the suspect's statements.

[44] In courts in Japan, for example, such documents regularly substitute the testimonies of the interviewing officers themselves (Gotō & Shiratori, 2013, pp. 878–879).

(Inbau et al., 2013, pp. 310–321), the production of a written version of an interpreter-mediated interview becomes further prone to various accuracy-related issues, including verification, as demonstrated in Chapter Five, Section 5.6.2, Table 5.22. The following two studies which delineate this issue were conducted in jurisdictions other than the U.S., where audio/video-recorded data were made available.

Using interview recordings and their transcripts in South Africa, Ralarala (2014) revealed manipulation and deficient translation occurring during the process of producing written translations of the interview recordings (p. 392). Harding and Ralarala (2017) also showed how orally narrated elements became omitted in the process of making a written translation of an oral interview (p. 158). Both addressed the current problematic procedures used by the South African police authorities.

In Belgium, Defrancq and Verliefde (2018) also investigated the drafting procedure of a written transcript by a police officer, accompanied by an interpreter's sight-translation. Belgium has a non-common-law system, where written records of a suspect's oral statements become crucial (p. 214). Their case study revealed that an interpreter with unclear qualifications kept controlling turn-taking, which disadvantaged the interviewee (p. 220).

Additionally, in Japan, too, a non-Japanese-speaking suspect's statement obtained through an interpreter is later put into a written document in Japanese by the interviewing officer. The Japanese is then back-translated orally into the suspect's language by the same interpreter for accuracy check (Mizuno & Naito, 2015, pp. 101–102). However, as Mizuno and Naito (2015) noted, this procedure does not always ensure accuracy. The interpreter may just repeat the same source-target combinations in reverse, so any translation issues that may still exist might not be detected even by the interpreter herself/himself (Mizuno & Naito, 2015, p. 102). Regarding this point, Marszalenko (2014) noted that this process might inherently lead to potential "verballing" (p. 179), a problem also noted in Section 2.3.1., and is not negligible, as in Japan once a written

translation is signed by the suspect, it becomes irreversible trial evidence even if it is more like a "police-manufactured product" (Marszalenko, 2014, p. 180).

2.3.3 Interpreting Mode in Free Recall or with Minors

Law enforcement in the U.S. uses various interview question techniques, one of which is an "open question" to elicit a full account of the incident (Inbau et al., 2013, p. 86), during which interruptions should be avoided not to disturb the flow and continuity of the account (Inbau et al., 2013, p. 90). Though the U.S. and the U.K. use different interview approaches, as was described in Chapter One, Section 1.4.1., the new interview method called "free recall" brought by the Police and Criminal Evidence Act (PACE) implemented in the U.K. in 1984 also encourages a suspect or witness to present one's own uninterrupted narrative account to retrieve memory (Böser, 2013, pp. 114–115; Shepherd & Griffiths, 2013, p. 27).

While open questions and free recalls are both useful methods for the police, it poses a challenge to interpreters because an interview room setting is usually arranged assuming the consecutive mode, despite that the suspect is encouraged to keep talking without interruption. Böser (2013) conducted an experimental study and found numerous interpreting issues, e.g., omissions of the source-language information and interruptions of the witness by interpreters (pp. 126–130), concluding that more negotiation on interview logistics was needed (pp. 131–132).

A similar issue arises when the police interview a minor, which Lee (2016) investigated, using data of an interpreter-mediated interview of a Russian-speaking minor by a Korean police officer (p. 197). Minor witnesses often have a tendency to keep talking, not always in a coherent manner, which presents similar problems to an interpreter. Though Lee (2016) identified many interpreting issues, since the police had used an untrained interpreter, it became difficult to discern the exact causes of these issues (p. 203).

One possible solution would be a switch to the simultaneous mode, which usually is possible only with trained interpreters (González et al., 2012, pp. 867–870; Setton and Dawrant, 2016, p. 253–314). Mental health care interpreting shares the same issue (Hale, 2015, p. 67), and Cambridge et al. (2012) also suggested a switch to the simultaneous or whispering mode as an alternative (p. 123). Hale et al. (2022) compared the consecutive and simultaneous modes in simulated police interviews with non-interruption needs, showing better results with the simultaneous mode, regardless of the language (Arabic, Mandarin, and Spanish) (p. 14, p. 16), and recommended the simultaneous mode accompanied by independent, separate recordings for each participant (p. 19).

2.3.4 Telephone/Remote Interpreting

Telephone or remote interpreting is a mode increasingly used by the law enforcement in the U.S. (Shaffer & Evans, 2018, p. 159), relevant to one of the issues the present thesis explores in Chapter Five. This increase was further accelerated by the COVID-19 outbreak in early 2020 (Pöchhacker, 2022, p. 195). Though still with many unresolved issues such as logistics, technology, and qualifications (O'Laughlin, 2016a, pp. 12–13), Mikkelson (2017) indicated that remote interpreting by professionals is still better than relying on "bystanders" or "fellow police officers," particularly in urgent situations (p. 117, underlined by the present author to be re-quoted in Section 2.3.5).

One of the earliest studies on police interpreting was Wadensjö (1999), which compared data of on-site interpreting and telephone interpreting, concluding that the former was more desirable than the latter (p. 247). More than a decade later, Braun (2013) undertook the same issue in the U.K. in an experiment-based study, revealing such issues as distortions (p. 214) and problematic turn-taking (p. 221). Martínez-Gómez (2014) was a survey-based inquiry on prison interpreters, which found an increasing use of remote interpreting in prison settings in England, Wales, the Netherlands, Switzerland, Australia, California, and Oregon, among others, primarily for practical reasons such as

costs and interpreter availability (p. 245). A more recent study by Xu et al. (2020) on telephone interpreting in lawyer-client interviews revealed technical, logistic, and working environment-related issues, along with others such as lack of contextual and visual cues, pronoun use confusions, and ethics-related issues (pp. 27–33).

Despite these technological and logistic issues yet to be resolved, the innovations made during the COVID times as well as the issue of interpreter availability would likely accelerate the use of remote interpreting by law enforcement in the U.S. as well as in other jurisdictions. In Japan, too, even before the outbreak of COVID-19, the Ministry of Justice had decided to set up approximately 240 remote interpreting facilities to connect prosecutors' interrogation rooms and interpreters working remotely to cope with the problem of interpreter availability (Torishirabeshitsu ni, 2020). More inquiries into relevant facts are necessary, which is a part of what this thesis presents in Chapter Five.

2.3.5 Officer Interpreters

The statement by Mikkelson (2017) quoted in Section 2.3.4, on the unrecommended use of "bystanders" or "fellow police officers" (p. 117) conversely indicates a common practice by the police in the U.S. of the use of officers as ad hoc interpreters. Mikkelson (2017) noted that various miscommunication issues commonly arise due to their lack of competence and qualifications, which later create serious legal consequences (p. 117). The use of police officers also raises an issue of impartiality, which is exactly what Berk-Seligson (2000, 2009) tried to call an alert on.

While some countries such as the U.K. and Australia prohibit the use of police officers as interpreters (Mulayim et al., 2015, p. xxix), it is a widespread practice in many of the other jurisdictions in the world, including the U.S.[45] and Japan (Ōki et al.,

[45] Though statistical research on the use of officer interpreters in the U.S. is limited, Shaffer & Evans (2018) noted that in their survey of 299 law enforcement officers from approximately 20 states, 53.4% of the officers responded that they most often use colleagues as interpreters, while only 24.3% responded that they use professionals (p. 156).

2014, p. 155; Tabuchi, 1995, pp. 275–276; Tamura, 2019a, p. 24). Despite the concern expressed by some legal scholars in Japan, such as Tanaka (2006), about the potential impartiality issue, the courts in Japan have generally endorsed the practice. The Osaka High Court on July 30, 1991, even ruled that the use of officer interpreters might actually make the interrogation more efficient and effective as long as measures were taken for later accuracy verification, e.g., audio/video-recording (Tanaka, 2006, p. 21). As was noted in Chapter One, Section 1.4.3, however, audio/video-recording of police interviews was not mandatory in Japan then and is still limited in its practice even now.

Berk-Seligson (2000, 2009) used LexisNexis case law search engine[46] to retrieve a total of 112 appellate cases from 1965 to 1999: 47 cases in California, 17 cases in Florida, and 48 cases in New York, from which she selected 49 cases (2000, pp. 219–220). Using transcripts that had been submitted as evidentiary documents in trial, Berk-Seligson conducted a discourse analytical study to delineate evidence of coercion on limited-English-speaking suspects by bilingual police officers serving as interpreters. Berk-Seligson (2000, 2009) also noted the "hearsay" issue in *People v. Torres* (1989), a landmark case in California in which the court used the *agent and/or conduit theory*[47] (*People v. Torres*, California, 1989, pp. 1258–1259) to overcome the hearsay issue of interpreter-mediated police interview (Berk-Seligson, 2000, pp. 223–225; 2009, pp. 29–30). Her criticism of the court's finding of the agency relationship between the officer interpreter and the suspect as a "stretch [of] credulity" (Berk-Seligson, 2009, p. 30) was apt, though she did not explore this issue further, which is what the present thesis undertook. The harm caused by the lack of linguistic incompetence and impartiality inherent in officer interpreters is what Berk-Seligson (2000, 2009) tried to call an alert

[46] As was noted in Chapter One, Section 1.7, LexisNexis is a legal research database, provided by a company with the same name, LexisNexis, based in New York City.

[47] The *agent and/or conduit theory* is one of the legal theories used in U.S. courts for police interpreters, which is explained and discussed in Chapter Four.

on, and so far, Berk-Seligson (2000, 2009) is the only substantial research conducted in the U.S. on the harm of the use of officer interpreters.

Notwithstanding the research's significance, however, the present thesis notes a few points of critique. First, perhaps due to the approach and the methodology taken, the research came out more like a collection of a few isolated case studies, presented only as a "tip of the iceberg" (Berk-Seligson, 2009, p. 214), making it difficult to grasp the actual scale of the problem on a more macroscopic level. Also, perhaps due to considerations for privacy, some of the factual court ruling details were kept partially anonymous, making it difficult for the readers to verify relevant details from public trial records.[48]

More importantly, the research seems to have shown limitations of the micro-level discourse analytical approach when the ultimate purpose was to communicate the gravity of the problem as a social issue. Perhaps a more macroscopic approach, using a "macro-level" sociological lens (Roy et al., 2018, p. 110) might be more suitable if the purpose is to explore and delineate the fundamental institutional power disparity (Mason, 2015b) that may lie underneath this problem. In so doing, going further back chronologically than 1965 would seem necessary, because if the use of certain legal theories, such as the "agen[t] theory" (Berk-Seligson, 2000, pp. 223–225; 2009, pp. 29–30), is one of the causes, then it would be necessary to trace back their origins and case law precedents[49] to empirically repudiate their validities (e.g., Ito, 2016, pp. 7–11).[50] Also, if the lack of interpreter qualifications is another issue, then it would be necessary to identify the flaws in the courts' qualification assessment criteria. Furthermore, if the

[48] Berk-Seligson (2009) noted that "[t]he names of persons and places have been fictionalized to preserve the anonymity of all those involved… Dates have been changed as well, for the same purpose" (p. 223).

[49] In common-law jurisdictions, cases, as a general rule, are decided based on precedents, which are previously established rulings (Epstein & walker, 2013, p. 29).

[50] Ito (2016) is the present author.

absence of police interpreter qualification system is an issue, then it would be necessary to identify what factors stand as an obstacle, and suggest possible, viable solutions. These are what the present thesis undertook.

Other than Berk-Seligson (2000, 2009), there are only a few isolated discourse analyses of police interviews mediated by officer interpreters. Filipović and Vergara (2018) is one example, which conducted a small-scale discourse analysis of an interview of a Spanish-speaking suspect mediated by a bilingual police officer. The study showed how the officer interpreter was acting more like a second investigator, ignoring transparency by not translating side exchanges to either party, even to the other interviewing officer, who consequently suffered from information lapses. The result corroborated the harm of using officer interpreters caused by their possible bias and obvious incompetence, further exasperated by their dual role (pp. 76–77).

Regarding this issue of officer interpreters, O'Laughlin (2016b), Director of Boston University Interpreter Program and a long-time Massachusetts court interpreter, noted that "[t]he fundamental problem with using police officers as interpreters is not that they are biased, which they might be, but that they are not sufficiently competent" (O'Laughlin, 2016b, para. 6, underlined by the present author). His experience-based view is that the major issue is the compromise of accuracy caused primarily by their lack of competence and some by bias, which, however, is condoned by most U.S. courts.

2.3.6 Miranda Administration Failure

In the U.S., one major concrete harm caused by the use of untrained, ad hoc police interpreters, including officer interpreters is the failure to properly administer Miranda warnings. Miranda is a list of rights constitutionally guaranteed to the suspects held in custody which the police are strictly required to notify them before the interrogation commences.[51] The linguistic discourse of Miranda, however, is complex and not readily

[51] The Miranda warnings originate from the U.S. Supreme Court's ruling in *Miranda v.*

understandable even to native speakers of English, an issue often pointed out by forensic linguists such as Shuy (1997, 1998) and Ainsworth (2008). Thus, when the rights are conveyed through an interpreter, problems become compounded, especially if the interpreter is not sufficiently qualified or unfamiliar with the legal implications of Miranda. A few consequences of interpreter-mediated Miranda administration failure are presented in Chapter Five, Section 5.3.1, in all of which the courts gave strict rulings.

Other jurisdictions have similar warnings, often called police cautions. Though their legal implications may differ from the strict Miranda rule in the U.S., they all share the same linguistic complexity issues, on which the following studies were found. Russell (2000) analyzed tape-recorded data of 20 French interpreter-mediated police interviews in the U.K. and found that the interpreters had obvious difficulties and often resorted to verbatim translation when they did not understand the meaning (p. 45). While Russell (2000) recommended a standard translation accompanied by an explanation, Shuy (1997, 1998) and Ainsworth (2008) contended the fundamental problem is the incomprehensibility of the cautions, or Miranda in the U.S., further complicated by the suspect's unfamiliarity with the common-law system (Laster & Taylor, 1994, p. 58).

Nakane (2007) made a similar analysis of Japanese-interpreter-mediated police cautions in Australia with interpreters at three different proficiency levels. At all levels the interpreters had translation difficulties, even possibly creating evidentiary admission issues. Nakane (2007, pp. 107–108) particularly noted the following issues: a) officers delivering cautions in long complex sentences; b) officers pausing at arbitrary turn boundaries; c) neither the officer nor the interpreter paying attention to check the suspect's comprehension; d) officers unaware of the difficulty in translating a written

Arizona (1966), and the Miranda rule stipulates that evidence the police obtained during the custodial interrogations cannot be used in later court trials unless the defendant, before the start of the interrogation, was fully "Mirandized," i.e., given the following four warnings: that she/he has the right to remain silent, i.e., not to incriminate oneself; that anything the defendant says can be used against her/him in a court of law; that the defendant has the right to talk to an attorney before and during the questioning; and that an attorney will be appointed before the questioning if the defendant cannot afford one (del Carmen & Hemmens, 2017, pp. 327–334).

text; e) officers regarding the caution as a ritual, not as real communication; and f) NAATI Level 3 accreditation's insufficiency without legal training.[52]

2.3.7 Qualifications and Professional Training

The studies on police interpreting reviewed above so far demonstrated how accuracy becomes compromised when untrained, ad hoc interpreters are used for police interviews. However, as was indicated by Mikkelson's (2017) reference to the use of "bystanders or fellow police officers" (p. 117), this seems to be a rather widespread practice in the U.S. One reason could be that most service-users are unable to tell the difference between qualified and unqualified interpreters. To empirically demonstrate their key differences, therefore, Hale et al. (2019) conducted a large-scale experiment in Australia, the result of which was also published in Hale et al. (2020). This project used simulated police interviews,[53] in order to make quantitative performance comparisons between trained and untrained interpreters (Hale et al., 2019, p. 111). The results showed significant differences, especially in the use of legal terms, turn-taking, and correct protocol, while the differences in their bilingual skills were less significant (p. 119), thus affirming the importance of using trained interpreters, despite the often-deceptive surface-level bilingual skills. The present thesis referred to their research results in designing a part of the research methods, as is explained in Chapter Three, Section 3.6.1.

2.3.8 Collaboration with Service Users

In addition to training as a way to improve interpreting accuracy, a few researchers also explored other ways that might improve accuracy, such as possible collaboration

[52] NAATI is an acronym for National Accreditation Authority for Translators and Interpreters Ltd, the only organization in Australia which issues governmental certifications to translators and interpreters. (NAATI, 2021).

[53] This large-scale research was conducted on a grant from the FBI (Federal Bureau of Intelligence) in the U.S. (see "Grants" at https://www.unsw.edu.au/staff/sandra-hale).

between the interpreters and the law enforcement as service-users. Kredens (2016) was an ethnographic study in the U.K. of interpreters and police officers in a discussion group setting who together viewed vignettes depicting various interpreter-mediated interview issues such as confidentiality or impartiality. The research recommended having a pre-interview session, especially to confirm relevant interaction rules to be followed during an interview (p. 74). Monteoliva-Garcia (2020) also looked at a broader aspect of interpreter-mediated police work in a community. Based on a thematic analysis of the data gathered through focus group interviews of police officers serving in communities in Scotland, the research confirmed the need for training on how to work with interpreters and how to enhance the quality of interpreter-mediated interactions (p. 51).

2.3.9 Hearsay Issue

Finally, as to research conducted on the hearsay issue of interpreter-mediated police interviews in the domain of interpreting studies, very few studies yet exist. In Japan, Kaneyasu (1999) and Chujo and Kaneyasu (1999) referred to the common-law concept of hearsay exclusion in their discussion of the system used in Japan which does not seem to provide sufficient accuracy verification of a suspect's statement written by a police officer in Japanese based on what the interpreter orally translated during the interview (Chujo & Kaneyasu, 1999, pp. 133–134; Kaneyasu, 1999, pp. 99–101).

As was noted in Section 2.3.2, in Japan, at the end of an interpreter-mediated interview, the officer prepares a written statement in Japanese which will be submitted for a trial as the suspect's statement. The content of the statement is confirmed through the same interpreter's oral back-translation only, and no written translation is made in the suspect's language. Therefore, the document the suspect signs is a statement written only in Japanese. The insufficiency of accuracy verification involved in this process was also noted by Akiyama (1998, pp. 279–282), who then was a judge at the Akita District Court, Marszalenko (2014, p. 179), and Mizuno and Naito (2015, p. 102), as was noted

in Section 2.3.2. At trial, the Japanese statement only is used as sufficient evidence, and the interviewing officer does not even have to testify, although as was mentioned in Chapter One, Section 1.4.3, Japan's current criminal procedure law, enacted in 1948, incorporated many of the features of the U.S. common-law system. As an alert to this practice, Chujo and Kaneyasu (1999) referred to the practice of common-law courts that abide by the hearsay exclusion and require not only the officer but also the interpreter to testify in court (p. 133). Ironically, however, this is exactly what is *not* happening in the majority of jurisdictions in the U.S., which is the very issue the present thesis undertook.

As early as in 1990, Takashi Ebashi, a Japanese constitutional law scholar, noted what the present thesis deems crucial and pertinent. Ebashi (1990) mentioned that there were basically two ways to ensure foreign-language-speaking suspects' right to an interpreter during a police interview, one of which was through statutory legislation that requires the law enforcement to procure interpreters free of charge, though he also noted that no country thus far had ever enacted such laws (p. 23). The alternative was to deny evidential admissibility of suspects' statements obtained without qualified interpreters, by applying rules of evidence and a constitutional provision that prohibits the use of evidence obtained through a violation of due process, which Ebashi noted was a measure that seemed to be used frequently in common-law countries (1990, p. 24). Ebashi (1990) observed that it was perhaps easier for common-law countries to try to resolve these problems in court by using evidentiary laws rather than creating a new law to guarantee new rights through legislative means (p. 24). What is ironical again, however, is that all the ten court rulings Ebashi (1990) mentioned as examples of U.S. courts' strict application of hearsay exclusion were all before the advent of the *agent and/or conduit theory* (e.g., *U.S. v. Nazemian*, 9th Cir., 1991), i.e., from 1880 (*People v. Lee Fat*, 1880, California)[54] to 1980 (*State v. Letterman*, 1980, Oregon)[55] (Ebashi, 1990, pp. 36-39).

[54] Listed in the Appendix 1 as one of the 228 criminal cases the present thesis analyzed.

[55] This case is discussed in detail in Chapter Four, Section 4.3.3.

Therefore, just as was in the case of Kaneyasu (1999) and Chujo and Kaneyasu (1999), Ebashi (1990) described only a part of the actual reality of the hearsay issue of police interpreters in the U.S. Nevertheless, Ebashi's (1990) note on the two fundamental solutions, i.e., legislative and judicial (p. 23), have direct relevance to what the present thesis discusses in Chapter Seven.

Among all the studies on police interpreting the thesis reviewed so far, Berk-Seligson (2000, 2009) is the only one that explicitly referred to the hearsay issue in the U.S., though only in passing in the discussion of *People v. Torres* (California, 1989), which used the *agent and/or conduit theory* (*People v. Torres*, California, 1989, pp. 1258–1259) to admit the defendant's statement interpreted by an officer interpreter (Berk-Seligson, 2000, pp. 223–225; 2009, pp. 29–30). About a decade later, following the 9th Circuit's ruling on *U.S. v. Aifang Ye* (2015), mentioned in Chapter One, Section 1.1.2, Cal-Meyer and Coulthard (2017) presented their view on this issue from the standpoint of forensic linguistics. However, they only presented a brief comment on the legal complexities involved in this issue and recommended transitory countermeasures such as training, use of qualified interpreters, audio-recording, interpreters' preservation of their notes for their later use, etc. (p. 11), which unfortunately continue to remain largely impossible in many U.S. jurisdictions due to the factors discussed in Chapters Four, Five, Six, and Seven.

Thus, there is a general paucity of interpreting research that has directly dealt with the hearsay issue of police interpreters, which seems to indicate that most interpreting researchers so far regarded it only as a legal issue with no direct relevance to interpreting studies and conducted police interpreting research primarily as explorations of interpreting accuracy, i.e., how accuracy is ensured or compromised. The only exceptions would be those by the present author: Ito (2016)[56] on the legal and discourse aspects, Tamura (2018), a chronological analysis of legal theories used for police

[56] Ito (2016) is the present author.

interpreters, Tamura (2019b) on the issues of police interpreters' in-court testimonies, Tamura (2019a) on the qualification issues of officer interpreters, and Tamura (2021b) on terminological and conceptual issues of *conduit*, *agent*, and interpreter *accountability* across interpreting and legal disciplinary boundaries, all of which were incorporated into the present thesis.

2.4 Legal Literature and Law Reviews

While most interpreting researchers seem to have regarded this issue primarily as a legal one, for lawyers, too, this issue seems to have presented difficulties as it involves interlingual interpreting and translation problems. This was evinced by the fact that even some of the most authoritative literature on hearsay by evidentiary law scholars did not have or had only limited and often varied descriptions on this issue. For example, neither Fishman (2011) nor Best (2015) had reference to the hearsay issue of out-of-court language interpreters. Fenner (2013) only had a one-sentence note which said that "[s]o long as the interpreter is just a conduit," no hearsay issue would arise (p. 60). Binder (2013) included a three-page court case review on out-of-court interpreters and noted that interpreters would create no hearsay if regarded as an agent (pp. 877–878) but added that interpreters were also viewed as a conduit, referring to the 4-tier criteria (p. 879) stipulated by *U.S. v. Nazemian* (9th Cir., 1991, p. 527). In addition, Binder (2013) also noted that "contemporaneous translation of spoken words" would qualify as a hearsay exception based on the "present sense impression"[57] rationale (p. 880). Thus, all noted that interpreters would create no extra layer of hearsay, which was one end of the hearsay/conduit polarity, but all for varied reasons.

At the same time, most law reviews that appeared following the 2013 decision by the 11th Circuit ruling on *U.S. v. Charles* (11th Cir., 2013), which was mentioned in

[57] All these legal theories, including the *present sense impression*, which is the same as a sudden, impulsive, or excited outcry, are discussed in Chapter Four.

Chapter One, Section 1.1.1, argued for the other, hearsay end of the polarity. Most of them supported the 11th Circuit's decision, endorsing the view that criminal defendants' right to cross-examine the police interpreter is an inviolable right enshrined in the U.S. Constitution, which should surpass any legal theories developed from evidentiary rules such as the Federal Rules of Evidence (Bolitho, 2019; Klubok, 2016; Kracum, 2014; Ross, 2014; Xu, 2014).[58] However, by taking this position, they also argued that interpreting or translation was fundamentally a highly subjective activity, prone to inaccuracy and bias, as was epitomized by the title of Ross's (2014) article "clogged conduits," referring to language interpreters, and thus calling for an in-court scrutiny.

Ross (2014) cited Catford (1965) to present examples of typical "shifts" that take place in translation (Catford, 1965, pp. 37–39; Ross, 2014, p. 1968) and quoted from *U.S. v. Romo-Chavez*, a 2012 ruling in the 9th Circuit, that "there are over ten translations of *War and Peace*…listed for sale by Amazon" (Ross, 2014, p. 1954; *U.S. v. Romo-Chavez*, 9th Cir., 2012, p. 964). With these examples, Ross (2014) argued that interpreters were in fact *not conduit* but inherently subjective, and that therefore scrutinization of their translation by having them testify in court and be cross-examined was essential, as otherwise the defendant's due process rights would be violated (p. 1988). Also, as an alternative solution if the interpreter is not available for an in-court testimony, Klubok (2016) and Bolitho (2018) suggested the use of the audio/video recording of the police interview. However, their recommended solution was to play for the jury only the parts of the defendant's foreign language statements in the recording and have the in-court interpreter or any other interpreter orally translate them on the spot for the jury (Bolitho, 2018, p. 234; Klubok, 2016, pp. 1426–1427).

These are the positions typically taken by lawyers, which derive from the long-standing hearsay/conduit polarity based on the Sixth Amendment, mentioned in Chapter One, Section 1.2. Within this polarity, the denial of conduit would immediately lead to

[58] The details are explained in Chapter Four.

deeming language interpreters as fundamentally subjective, dubious, and inaccurate, thus requiring scrutiny through cross-examination. Also, while arguing for interpreters' in-court testimonies as a way to overcome hearsay, no further discussions are presented as to what kind of testimonies should be required, and whether or not such testimonies are practically as well as ethically feasible for interpreters, not to speak of their actual accuracy verification effect.

Furthermore, very typically and almost self-paradoxically, the same lawyers who contend that interpreting is fundamentally subjective and dubious propose having (or making) in-court interpreters translate the audio/video-recorded statements on the spot to the jury, assuming that these interpreters can promptly deliver accurate translations. Regardless of any practical issues such as acoustic problems, noise issues, omissions of contextual clues, and participants' voice-overlaps, to mention a few, these interpreters are expected or supposed to be able to render accurate translations anytime on call immediately upon request in court. Suddenly asked to listen to chunks of audio/video recordings played in court, these interpreters are expected to function like a convenient machine that can be turned on and off any time the users please. Such suggestions in these law reviews, therefore, only seem to reveal how detached these lawyers may possibly be from the complex nature of interlingual interpreting work, and from the reality that perhaps these interpreters' rights also require protection with clear professional accountability boundaries.

Finally, the review of the legal literature and law reviews re-confirmed the problem of viewing police interpreters' hearsay issue only as a hearsay/conduit polarity, i.e., as a simple bipolar issue between the judiciary and the criminal defendants. This perspective completely disregards the existence of a third stakeholder, the interpreters. This is what the present thesis empirically explored in the following chapters.

Chapter Three: Approach and Methods

This chapter explains the approach and methods used by the present thesis to explore: (a) what kind of hearsay circumvention theories, based on what kind of views or notions about language interpreters, the courts in the U.S. developed which led to the creation of the current hearsay/conduit polarity applied to police interpreters; and (b) how effective the current hearsay/conduit polarity is in ensuring and/or verifying police interpreters' translation accuracy and in enabling them to fulfill their professional accountability. The two terms, *ensure* and *verify*, refer to what each end of the polarity is expected to perform. First, the thesis investigated the *conduit* end of the polarity by examining what kind of hearsay circumvention theories the courts in the U.S. developed for police interpreters, and how effectively they ensured their translation accuracy. Secondly, the thesis investigated the *hearsay* end of the polarity by analyzing how effectively police interpreters' in-court testimonies verified their translation accuracy when they did testify in court.

As was briefly noted in Chapter One, Section 1.7, the present thesis based its analyses on the U.S. appellate court rulings collected from LexisNexis search engine (LexisNexis, hereafter),[59] within the time frame from 1850 to 2018. Mixed methods were used, which comprised: qualitative, chronological analyses of the legal theories used in the collected court-rulings and quantitative analyses of the data obtained from these court-rulings.

Section 3.1. presents the thesis's theoretical perspectives and framework, as well as where within the theoretical paradigm of interpreting studies (Pöchhacker, 2022, pp. 70–77) the present thesis is positioned. Section 3.2 presents the research strategies and

[59] LexisNexis is a legal research database, provided by a company with the same name, LexisNexis, based in New York City. The version the author used was the old version called LexisNexis Academic, which the company updated to a new version, Nexis Uni, starting from July 2019.

methods used by the present thesis. Section 3.3 explains how the data collection was conducted, and Section 3.4 shows how the collected data, as relevant concepts or constructs, was "operationalized" (Mellinger & Hanson, 2017, pp. 3–4) through what kind of data "coding" (Epstein & Martin, 2014, pp. 95–116). Section 3.5 explains how the thesis conducted empirical analyses of the legal theories, and Section 3.6 presents the details of the three data operationalizations (Mellinger & Hanson, 2017, pp. 3–4) to analyze: (a) how U.S. courts assessed the sufficiency of the police interpreters' qualifications; (b) what kind of interpreting issues arose and how the courts judged them; and (c) how effectively police interpreters' in-court testimonies verified their translation accuracy. Section 3.7 explains how Ian Mason's (2015b) argument on three power relations (pp. 314–316) in dialogue interpreting, which is explained in Section 3.1.2, was applied macroscopically to explore the fundamental causes of the continuation of the hearsay/conduit polarity. Finally, Section 3.8 explains the validity, limitations and delimitation of the present thesis.

3.1 Theoretical Perspective, Framework, and Paradigm

3.1.1 Theoretical Perspective

The present thesis analyzed the hearsay/conduit polarity many U.S. courts continue to use for police interpreters, using a macro-sociological approach (Pöchhacker, 2022, p. 57). Interpreting studies as a discipline started in the 1950s, initially inspired by the performance of conference interpreters providing simultaneous renditions, a newly developed mode of interpreting needed for multilingual international conferences, starting in the 1920s first at the ILO and being fully implemented later at the Nuremberg Trial (1946–1946) (Pöchhacker, 2022, p. 29, p. 33).[60] Since then, the discipline kept

[60] Though not mentioned in Pöchhacker (2022), Moser-Mercer (2015, p. 304) noted, citing Evgeny Gofman (1963), that around the same time as the ILO's initial use of simultaneous interpreting in the 1920s, Russian interpreters also used simultaneous interpreting at the Sixth Congress of the Comintern in Moscow.

evolving, incorporating and being "shaped by conceptual and methodological approaches from other, more established disciplines" (Pöchhacker, 2022, p.53).

Pöchhacker (2022) classified interpreting studies' disciplinary approaches into the following five categories: translation, psychological, linguistic, cultural, and sociological (pp. 53-57). In this categorization, discourse analytical court interpreting research such as Berk-Seligson (1990) and Hale (2004) reviewed in Chapter Two, Section 2.2 would be placed under the linguistic approach, employing sociolinguistics and pragmatics in a way similar to forensic linguistics (Coulthard et al., 2017; Coulthard et al., 2021), using discourse analytical approach (Mason, 2015a, p. 111). Pöchhacker (2022) also noted that discourse analysis itself which originally derived from linguistic and sociolinguistic foundations has become very much interdisciplinary as an approach, used also in such fields as law (via forensic linguistics) and healthcare (via health communication) (p. 56).

Pöchhacker (2022) then divided the fifth one, the sociological approach, into micro and macro p. 57). The micro-sociological approach, commonly used in conversation analysis research originally developed by Sacks et al. (1974), can be exemplified by such interpreting research as Roy (1989) as well as Wadensjö (1998), who, as was reviewed in Chapter Two, Section 2.1.2, employed Goffman (1981) as a theoretical framework. As for the macro-level sociological approach, Pöchhacker (2022) mentioned Inghilleri (2005) as an example, which, as was also mentioned in Chapter Two, Section 2.1.3, drew on Bourdieu's sociological theory (e.g., Bourdieu, 1991; Bourdieu and Wacquant, 1992) to explore role, status, and power of interpreters.

The present thesis also used macro-sociological approach as defined by Pöchhacker (2022, p. 57) or a macroscopic sociological "lens" (Roy et al., 2018, p. 110) in order to analyze the two-century-long hearsay/conduit polarity used by U.S. courts for police interpreters. In so doing, the thesis also explored possible causes of the current problematic impasse, using Ian Mason's argument on three power relations in

interpreter-mediated discourse (Mason, 2015b, pp. 314–316; Mason & Ren, 2012) as a theoretical framework.

3.1.2 Theoretical Framework

Mason (2015b), referring to Anderson (1976/2002) on interpreter roles and power (Anderson, 1976/2002, p. 212),[61] argued that interpreting is a "socially situated activity" involving "power and control" (p. 314) exercised by multiple parties, each coming with different, often conflicting, goals and interests. Police interpreting, which is what the present thesis analyzed, is a typical example of such instances. Mason (2015b) categorized the power relations involved in interpreting activities into three types: (a) power relations between languages; (b) institutionally pre-determined power disparities; and (c) interpreters' interactional power advantage (pp. 314–316).

Typically, those requiring interpreters in judicial procedures are witnesses who do not speak the language of the social majority, which typically is the language used in "government documents, court proceedings and business contracts" (Kaur, 2018). In colonial times, the majority's language was often the language of the "conquers," and in the "current hegemony" it would be "English," which "as a lingua franca," is the language of international business and politics (Mason, 2015b, p. 314), as well as the language used by the courts in the U.S. (Kaur, 2018). Conversely, this would also mean that inability to use the majority's language may possibly be associated with the socially inferior status of the uneducated, and the languages they use or even the ideas expressed in these languages may also be subject to potential low esteem, including sign languages (Grbić, 2001, p. 156; Mason, 2015b, p. 314). These are what Mason (2015b) described as power relations between languages (pp. 314–315).

Additionally, though Mason (2015b) did not make a specific reference, not a few

[61] Anderson (1976/2002) drew on a 19th-century German sociologist Georg Simmel's notion on the "*tertius gaudens* (the third [party] who enjoys)" (Anderson, 1976/2002, p. 213; Simmel, 1964, p. 154; also see Pöllabauer, 2015, p. 356).

languages spoken by social minorities are more often than not minor or rare languages,[62] not commonly taught in foreign language classes in schools for the speakers of the social majority's language, except for Spanish (Foreign language enrollments, 2011; Looney & Lusin, 2018). This would mean that the interpreters for these rare languages may also come from the same linguistic and cultural group as native speakers of these languages (Mizuno & Naito, 2015, p. 206; Wadensjö, 2009, p. 44). When this is the case, this factor may also influence the social majority's views on the interpreters of these languages (Pöchhacker, 2022, p. 170; Rosado, 2014).

Nevertheless, usually as the only bilingual person who can steer the discourse, interpreters in general are also endowed with what Mason (2015b) called interpreters' interactional power advantage (pp. 315–316). Such interactional power advantage held by interpreters, however, may also become one of the reasons why judges, lawyers, or law enforcement officers may try to reinforce their control by using what Mason (2015b) called institutional power (p. 315). Courts' frequent dictum to interpreters "not to interpret" but "translate" word-for-word as a language conduit (Morris, 1995, p. 26, p. 32) or to translate everything verbatim exactly the way it was said in the source language (Tsuda et al., 2016, p. 84, p. 95) is perhaps one of the most typical and problematic examples of such institutional power execution by the judicial authority, which court interpreters have no choice but to comply with. Underneath all this may reside the fact interpreters are very possibly given "little professional recognition," constantly regarded as "replaceable by any available bilingual" (Mason, 2015b, p. 315).

[62] A *minor* language here is used synonymously with languages spoken by social minorities and refer to those other than the major language, i.e., English in the case of the U.S. (Dietrich & Hernandez, 2022). Spanish, therefore, is a minor language is the U.S. Also, while it had the largest foreign-language speaker ratio in 2019 (Dietrich & Hernandez, 2022) and was the most commonly taught foreign language both in K-12 (Foreign language enrollments, 2011) and higher education (Looney & Lusin, 2018), Spanish speakers in the U.S. seem to remain in a sub-standard social status (Cobas et al., 2022; Kaur, 2018), which the thesis further explores in Chapter Six. A *rare* language was defined by NAJIT (2005) as a language "not previously requested in a particular court" and presents challenges to court administrators. For example, a Los Angeles court once spent three months to find a speaker of a variant of Mixe, spoken only by 7,000 people in a southern Mexican mountain area (Kim, 2009).

These three types of power relations in interpreter-mediated discourse posited by Mason (2015b) are what the present thesis used as a theoretical perspective (Pöchhacker, 2022, p. 53) in exploring the issue of hearsay/conduit polarity used by U.S. courts in their attempt to resolve the hearsay issue of police interpreters, with a particular attention to the institutional power disparity between the judicial community (*interpreters of law*) and the interpreting community (*interpreters of a foreign language*) with a "macro-level" sociological "lens" (Roy et al., 2018, p. 10–11, p. 110),

3.1.3 Theoretical Paradigm

In discussing approaches in interpreting studies, Pöchhacker (2022) also noted the concept of *paradigm* to refer to the evolutional stages the discipline has gone through since its inception in the 1950s (pp. 70–77), referring to Kuhn (1962/2012). According to Pöchhacker (2022), interpreting studies started from Interpretive Theory of Translation (IT) Paradigm, from which Cognitive Processing (CP) Paradigm emerged, which also led to the creation of Neurophysiological/Neurolinguistic (NL) Paradigm, at the bottom of all of which lay Translation Studies (TT) Paradigm as a foundation. These first three paradigms, however, were more or less concerned with interpreters' cognitive performance in consecutive and simultaneous interpreting in conference settings (pp. 70–73). Then in the early 1990s, a completely new paradigm emerged with a focus on the analysis of dialogic, interactive, and/or conversational discourses, led by such research as Roy (1989) and Wadensjö (1998) as well as Berk-Seligson (1990) and Hale (2004). [63] This paradigm, named by Pöchhacker (2022) as Dialogic Interactionist/Discourse-in-Interaction (DI) Paradigm (p. 74), is what the present thesis situated itself within.

[63] As was noted in Section 3.1.1, Pöchhacker (2022) categorized Roy (1989) and Wadensjö (1998) as having used the sociological approach, and Berk-Seligson (1990) and Hale (2004) socio-pragmatic linguistic approach, though in Pöchhacker's (2022) Paradigm classification they all belong to the same DI Paradigm (pp. 71–77).

However, unlike the paradigm's pioneering works such as Roy (1989), Wadensjö (1998), Berk-Seligson (1990), Hale (2004), and Mason (2001, 2009/2014), which all conducted micro-level (Roy et al., 2018, p. 110), sociolinguistic and/or sociological analyses of dialogic discourses, the present thesis conducted macro-sociological (Pöchhacker, 2022, p. 57) analyses, using a macroscopic sociological "lens" (Roy et al., 2018, p. 110), to explore, in particular, potential institutional power disparity (Mason, 2015b) that may lie underneath the issue of hearsay/conduit polarity and also among the involved stakeholders. In this respect, it may also be possible to say that the present thesis explored an interdisciplinary area that links interpreting studies with law and forensic linguistics (Coulthard et al., 2017; Coulthard et al., 2021; Pöchhacker, 2022, p. 56) from a macro-sociological perspective (Pöchhacker, 2022, p. 57).

3.2 Research Strategies and Methods

The primary goal of the present thesis, as was noted in Chapter One, Section 1.3, was exploratory, i.e., exploration from interpreting studies perspective into the validity of the current hearsay/conduit polarity. The thesis was conducted as an observational, survey research, using U.S. appellate court rulings as raw data (see Pöchhacker, 2022, pp. 68–70 for interpreting studies research methodology). It used mixed methods: empirical analyses of legal theories and quantitative analyses of the data collected from court ruling texts.

The present thesis based its research on U.S. appellate court rulings as a source of raw data for two main reasons. First, as was noted in Chapter One, Section 1.1, unlike the Court Interpreters Act of 1978, which was implemented to ensure the quality of in-court interpreters, no equivalent legislation yet exists in the U.S. for police interpreters. Instead, the courts, both federal and states, presumably play the role of ensuring and/or verifying police interpreters' translation accuracy, resorting to the rules of evidence (Ebashi, 1990, p. 24). The current case laws, therefore, are a product of these legal

precedents which developed chronologically over the past two centuries and have become binding. This means that these appellate court rulings could be regarded as the most direct sources of information to find out what kind of legal theories these U.S. courts developed with what kind of views and notions about language interpreters, and how effective the current hearsay/conduit polarity is in ensuring and/or verifying interpreters' translation accuracy.

Secondly, while Berk-Seligson (2000) may have been right when she noted that these appellate rulings did not always "reveal clearly" the qualifications of officer interpreters (p. 215), many of them also contained various, often detailed, descriptions about the interpreters and the interpreted events, most probably intended to substantiate the courts' decisions. Thus, it seemed that if the information contained and dispersed in these court ruling texts were collected systematically and operationalized (Mellinger & Hanson, 2017, pp. 3–4) for quantitative analyses, the results might reveal at a more macroscopic level as to how effective the current hearsay/conduit polarity is in ensuring and/or verifying police interpreters' translation accuracy. For these reasons, the present thesis chose to use U.S. appellate court rulings as a data source, using LexisNexis database, the same court ruling search engine as was used by Berk-Seligson (2000, 2009), but using different approaches and methods.

3.3 Data Collection

3.3.1 Court Ruling Search

The search for court cases to be used as raw data for the present thesis was conducted from July 2017 till August in 2018, using LexisNexis database,[64] which enables searches by jurisdictions, specific time frames, and various key word settings,[65]

[64] The version the present author used from July 2017 till August 2018 was the old version called LexisNexis Academic. The new version which began from July 2019 is called Nexis Uni.

[65] Some of these key word functions also changed or further improved when the version changed from LexisNexis to the current Nexis Uni.

among many of its other functions. Just as how Berk-Seligson (2009) began her search with initial key words of "police" and "interpreter" or "translator" (p. 23), the present author also began with the first two key words: *interpreter* and *hearsay*. This initial test-run, however, immediately led to an unmanageably large volume of downloads. For example, just for the state of California, and only for a period starting from 1980 up to July 2017, these two key words led to a download of 413 appellate cases amounting to a total of 5,784 pages, many of which had no direct relevance to the *hearsay* issue of out-of-court *interpreters*. For instance, many rulings had the word interpreter in a certain section which had nothing to do with the hearsay issue discussed in a different section of the ruling.

Therefore, the key word setting was changed to: *interpreter* and *hearsay* found *in the same paragraph*. This made the search more efficiently focused,[66] enabling more direct captures of relevant rulings. Also, additional cases the setting did not capture but were relevant, e.g., the cases cited in the captured rulings as precedents, were added to the case pile. A double-check was also conducted replacing the word *interpreter* with *translator* if *interpreter* did not capture any rulings;[67] otherwise, *interpreter* remained as a key word.

One point of inconvenience about LexisNexis (also of the current version Nexis Uni) was that the database did not allow separate searches for civil or criminal cases only.[68] This made the selection procedure more troublesome but also beneficial for the

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[66] Nexis Uni, the current version, has more sophisticated search setting variations and options. Also, in retrospect, *interpreter* and *hearsay* found *in the same sentence* might have made the search even more focused, though it was not chosen for the reason that it might also exclude potentially relevant cases.

[67] For the use of these two terms *interpreter* and *translator* by U.S. courts, see *Taniguchi v. Kan Pacific* (2012) and Tamura (2021a).

[68] This seemed not LexisNexis-specific but more to do with how search engines for U.S. court rulings were designed in general, as the same was the case with Westlaw search engine for U.S. court rulings, while Westlaw Japan, a search engine by the same company for Japanese court cases, allowed separate searches for civil and criminal cases. Westlaw is a legal research database, provided by

reason that evidentiary rules and legal theories on hearsay apply to both civil and criminal cases in the same way.[69] The citations of precedential legal authorities are also made across civil and criminal boundaries. However, separation of the downloaded cases into these two categories had to be made manually.

Using this method, a total of 691 cases, starting from 1850, the earliest possible accessible date on LexisNexis at the time of the research, up to the most recent uploads in 2017 were downloaded in July and August 2017. Also, while the data analyses continued until August 31, 2018, 19 additional new captures were downloaded, making the final total downloads 710 cases.[70] Out of these 710 cases, those from jurisdictions which operate differently from ordinary state and federal courts, such as DC Circuits[71] and military courts,[72] were excluded, thus making the finalized total captures 689 cases (214 cases from 11 federal circuits and 475 cases from 50 states and territories) for further screening.

Since the old version used by the present author (LexisNexis) from July 2017 till August 2018 no longer exists, having been replaced by a new version (Nexis Uni), the validity of the data was verified on March 1, 2023, comparing those confirmed on July 29, 2018 and those confirmed on March 1, 2023. Table 3.1 below shows the breakdown

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Thomson Reuters. The version available to the author was Thomson Reuters Westlaw Classic, which seemed to work more or less in the same way as LexisNexis.

[69] As is discussed in detail in Chapter Four, however, in criminal cases the Sixth Amendment Confrontation Clause becomes another major issue.

[70] The specified time only refers to when the downloads were made. Due to the time lag between the actual court decision dates and the LexisNexis (now Nexis Uni) upload time, there may have been rulings decided before the download dates but were not included in the downloads.

[71] The DC Circuit was excluded for the reason that it operates differently from other civilian courts; it is an appellate-level-only court without lower district courts, primarily though not exclusively in charge of government-agency-related litigations (Roberts, 2006).

[72] Military courts such as the Court of Appeals for Armed Forces and Military Branches Criminal Appeals were also excluded for the reason that they are non-civilian courts operating on similar but different evidentiary rules by the Manual of Courts-Martial United States (Lederer, 1990; Norton, 2019).

of the above 689 cases by jurisdictions for the period from January 1, 1850 to July 29, 2018, confirmed on the old version (LexisNexis) on July 29, 2018,[73] and its verification on March 1, 2023 on the new version (Nexis Uni) for the same period between January 1, 1850 and July 29, 2018,[74] which listed 212 federal cases and 492 state cases (704 in total), showing only minor discrepancies between the two versions perhaps as a result of possible changes in the database setting.

[73] The list in Table 3.1 does not include the states which had zero downloads.

[74] Though Nexis Uni (new version) now enables case search as early as from January 1, 1830, this verification also confirmed that no additional old cases relevant to this issue were found from Nexis Uni (new version) during the period between January 1, 1830 (the earliest in new version) and January 1, 1850 (the earliest in the old version).

Table 3.1

Initial Downloads by Jurisdictions

Federal Courts (Circuits)	State Courts	Initial Downloads by "interpreter" w/p "hearsay"			
		Confirmation by Old LexixNexis (Confirmed on July 29, 2018)		Verification by New Nexis Uni (Verified on March 1, 2023)	
		Period: January 1, 1850–July 29, 2018		Period: January 1, 1850–July 29, 2018	
		Federal	States	Federal	States
1		7		7	
	ME		1		0
	NH		2		2
	MA		16		13
	RI		5		6
	PR		0		1
2		36		36	
	VT		2		2
	NY		30		30
	CT		7		6
3		9		8	
	NJ		9		13
	PA		11		13
	DE		3		2
	VI		1		1
4		19		18	
	MD		4		4
	VA		1		1
	NC		5		6
	SC		3		3
5		35		35	
	TX		59		56
	LA		8		6
	MS		5		6
6		10		4	
	MI		11		11
	OH		14		16
	KY		6		6
	TN		7		8
7		12		12	
	WI		9		7
	IL		16		17
	IN		9		8
8		8		9	
	ND		1		0
	SD		2		1
	NE		8		7
	MN		6		10
	IA		9		8
	MO		12		10
	AR		2		2
9		46		54	
	HI		3		5
	AK		1		1
	WA		21		26
	OR		12		11
	CA		93		94
	MT		2		2
	ID		3		3
	NV		4		5
	AZ		10		12
10		13		16	
	UT		2		2
	CO		4		6
	NM		1		0
	KS		5		8
	OK		5		4
11		19		13	
	GA		12		13
	FL		13		18
Total		214	475	212	492

3.3.2 Screening

The total captures of 689 cases (214 federal cases and 475 state cases) were manually divided into civil and criminal cases, relying largely but not exclusively on the case titles,[75] and organized chronologically as well as by jurisdictions.

Intensive screening followed, in order to select only those that were directly relevant to the issue of the present thesis: the *hearsay* issue of an out-of-court *interpreter*. This was done, by first highlighting basic key words such as: *interpret/interpreter/ interpretation, translate/translator/translation, hearsay, testify/testified/testimony, admissible/inadmissible/admissibility, police, officer*; and later more specific key words such as: *agent/agency, conduit, present sense, catch-all,*[76] *declarant,*[77] *confrontation,* and so on.

The hearsay issue of interpreter-mediated out-of-court statements is usually a *procedural due process* issue, not a *substantive* or main issue[78] of the case. However, if

[75] In U.S. courts, generally though not always, criminal case titles in federal courts usually begin with *U.S.* as the first party in the case title, whereas with state cases, the titles usually begin with such words as: *Commonwealth*, *State*, or *People*. With civil cases, the titles commonly have both parties' names as opposing sides. One major exception is post-conviction habeas corpus petitions made by criminal convicts, which are technically categorized as civil suits (Constitutional collateral estoppel, 1971, p. 1239, fn. 61) with the name of the officer in charge of the petitioner's detention, e.g., the prison warden, appearing as one of the two parties in the case title. The present thesis excluded habeas corpus petition rulings both from civil and criminal case piles, except for: *Puente v. Florida Attorney General* (11th Cir., 2017), which was included as a federal criminal case for the reason that a hearsay issue of a nurse's testimony to an interpreter-mediated victim's statement was newly raised in this petition (*Puente v. Florida Attorney General*, 11th Cir., 2017, p. 12, pp. 20–21); and *Jackson v. Hoffner* (6th Cir., 2017) for the reason that this was a new appeal made in the federal circuit after *People v. Jackson* (Michigan, 2011) was affirmed by the Court of Appeals of Michigan.

[76] *Present sense* and *catch-all* are legal expressions used for legal theories to overcome police interpreters' hearsay issue, though not as predominant as *agent and/or conduit*. The details are explained and discussed in Chapter Four.

[77] *Declarant* is also a legal term which refers to a person who made a statement. It is the person to whom the statement belongs, e.g., the suspect or the interpreter.

[78] *Procedural due process* ensures that criminal defendants are given a fair opportunity to challenge the charges against them, including the provision of a qualified language interpreter if needed, whereas *substantive* here refers to *substantive due process*, which means whether the judgment was factually correct and whether the punishment corresponded to the committed crime, with the relevant law correctly applied (Bergman & Berman, 2013, p. 358). These concepts are

it became a major reason for appeal, the discussion usually appeared early and often over multiple paragraphs. Otherwise, the relevant part usually appeared somewhere later constituting a more compact portion within the entire case text where the highlighted key words clustered.

Though the initial filtered search with key words was useful, it inevitably captured a large number of cases with *interpreter* and *hearsay* located reasonably close in the same paragraph, but each discussing separate, unrelated issues. For example, the following is an excerpt from the fourth paragraph of *State v. Avgoustov*, a 2006 criminal case in Vermont on an aggravated sexual assault:

> Defendant first challenges that the State does not present substantial, admissible evidence of guilt. Specifically, defendant argues that although the State has filed a motion to admit R.B.'s hearsay statements, they have not yet been deemed admissible by the trial court. Defendant also argues that the court improperly relied upon defendant's alleged statements in the affidavit of probable cause, because defendant is not a native speaker of English and lacked a Russian interpreter at the time he made the statements. (*State v. Avgoustov*, 2006, Vermont, p. 1186, underlined by the present author)

In the above paragraph, the first key word *hearsay* was used to confront the admissibility of the statement made by the victim (R.B.) to the police, which was only submitted in the form of interview recording. The second key word *interpreter* was used to challenge the reliability of the statement, i.e., confession, the defendant had allegedly made without a Russian interpreter although the defendant was not a native speaker of English. Thus, although these two key words, *hearsay* and *interpreter*, were located very close in the same paragraph, each was used to discuss separate issues.

This screening process with intensive reading was conducted manually as a single-person analysis in July and August 2017, which also continued with new additional

discussed in detail in Chapter Six and Chapter Seven.

captures till August 31, 2018. Also, the cases which the initial search did not capture but were found through cross-references of precedential citations were added to the final selected list. For example, *Lopez v. Commonwealth*, a 2015 case in Kentucky was the state's first appellate case on police interpreters' hearsay issue which was captured by the initial search. In *Lopez v. Commonwealth* (Kentucky, 2015), the appellate court cited a precedent going all the way back to the state's 1906 appellate ruling, *Fletcher v. Commonwealth*, in which the *Fletcher* court referred to an interpreter who had translated for the grand jury as having been "a mere conduit" (*Fletcher v. Commonwealth*, 1906, Kentucky, p. 577; *Lopez v. Commonwealth*, 2015, Kentucky, p. 873). Thus, *Fletcher v. Commonwealth*, which the initial key word setting had not captured, was added to the final selection.

As a result of this intensive screening, a total of 301 cases (73 civil cases and 228 criminal cases) were chosen as directly relevant to the issue addressed by the present thesis, the breakdown of which by federal and states is shown in Table 3.2 below.[79]

Table 3.2

Final Selections

	Criminal	Civil	Total
Federal (11 Circuits)	51	19	70
States (50 States)	177	54	231
Total	228	73	301

Table 3.3 below shows a jurisdictional breakdown, side by side with initial downloads. A complete list of all the 228 selected criminal cases is also presented in Appendix 1, and a complete list of all the 73 civil cases is presented in Appendix 2.

[79] These 228 criminal cases included 36 unpublished appellate cases: 1 in Massachusetts, 1 in Pennsylvania, 1 in Illinois, 1 in Minnesota, 1 in Nevada, 2 in Arizona, 28 in California, and 1 in Kansas. Sloan (2012) contends, however, that for the reason that cases which used to be called "unpublished" are now widely available online, "unpublished" is a misnomer (p. 96), and that they should instead be called "non-precedential" as they are treated as not binding (p. 99). In addition, despite their controversial "authoritative value," Sloan (2012) also argues that these non-precedential rulings can be of high value from a research standpoint (p. 99).

Table 3.3

Final Selections: Breakdown by Jurisdictions

Federal Courts (Circuits)	State Courts	Initial Downloads by "interpreter" w/p "hearsay"		Post-Screening Total				
		Confirmation by Old LexixNexis (Confirmed on July 29, 2018)		Civil	Criminal	Civil	Criminal	Total
		Period: January 1, 1850–July 29, 2018						
		Federal	States	Federal		States		
1		7		1	1			2
	ME		1			0	0	0
	NH		2			1	0	1
	MA		16			2	5	7
	RI		5			0	4	4
2		36		4	8			12
	VT		2			0	0	0
	NY		30			5	11	16
	CT		7			0	7	7
3		9		2	3			5
	NJ		9			1	1	2
	PA		11			0	3	3
	DE		3			2	1	3
	VI		1			0	0	0
4		19		1	7			8
	MD		4			0	1	1
	VA		1			0	0	0
	NC		5			0	3	3
	SC		3			1	0	1
5		35		7	6			13
	TX		59			7	18	25
	LA		8			1	1	2
	MS		5			0	0	0
6		10		0	1			1
	MI		11			7	1	8
	OH		14			0	3	3
	KY		6			1	2	3
	TN		7			0	0	0
7		12		1	2			3
	WI		9			3	4	7
	IL		16			1	5	6
	IN		9			1	1	2
8		8		1	2			3
	ND		1			0	1	1
	SD		2			0	0	0
	NE		8			3	3	6
	MN		6			1	3	4
	IA		9			1	2	3
	MO		12			3	3	6
	AR		2			0	1	1
9		46		0	14			14
	HI		3			1	2	3
	AK		1			0	1	1
	WA		21			1	8	9
	OR		12			1	8	9
	CA		93			4	44	48
	MT		2			1	1	2
	ID		3			0	1	1
	NV		4			0	3	3
	AZ		10			1	6	7
10		13		2	1			3
	UT		2			0	0	0
	CO		4			1	1	2
	NM		1			0	0	0
	KS		5			0	1	1
	OK		5			2	2	4
11		19		0	6			6
	GA		12			0	8	8
	FL		13			1	7	8
Total		214	475	19	51	54	177	301

3.4 Database Creation

3.4.1 Database One: By Chronology and Jurisdictions

To explore the research question, the first database (Database One) was created on an Excel spreadsheet[80] both for civil and criminal cases. All the above 301 cases were recorded chronologically, with each row corresponding to each year from 1850 to 2018 on the vertical scale and the jurisdictions listed on the horizontal scale, assigning one column to each single jurisdiction. Upon confirming the relevance of each case content, the case name was recorded in each cell with additional basic information such as: (a) whether or not the interpreter testified,[81] (b) decisions on admission/non-admission of the interpreter's out-of-court translation,[82] (c) legal reasons or theories mentioned in the rulings, and (d) citations of precedents[83] and other legal authorities for chronological cross-references. Database One was necessary as a first step to understand how the hearsay/conduit polarity developed in U.S. courts over the past two centuries, and to enable various quantitative data sorting and calculations to empirically explore the answers to the present thesis's research questions.

As was noted in Section 3.2, the thesis used mixed methods, one of which was empirical analyses of the legal reasons used to develop hearsay circumvention theories for police interpreters. These theories presumably argued that interpreter-mediated out-of-court statements created no extra layer of hearsay. The question, therefore, was

[80] Excel is a spreadsheet developed by Microsoft, that enables statistical calculation as well as designing and creation of visual graphs, among other numerous features.

[81] One important note is that all the court rulings collected from LexisNexis are appellate court cases. Therefore, "whether or not the interpreter testified" here means "whether or not the interpreter testified during the lower court's trial session."

[82] This "decisions on admission/non-admission of the interpreter's out-of-court translation" also refers to the appellate court's judgment on the lower court's decision.

[83] In U.S. courts, a previous appellate ruling on the same issue becomes a binding precedent within the same jurisdiction, whereas other jurisdictions can cite it as a "persuasive" legal authority (Sloan, 2012, pp. 4–10).

whether and how these theories ensured interpreters' translation accuracy. To investigate this question, the thesis first sorted out all the 301 cases into the following 4 categories based on: (a) whether or not the interpreter testified in court; and (b) whether the interpreter-mediated out-of-court statement was admitted into evidence, as are shown in Table 3.4 below.

Table 3.4

Interpreter Testimony and Evidentiary Admission

Category I	Interpreter TESTIFIED + Translated Statement NOT ADMITTED
Category II	Interpreter DID NOT TESTIFY + Translated Statement NOT ADMITTED
Category III	Interpreter TESTIFIED + Translated Statement ADMITTED
Category IV	Interpreter DID NOT TESTIFY + Translated Statement ADMITTED

Database One enabled the calculation of the total number of cases in each of the above four categories between 1850 and 2018, which came out as is shown in Table 3.5.[84] Each one of the total 301 selected cases was classified into one of the above four categories, and Database One calculated the number of cases in each category which appeared in each year from 1850 to 2018. Table 3.5 seemed to reveal, at least statistically, a rather clear split among U.S. court rulings on the hearsay issue of interpreter-mediated out-of-court statements, with the rulings spread out in each of the four categories over 170 years between 1850 and 2018, though in total, Category IV (interpreter *did not testify* but the translated statement was *admitted*) surpassed all the other three categories.

[84] There are three data discrepancies between Tables 3.5 and 3.6 below and Chart 1 in Tamura (2019b, p. 5) which resulted from a re-analysis of two civil cases, *Sullivan v. Kuykendall* (Kentucky, 1885) and *Highstone v. Burdette* (Michigan, 1886), and one criminal case, *People v. Jaramillo*, (California, 1934).

Table 3.5

Interpreter Testimony and Evidentiary Admission: 1850-2018

	I Testified; Not Admitted	II Not Testified; Not Admitted	III Testified; Admitted	IV Not Testified; Admitted
1850				
1851				
1852				
1853				
1854				
1855				
1856		2		
1857		1		
1858				
1859				
1860				1
1861				1
1862				
1863				
1864				
1865			1	
1866				
1867				
1868				
1869		1		1
1870				
1871		1		
1872				
1873				
1874				
1875				
1876				
1877				
1878				
1879				
1880		3		
1881				1
1882			1	1
1883				
1884				
1885			1	
1886		2		
1887		1		
1888				
1889			1	1
1890				3
1891				

	I Testified; Not Admitted	II Not Testified; Not Admitted	III Testified; Admitted	IV Not Testified; Admitted
1892				4
1893			1	
1894				
1895				
1896		2		
1897				
1898				
1899				
1900				
1901			1	
1902	1	1		
1903		1	1	
1904				1
1905				2
1906				1
1907		1		
1908				
1909		1	1	
1910			1	3
1911			1	
1912			1	1
1913		1	1	
1914				
1915	1			
1916	1			1
1917			1	1
1918		1		3
1919			1	
1920				1
1921		1		
1922				
1923				
1924				1
1925		2		
1926		1		
1927				
1928		1		
1929			1	
1930				
1931				1
1932				
1933				

	I Testified; Not Admitted	II Not Testified; Not Admitted	III Testified; Admitted	IV Not Testified; Admitted
1934	1			
1935				1
1936				
1937		1		1
1938		2		
1939				
1940				
1941				
1942		1		
1943				1
1944				
1945				
1946				
1947				
1948				
1949				
1950				
1951	1			
1952				
1953				
1954				
1955				1
1956				
1957				
1958		1		
1959				
1960		1		
1961				
1962			1	
1963				1
1964		1		
1965				
1966		1		
1967				
1968				
1969				1
1970				
1971		1		
1972				
1973			1	1
1974				2
1975	1			1

	I Testified; Not Admitted	II Not Testified; Not Admitted	III Testified; Admitted	IV Not Testified; Admitted
1976			1	
1977				
1978				
1979			1	1
1980			1	
1981		1		
1982	1			
1983	1		2	
1984		1	2	
1985			3	2
1986			1	1
1987		1	1	1
1988				1
1989		1	3	1
1990			1	1
1991	1	1	2	3
1992				1
1993				
1994				4
1995			1	1
1996				1
1997	1	2		2
1998			1	
1999	1	1	3	
2000	1	1	2	
2001			1	4
2002		3	2	1
2003			2	3
2004	1	1	5	5
2005	1		2	8
2006		1	2	4
2007		6	3	8
2008	1	4	1	7
2009			2	4
2010		3	4	2
2011			2	3
2012		3	5	7
2013		1		5
2014		1		2
2015		1	3	4
2016		1	1	4
2017	1			5
2018	1		2	3
Total	17	67	79	138

In order to delineate the chronological changes more clearly in the court rulings on this issue, the above data in Table 3.5 were re-organized by decades as are shown in Table 3.6 below, which depicted the overall chronological trends more distinctly.

Table 3.6

Interpreter Testimony and Evidentiary Admission: 1850-2018 by Decades

Years	I Testified; Not Admitted	II Not Testified; Not Admitted	III Testified; Admitted	IV Not Testified; Admitted
1850-1859	0	3	0	0
1860-1869	0	1	1	3
1870-1879	0	1	0	0
1880-1889	0	6	3	3
1890-1899	0	2	1	7
1900-1909	1	4	3	4
1910-1919	2	2	6	9
1920-1929	0	5	1	2
1930-1939	1	3	0	3
1940-1949	0	1	0	1
1950-1959	1	1	0	1
1960-1969	0	3	1	2
1970-1979	1	1	3	5
1980-1989	2	4	13	6
1990-1999	3	4	8	13
2000-2009	4	16	22	44
2010-2018	2	10	17	35
Total	17	67	79	138

The first and the most obvious was the increase, starting from around 1980s, in all categories except Category I (interpreters *testified* but the interpreter-mediated out-of-court statement were *not admitted*). The second was the corroboration of a clear split in court decisions. Of the above four categories, Category II (interpreters *did not testify* and the interpreter-mediated out-of-court statements were *not admitted*) and Category III (interpreters *testified* and the interpreter-mediated out-of-court statements were *admitted*) followed the traditional common-law hearsay rule, at least in principle. In contrast, Category IV (Interpreters *did not testify* but the interpreter-mediated out-of-court statements were *admitted*) clearly contravened the hearsay principle.

However, the total number in Category II (67 cases) and III (79 cases), both of which abided by the hearsay exclusion rule (146 in total), and the total number in Category IV (138 cases), which circumvented hearsay exclusion, came out as not conspicuously different, empirically corroborating a split that continued for 170 years.

In order to examine whether these trends were equally observable both in civil and

criminal cases, data in Table 3.6 above were divided into civil and criminal cases, shown in Table 3.7 below. This revealed a rather clear trend disparity, particularly in the last several decades, in which there seemed to have been a noticeable increase in Category III (interpreters *testified* and the interpreter-mediated out-of-court statements were *admitted*) and Category IV (interpreters *did not testify* but the interpreter-mediated out-of-court statements were *admitted*) mainly in criminal cases, implying a necessitated application of the hearsay/conduit polarity primarily in criminal cases.

Table 3.7

Interpreter Testimony and Evidentiary Admission: Civil & Criminal

Civil Cases (Federal & States): 73 Total				
	I	II	III	IV
1850-1859	0	3	0	0
1860-1869	0	0	1	3
1870-1879	0	1	0	0
1880-1889	0	0	1	5
1890-1899	0	1	0	5
1900-1909	0	1	0	2
1910-1919	0	0	2	4
1920-1929	0	2	0	1
1930-1939	0	3	0	2
1940-1949	0	1	0	1
1950-1959	1	1	0	0
1960-1969	0	3	0	0
1970-1979	0	1	0	2
1980-1989	0	1	0	0
1990-1999	0	1	0	2
2000-2009	0	6	1	6
2010-2018	0	4	2	3
Total	1	29	7	36

Criminal Cases (Federal & States): 228 Total				
	I	II	III	IV
1850-1859	0	0	0	0
1860-1869	0	1	0	0
1870-1879	0	0	0	0
1880-1889	0	5	1	0
1890-1899	0	1	1	2
1900-1909	1	3	3	2
1910-1919	2	2	4	5
1920-1929	0	3	1	1
1930-1939	1	0	0	1
1940-1949	0	0	0	0
1950-1959	0	0	0	1
1960-1969	0	0	1	2
1970-1979	1	0	3	3
1980-1989	2	3	13	6
1990-1999	3	3	8	11
2000-2009	4	10	21	38
2010-2018	2	6	15	32
Total	16	37	71	104

The major question, however, is how effective this hearsay/conduit polarity is in ensuring and/or verifying translation accuracy. The thesis explored the answer through empirical analyses of the legal reasons used for hearsay circumvention theories and quantitative analyses of the data obtained through operationalizations of the information contained in the ruling texts, for which Database Two was created.

3.4.2 Database Two: Empirical Data from Court Rulings

Database Two contained more specific, detailed facts, consisting of four separate Excel spreadsheets for: criminal-federal, criminal-states, civil-federal, and civil-states. Each spreadsheet listed case names vertically in the far-left column, grouped by jurisdictions, i.e., by 11 circuits or 50 states.[85] Within each jurisdiction, the cases were listed chronologically, with one row for each case. Moving right-ward, columns were created to record more detailed information contained in these 73 civil and 228 criminal cases.

For 228 criminal cases, the analyses of which were the primary objective of the present thesis, the searched information consisted of such items as:

a. interpreter profile (if more than one interpreter was used, an additional row was created for each interpreter);
b. language(s) used;
c. original declarants, i.e., whom the interpreter translated for: suspect, victim, or other witnesses;
d. offence(s) the defendant was charged for;
e. whether or not the interpreter testified, and if yes, what kind of testimony was given, which was later expanded and operationalized for quantitative analyses, explained in Section 3.6.3;
f. whether or not any interpreting issues were mentioned in the ruling, which was later expanded and operationalized for quantitative analyses, explained in Section 3.6.2;
g. whether or not the interpreter's out-of-court translation was admitted (decisions on evidentiary admission/non-admission);
h. legal reasons or theories for admission/non-admission decisions, including citations of legal authorities (both statutory and legal precedents); and
i. whether the ruling noted that the interview had been audio/video-recorded.

[85] The states with no relevant cases were not included in the list.

These items were listed horizontally in the top row, each with a column assigned in a manner that would enable further item additions and expansions, as well as chronological sorting to assist empirical analyses of legal theories (Epstein & Martin, 2014) and data operationalizations (Mellinger & Hanson, 2017, pp. 3–4) for quantitative analyses.

3.5 Empirical Analyses of Legal Theories

As was mentioned in Chapter Two, Section 2.4, even some of the most authoritative evidentiary law literatures on hearsay do not yet have (Best, 2015; Fishman, 2011) or have only limited and often varied descriptions of police interpreters' hearsay issue, some with a passing note on "conduit" (Binder, 2013, p. 879; Fenner, 2013, p. 60), on "agent" (Binder, 2013, pp. 877–878), or on "present sense impression" (Binder, 2013, p. 880). As for the law reviews which were also noted in Chapter Two, Section 2.4, they all denied the conduit polar and argued for the hearsay polar, contending that interpreters' translations were inherently subjective and replete with accuracy issues, and that therefore police interpreters should be required to testify in court and be cross-examined (e.g., Bolitho, 2019; Klubok, 2016; Kracum, 2014; Ross, 2014; Xu, 2014).

The present thesis, therefore, first conducted a thorough, chronological analyses of the legal reasons and rationales of hearsay circumvention theories and examined their empirical validity from interpreting studies' standpoint based on the data collected on Database Two. In so doing, the thesis also investigated which hearsay circumvention theories became dominant for what kind of possible reasons as well as what kind of terminology, concepts, and expressions were created for language interpreters by legal professionals as well as their implications for language interpreters.

3.6 Quantitative Analyses through Data Operationalizations

Next, the thesis conducted quantitative analyses to explore how effective the

currently used hearsay/conduit polarity is in ensuring and/or verifying police interpreters' translation accuracy. This required operationalization (Mellinger & Hanson, 2017, pp. 3–4) of the information obtained from the court ruling texts through data coding (Epstein & Martin, 2014, pp. 95–116).

As was briefly noted in Chapter One, Section 1.1.2, the *conduit* end of the polarity contends that even if hearsay is circumvented, translation accuracy is ensured, because the trial judges can single-handedly assess police interpreters' competence, based on the 4-tier criteria: (a) which party supplied the interpreter; (b) whether the interpreter had any motive to mislead or distort; (c) the interpreter's qualifications and "language skill";[86] and (d) whether actions taken subsequent to the conversation were consistent with the translated statements (*U.S. v. Nazemian*, 9th Cir., 1991, p. 527). Therefore, the thesis empirically investigated how effective this hearsay circumvention case law is in ensuring translation accuracy through a quantitative inquiry into how the trial judges determined interpreters' qualifications and skills to pass the stringent hearsay muster.

Even in the field of interpreting studies, the assessment of "interpreting quality" (Liu, 2015, p. 20) is not an easy, clear-cut task, with the concept itself having been a long-debated issue. Still, among many of the "observable and distinguishable constructs" to define "interpreting quality," interpreting researchers generally agree that "fidelity (accuracy)" and "fluency" to be the most widely used "main quality criteria," which, however, need to be further "operationalized" for measurable assessment (Liu, 2015, p. 20), specifically in the domain of police interpreting.

One of the latest large-scale experiments conducted on the differences in the quality of police interpreting between trained and untrained police interpreters was Hale,

[86] *U.S. v. Nazemian* (9th Cir., 1991) used "language skill" in a singular form (p.527), though in the domain of foreign language teaching and learning, usually the term is used in a plural form, as there are at least four separate skills, i.e., listening skill, speaking skill, reading skill, and writing skill (e.g., Rivers, 1968). In the present thesis, language *skills* in a plural form is used hereafter to refer to skills, whether foreign language skills or interpreting and/or translation skills, and "language skill" in a singular form in quotation marks is used to refer specifically to "language skill" used in *U.S. v. Nazemian* (1991, 9th Circuit, p. 527).

et al. (2019), which was reviewed in Chapter Two, Section 2.3.7. In this experiment, Hale, et al (2019) defined "trained" as having received "formal interpreter training" and/or "accredited and had undertaken professional development courses"; and "untrained" as bilinguals with "high fluency" in both languages but had "no formal interpreting education or accreditation" (p. 112). Their research also surveyed the two groups' profiles in such categories as the highest level of formal education, legal interpreting training, NAATI[87] accreditation, first language, primary language spoken at home, in addition to age and gender (Hale et al., 2019, p. 113).

With the present thesis, however, available facts were limited only to those that were actually mentioned in the rulings, dispersed within their texts, and as was noted in Section 3.2, Berk-Seligson (2000) rightly pointed out the scarcity of the information in these appellate rulings on the interpreters' exact qualifications (p. 215). Still, intensive reading of all the 228 criminal cases also unveiled descriptions that seemed relevant to the interpreters' "qualifications and language skill" (*U.S. v. Nazemian*, 9th Cir., 1991, p. 527), which were included in these rulings, most probably in order to substantiate the courts' decisions. Conversely, if the rulings contained no such descriptions, then very possibly there was none the courts could refer to.

Using such data obtained from these court ruling descriptions for quantitative analyses, however, required operationalization of relevant concepts or constructs (Mellinger & Hanson, 2017, pp. 3–4) through data coding (Epstein & Martin, 2014, pp. 95–116). After searching, identifying, recording, and categorizing textual data that seemed relevant to the interpreters' "qualifications and language skill" (*U.S. v. Nazemian*, 9th Cir., 1991, p. 527), the thesis first conducted the following two data operationalizations to examine how effective the *conduit* end of the polarity is in ensuring translation accuracy:

[87] NAATI is an acronym for National Accreditation Authority for Translators and Interpreters Ltd, the only organization in Australia which issues governmental certifications to translators and interpreters. (NAATI, 2021).

1. Operationalization of interpreter qualifications; and

2. Operationalization of interpreting issues.

In addition to the above two, the thesis also conducted a quantitative analysis of the *hearsay* end of the polarity, which views interpreters' translation with fundamental skepticism and contends that its accuracy could only be verified through cross-examination of the interpreter. Thus, the thesis also investigated, through the following third operationalization, how effective requiring interpreters' in-court testimony was in verifying their translation accuracy:

3. Operationalization of interpreters' in-court testimonies.

The details of these three operationalizations are explained in the following three sections respectively.

3.6.1 Operationalization of Interpreter Qualifications

The thesis first classified the interpreters in the total 228 criminal cases (51 federal and 177 state cases) into profile categories.[88] This was relatively easy as relevant information was usually explicitly mentioned in the rulings, though in some cases the interpreters' identities remained unknown. More difficult was the actual classification. Too many categories would obscure quantitative comparisons, while too many category mergers would also impair necessary comparisons. Also, a few classification issues arose with some interpreters, such as a wife of a police officer (*State v. Fuentes*, Wisconsin, 1998) and a college student who served as a police intern (*Commonwealth v. Lujan*, Massachusetts, 2018).[89] After a number of trial-and-errors, the present thesis

[88] The total number of interpreters came out as 243 (54 interpreters for 51 federal cases and 189 interpreters for 177 state cases), as in some cases more than one interpreter was used.

[89] The wife of a police officer in *State v. Fuentes* (Wisconsin, 1998) was categorized as an acquaintance. The police intern in *Commonwealth v. Lujan* (Massachusetts, 2018) was also categorized as an acquaintance in Tamura (2019a, 2019b) for the reason that technically he was still a civilian college student. However, the present thesis re-categorized this police intern as a law enforcement officer for the reason that this intern, who had been interpreting for the West Springfield Police Department for almost 9 years on a regular basis (*Commonwealth v. Lujan*, Massachusetts,

rested on the following 12 categories:

1. Court/certified interpreters, including those who were qualified to work as court interpreters prior to the Court Interpreters Act of 1978, as well as professional sign language interpreters;[90]
2. Alternatively qualified interpreters, who were not court/certified interpreters but were employed or regularly working as interpreters, e.g., as hospital interpreters (*alternatively* was used to avoid confusion with *otherwise*, which is used as one of the official qualification categories for federal court interpreters[91]);
3. Law enforcement officers or government officers serving as interpreters, who were further divided into two categories: (a) bilingual officers who interviewed the suspect/witness directly in a foreign language, and (b) those who only acted as an interpreter for another interviewing officer;
4. Unknown, i.e., interpreters whose identity remained unknown in the ruling.
5. Telephone, i.e., interpreters made available through remote language interpreting service providers, such as LanguageLine;[92]
6. Co-workers/employees;
7. Acquaintances, i.e., friends or acquaintances of the defendant or other witnesses, not including family, relatives, employees, or co-workers, who were classified in

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2018, p. 98), was legally "under close supervision" of the West Springfield Police Department, who was his employer (Temporary and leased employees, interns and volunteers: Massachusetts, 2022).

[90] As was noted in Chapter One, Section 1.1, the Court Interpreters Act of 1978 and the Federal Court Interpreter Certification Examination (FCICE) are for federal courts (González et al., 2012, pp. 1159–1180), following which the state courts have also made similar efforts with varying standards (Mellinger et al, 2023, p. 146). The U.S. also implemented the Registry of Interpreters for the Deaf (RID) as early as in the 1960s, as is explained in Chapter Five, Section 5.1.1, stipulating the use of "qualified sign language interpreters" in police interviews. If sign language interpretation was provided by a family member, however, the thesis classified this interpreter as a family member.

[91] Administrative Office of the U.S. Courts (2021) defines "*otherwise* qualified interpreters" as interpreters who are either "professionally qualified" or "language skilled/ad hoc" (p. 3).

[92] LanguageLine Solutions ® (LanguageLine Solutions, 2023).

different categories;[93]

8. Family, including children and relatives;
9. Neighbors (who were not acquaintances) and by-standers, i.e., those who happened to be at the site and were asked to or volunteered to help;
10. Co-conspirators;
11. Informants; and
12. Inmates.

The above 12 profile classification was the first step for further qualification assessment, which, as was mentioned above, required operationalization (Mellinger & Hanson, 2017, pp. 3–4) of the data dispersed in the court ruling texts through coding (Epstein & Martin, 2014, pp. 95–116).

The following are two examples of court ruling descriptions (raw data) that seemed relevant: (a) *Diaz v. State*, a 2010 ruling in Texas; and (b) *State v. Montoya-Franco*, a 2012 ruling in Oregon.

a. Relevant descriptions in *Diaz v. State* (Texas, 2010):

> Ortega testified... Because Chaides could not find an officer to translate the written statement, he asked Edna Ortega, an investigator with CPS who happened to be at the police station, to orally translate the written statement to Appellant in Spanish. Ortega was very fluent in Spanish, which she spoke in her home growing up and studied in grade school, high school, and college. (pp. 21–23, underlined by the author)

b. Relevant descriptions in *State v. Montoya-Franco* (Oregon, 2012):

> Officer Diaz…testified that he was certified through the City of Salem to act as an interpreter for Spanish speakers. He also testified that Spanish was his first language, that he grew up in a household with Spanish-speaking parents, and that

[93] The above-mentioned "police officer's wife" (*State v. Fuentes*, 1998, Wisconsin) was also included in this category, though in this case this interpreter was an acquaintance of the law enforcement, not of the defendant.

he primarily communicated with his parents in Spanish. (p. 667, underlined by the author)

For all the 228 criminal cases, descriptions in the court ruling texts that seemed similarly relevant to "qualifications and language skill" (*U.S. v. Nazemian*, 9th Cir., 1991, p. 527), such as those underlined in the examples (a) and (b) above, were searched, identified, and recorded on the Excel spreadsheet. These underlined descriptions were then categorized into one of the following five qualification-related attributes:

a. Linguistic Competence: descriptions that the interpreter was able to speak or communicate in the given language, with such key words as: *first* or *native language*, *raised* or *brought up speaking the language*, *language used at home* (*heritage language*), as well as *fluent*, among others;
b. Experience: descriptions of regular or long-time use of the language for the job, such as: *the officer was using the language regularly on the job*, *doing the interpreting job on a regular basis*, or *doing it for a long period of time*, and so on;
c. Formal education or training: any formal education or training to improve the language and/or interpreting skills;
d. Certification/Court interpreter: if any, including even ones issued by the municipality, such as *certified by the city*, or a description that a *court interpreter* was used; and
e. In-court testimony about one's own qualifications: not any testimonies but only those that specifically referred to one's own qualifications as an interpreter.

Relevant descriptions such as the above examples were often contained in the interpreters' own in-court testimonies and/or in the passages of the court ruling written by the presiding judge, both of which were recorded separately on the spreadsheet.

Next, the thesis decided weighted point assignments for these five categories that seemed relevant to "qualifications and language skill" (*U.S. v. Nazemian*, 9th Cir., 1991, p. 527), for the reasons that these five attributes did not seem to carry equal weights from interpreting studies standpoint. For example, (a) is usually regarded in interpreting

studies only as a necessary but not sufficient condition to work as an interpreter, whether judicial (e.g., Benmaman & Framer, 2015, p. 128; Hale et al., 2019) or otherwise (e.g., Setton & Dawrant, pp. 61–65). Also, with a few cases, what seemed to have been written to substantiate (b) was only an experience in using the language (e.g., Spanish or English) as a means of communication at work (e.g., *Correa v. People*, California, 2000, p. 634), and thus not exactly an *interpreting* experience. In addition, regarding (c), in the field of interpreting studies, there is a clear distinction between foreign language training (for non-native or B/C language)[94] and interpreting skill training, the former generally serving as a pre-requisite for the latter (e.g., Setton & Dawrant, pp. 61–65). Furthermore, (e) may have been helpful for the court as well as may have meant that the interpreter was ready to be cross-examined about her/his qualifications, it in itself does not supplement (b), (c), or (d). Therefore, in operationalizing interpreter qualifications, the use of weighted points became necessary.

In deciding the distribution of weighted points, the present thesis based the assignment criteria on Hale et al. (2019) mentioned in Section 3.6 above, large-scale experimental research on 44 trained and 56 untrained police interpreters (p. 112) funded by the Federal Bureau of Investigations (Hale et al., 2019, p. 126). In this research, Hale et al. (2019) surveyed the demographic characteristics of both trained and untrained police interpreters (p. 113), which showed the following three key results relevant to the present thesis's qualification attributes (b), (c), and (d).

1. As to the trained interpreters' experience, 36.4% had court interpreting experience and 43.2% had tribunal[95] interpreting experience, while with untrained interpreters, the

[94] International Association of Conference Interpreters, known as AIIC by the French acronym, classifies interpreters working languages into: A language (a native language or its strict equivalent), B language (a non-native language of which an interpreter has a perfect command), and C language (a language of which an interpreter has a complete understanding) (Thiéry, 2015, p. 14).

[95] Tribunal interpreting refers to a court temporarily established to serve a specific purpose, in which multiple languages are used, and which takes place both domestically and internationally. Major international tribunals that have taken place to try war criminals include: Nuremberg Trial (1945–1946), Tokyo Trial (1946–1948), which was noted in Chapter Two, Section 2.1.4, and

percentage of those who had done court interpreting was 3.6% and tribunal interpreting also 3.6%.

2. As to the trained interpreters, 50% of them also had legal interpreting training.
3. While 48.8% of the trained interpreters had NAATI accreditation, none (0%) of the untrained interpreters had NAATI accreditation.

The above three results seemed to indicate that even untrained interpreters may still have some interpreting experience, just as a small percentage of untrained interpreters in Hale et al. (2019) had some interpreting experience. Untrained interpreters, however, usually have neither formal interpreting training not accreditation (e.g. certification), as was the case in Hale et al. (2019, p. 113). Thus, the thesis assigned slightly more weighted points to (c) and (d) than (b). In addition, in evaluating the interpreting performance of both trained and untrained interpreters, Hale et al. (2019) assigned 10% out of 100% total to "bilingual competence" (p. 116), which seemed relevant to the qualification attribute (a), linguistic competence to use the language fluently.

Based on the above information, the present thesis assigned weighted points to the five categories as follows out of the total 100 points.

a. 1st/Native/Heritage Lang/Fluent: 10 points

The same ratio (10%) as Hale et al.'s (2019) bilingual competence was assigned.

b. Regular/Long-time Job Experience: 5 or 25 points

Based on the above findings that even untrained interpreters may have some interpreting experience, 25 points were assigned to this category, unlike 30 points assigned for (c) and (d), and only 5 points were assigned if the experience seemed to entail only the use of a foreign language skill, not interpreting skill.

c. Formal Education/Training: 5 or 30 points

Formal interpreting training was assigned 30 points, whereas 5 points were assigned

International Criminal Tribunal for the Former Yugoslavia (ICTY) (Takeda, 2015, p. 424).

to foreign-language training in secondary or higher education.

d. Certified/Court Interpreter: 30 points

e. Interpreter's Own Testimony on Qualifications: 5 points.[96]

The above weighted points were assigned so that a minimum of 30 points (e.g., formal training or accreditation) would become necessary to be regarded as qualified.

Table 3.8 below shows how the actual descriptions in a court ruling were analyzed, categorized, and numerically coded with four examples. The first one is a 2010 ruling in Texas (TX), the second a 2000 ruling in Illinois (IL), the third a 1997 ruling in Washington (WA), and the fourth a 2012 ruling in Oregon (OR). All were law enforcement officers acting as interpreters. For each case, the jurisdiction (state), the year of the ruling, and the case title were recorded in the far-left three columns. In the next column to the right, relevant descriptions contained in the interpreter's own testimony were recorded, and in the farthest-right column relevant descriptions contained in the court ruling were recorded. The five qualification-related attributes explained above were listed in the middle, each with a column assigned.

The textual descriptions were then analyzed and categorized into one of the five qualification-related attributes, with the following column labels, each assigned the following weighted points out of 100 total points, as follows.

a. 1st/Native/Heritage Lang/Fluent: 10 points

b. Regular/Long-time Job Experience: 5/25 points

c. Formal Education/Training): 5/30 points

d. Certified/Court Interpreter: 30 points

e. Interpreter's Own Testimony on Qualifications: 5 points

[96] As was noted above, though an interpreter's in-court testimony about one's qualifications in itself does not prove she/he was sufficiently qualified, the thesis assigned 5 points to this category for the reason that by agreeing to testify in court about one's qualifications, the interpreter knowingly allows relevance (Curry, 2017, p. 236, 2021, p. 233) to be established for the defendant to scrutinize the qualification details in cross-examination, including a possible on-the-spot translation test in court (*People v. Huerta*, California, 2003, p. 27; *State v. Rodriguez-Castillo*, Oregon, 2008, pp. 53–54; *U.S. v. Romo-Chavez*, 9th Cir., 2012, pp. 963–964), as is discussed in Chapter Six, Section 6.1.1.

Table 3.8

Coding Examples: Qualification Attributes

Juris-diction	Year	Case Name	Interpreter's Own Testimony	(a) 1st/N/H Lang/ Fluent (10 pts)	(b) Regu-lar/ Long-time Job Exp (5/25 pts)	(c) Formal Ed/Trg (5/30 pts)	(d) Certi-fied/ Court IT (30 pts)	(e) IT's Own Testi-mony on Q (5 pts)	Total (100 pts)	Court-Ruling Descriptions
TX	2010	*Diaz v. State*	Ortega testified (e)... Because Chaides could not find an officer to translate the written statement, he asked Edna Ortega, an investigator with CPS who happened to be at the police station (b-0), to orally translate the written statement to Appellant in Spanish. Ortega was very fluent in Spanish, which she spoke in her home growing up (a) and studied in grade school, high school, and college (c) (pp. 9-11).	10	0	5		5	20	
IL	2000	*People v. Villa-gomez*	Montilla testified (e) that he informed defendant that he spoke Spanish...Montilla is of Puerto Rican descent (a) (p. 3).	10				5	15	
WA	1997	*State v Garcia-Trujillo*		10	0				10	...and arranged for Special Agent Lee Bejar, a border patrol agent (b-0) in Bellingham whose first language was Spanish (a), to translate the interview (p. 205).
OR	2012	*State v. Montoya-Franco*	Diaz testified (e) that he was certified through the City of Salem to act as an interpreter for Spanish speakers (d). He also testified that Spanish was his first language, that he grew up in a household with Spanish-speaking parents, and that he primarily communicated with his parents in Spanish (a) (p. 667).	10			30	5	45	
Total				40	0	5	30	15	90	
Ave./ Inter-preter				10.00	0.00	1.25	4.50	3.75	19.50	

Abbreviations:	
	1st/N/H Lang: First or Native or Heritage Language
	Formal Ed/Trg: Formal Education or Training
	Certified/Court IT: Cirtified or Court Interpreter
	IT's Own Testimony on Q: Interpreter's Own Testimony on Qualification
	pts: points

In the above example, a description identified as relevant to one of these five attributes was underlined and marked with the relevant alphabet (a, b, c, d, and e) in parentheses. With a description which negated one of these attributes, the parenthetically marked alphabet was followed by a hyphen and zero (e.g. b-0).

For example, in the first case above, *Diaz v. State* (Texas, 2010), there was a description that the interpreter, whose name was Ortega, "testified," so 5 points were scored in Column (e) for interpreter's own testimony on one's own qualifications. In the same text, there was also a description that "Because Chaides[97] could not find an officer to translate the written statement" he asked "Edna Ortega, an investigator with CPS[98] who happened to be at the police station." This description was assessed as *negatively* relevant to Column (b-0), because it denoted that Ortega, who was an "investigator," *not* an interpreter, was asked to interpret because Chaides, the interviewing officer, who "could not find an officer to translate the written statement" found Ortega, who "happened to be at the police station." Thus, 0 point was scored in Column (b). The next description in the same text also said, "Ortega was very fluent in Spanish, which she spoke in her home growing up," which was relevant to Column (a), so 10 points were scored here. Finally, there was also a description that "[Ortega] studied [Spanish] in grade school, high school, and college," which was relevant to Column (c), but it was only a language study, not a formal interpreter training, so only 5 points were scored.

The same was done for the next case *People v. Villagomez* (Washington, 1997) Montilla, the interpreter, "testified" about his own qualifications, so 5 points were scored in Column (e). There were also descriptions that "he spoke Spanish," and that Montilla was "of Puerto Rican descent," which together would be relevant to Column (a), so together 10 points (not 20 points) were scored.[99]

In the third example, the interpreter, Lee Bejar, did not testify, so no points were scored in Column (e), but the ruling contained information obtained during the trial from

[97] Chaides was the name of the interviewing officer, who needed a Spanish interpreter. (*Diaz v. State*, Texas, 2010, p. 4).

[98] CPS is an acronym of Child Protective Services.

[99] Multiple descriptions on the same qualification attribute were not given double points, so here only 10 points, not 20 points.

other witnesses. For example, the ruling referred to the officer as "Lee Bejar, a border patrol agent," which implied that he was not regularly serving as an interpreter, which was assessed as *negatively* relevant to Column (b), scoring 0 point. However, the ruling also noted Bejar's "first language was Spanish," so 10 points were scored in Column (a).

In the fourth case, *State v. Montoya-Franco* (Oregon, 2012), Officer Diaz "testified" about his own qualifications, thus 5 points were scored in Column (e). Also, the ruling said, "[Diaz] testified that Spanish was his first language, that he grew up in a household with Spanish-speaking parents, and that he primarily communicated with his parents in Spanish," so together 10 points were scored in Column (a). In addition, the ruling noted that he was "certified through the City of Salem to act as an interpreter for Spanish speakers," so 30 points were scored in Column (d) for "Certified/Court interpreter."

The same assessment was conducted for all the 243 interpreters (54 in federal and 189 in state cases) in 12 profile categories, with per interpreter average for each category and their total. Complete details on how the original court ruling descriptions were identified, analyzed, and categorized, along with the evidentiary admission ratio for each profile category, are presented in Appendix 3: Interpreter Qualifications and Evidentiary Admission by Profiles. Table 3.9 below shows the results for: court/certified interpreters and alternatively qualified interpreters. As are shown, the total average points per interpreter for court/certified interpreters came out as 40.00/100 points and those for alternatively qualified interpreters as 30.00/100.

Table 3.9

Qualification Attributes Points Total: Example

		Total # of Interpreters in Each Profile Group	(a) 1st/N/H Lang/ Fluent (10 pts)	(b) Regular/ Long-time Job Exp (5/25 pts)	(c) Formal Ed/Trg (5/30 pts)	(d) Certified/ Court IT (30 pts)	(e) Testimony on Qualifi-cation (5 pts)	Total (100 pts)
Court/ Certified IT	F	4	0	75	90	120	15	300
	S	28	30	50	35	840	25	980
	TOTAL	32	30	125	125	960	40	1280
	Ave./ Interpreter		0.94	3.91	3.91	30.00	1.25	40.00
Altenatively Qualified IT	F	2	10	50	0	0	0	60
	S	7	20	175	5	0	10	210
	TOTAL	9	30	225	5	0	10	270
	Ave./ Interpreter		3.33	25.00	0.56	0.00	1.11	30.00
Abbreviations:		#: Number; IT: interpreter; F: federal cases; S: state cases						

The thesis made the same calculations with all the 12 profiles and compared the by-profile qualification point averages with by-profile evidentiary admission ratios. In addition, using the data shown in Appendix 3: Interpreter Qualifications and Evidentiary Admission by Profiles, the thesis also conducted a *t*-test on the qualification points of the interpreters whose translation were found inadmissible and the points of those whose translations were found admissible to examine whether there was a statistically significant difference in the qualification points between these two groups.

3.6.2 Operationalization of Interpreting Issues

The selected appellate rulings also contained, though not always, descriptions of various interpreting issues that had been raised in lower courts. To enable their quantitative analyses, operationalization of these court-ruling descriptions was also conducted. After reading the court ruling descriptions of 243 interpreters in 228 criminal cases, the following three categories emerged and seemed feasible for analyses.

1. *Comprehension issues*: there was an explicit description about comprehension and/or communication problem with the interpreter.

The following passage from *In re Joseph D.* (California, 2006) is a good example, in which the defendant stated that the interviewing officer could not speak or understand Spanish well:

> At trial, Joseph repeatedly testified that Officer Douglas did not speak Spanish well and that Douglas did not fully understand Joseph's statements. For example, Joseph noted that "there were several things that I would tell [Officer Douglas] that he wouldn't understand and he [w]ould [stay] quiet and then all of the sudden he would ask me again, you know, "What's that again, what's that again?" (p. 14, underlined by the author)

2. *Factual discrepancy*: there was an apparent factual discrepancy between what the interviewing officer heard from the interpreter and what the defendant later insisted in court as to what she/he had said.

Normally this would have fallen into "defendant's prior inconsistent statements"[100] but now there was an extra layer added in the form of the interpreter's translation, and there was no way of identifying whether the discrepancy was a result of an inaccurate translation or otherwise, unless the whole discourse had been audio/video-recorded. The following passage from *People v. Perez* (New York, 1985) is a good example, in which a discrepancy between version A and version B appeared as to on which street the defendant told the officer he had been at the time of the shooting:

> Through the translator, the defendant told the detective that as he was walking on 4th Avenue (A), he saw a male black running, then heard a shot and felt pain in his wrist. After further investigation defendant was charged with the homicide.

[100] Legally, this is a statement made by the defendant before the trial which is inconsistent with what the defendant is now testifying to during the trial, which is stipulated as "not hearsay" by the Federal Rules of Evidence 801(d)(1)(A).

> Defendant testified at trial, alleging that he was shot by unknown assailants at 300 Douglas Street (B), the scene of the double homicide. During cross-examination of defendant, the District Attorney asked if he had ever told Detective Peaslee that he was shot while walking on 4th Avenue, by a male black. The defendant denied ever making such statement. (p. 32, underlined by the author)

3. *Translation/linguistic-specific issues*: the rulings also contained specific descriptions of translation accuracy issues.

The present thesis categorized them into two sub-groups, each of which was then further divided into two sub-categories as follows.

a. Syntactic issues:

(1) Tense issues: tense errors, some at a very basic level; and

(2) Other syntactic issues/errors: singular/plural, subject-verb agreement, and other syntactic errors.

b. Semantic issues:

(1) Word mis-choice or misuse, lack of vocabulary; and

(2) Other semantic/meaning-related/residual issues.

The following are examples of how the descriptions in court rulings were categorized into each one of the four types of translation issues classified above.

a. (1) Syntactic issues on tense

State v. Garcia-Trujillo (Washington, 1997) is a good example. This was a case on statutory rape, which in the state of Washington is stipulated on a sexual intercourse (regardless of whether it was consensual or not) with a minor under the age 16. The key issue in this case was whether Garcia (defendant) *knew* how old V.C. (the victim) was at the time the crime was committed. Agent Bejar had interpreted for Garcia and Detective

Moser during the interrogation:

> Bejar testified that he now remembered some of the questions and answers he had translated when he acted as an interpreter for Detective Moser. Specifically, he remembered translating the question, "Do you know how old [V.C.] is?" and Garcia's answer, "No." He also remembered translating the question "How old do you think she is?" but remembered only that Garcia's response was an age under 18. The State then recalled Detective Moser, who testified that he had asked five or six questions regarding V.C.'s age, including "how old he thought [V.C.] was" and "how old did he think that she was." Garcia testified on his own behalf and, when asked if he told police that V.C. did not tell him how old she was, denied that he had made that statement to Agent Bejar. Instead, he testified he told Agent Bejar that V.C. told him she was 17 years old. V.C. also testified she told Garcia she was 17 years old. The State called Detective Moser as a rebuttal witness. Moser testified that he asked Garcia if V.C. had told him how old she was and that Garcia answered "No." (p. 206, underlined by the author)

In a case such as statutory rape, "*Do* you know how old she *is*?" in contrast to "*Did* you know how old she *was*?" or "How old *did you think she was*?" or "How old *do you think she is*?" or even "How old *do you (now) think she was*?" all make critical differences as to whether the defendant *knowingly* committed the crime, with an accurate translation of the tense becoming a most crucial point.

a. (2) Other syntactic issues/errors

U.S. v. Romo-Chavez (9th Cir., 2012) is an example in this category. The officer interpreter in this case translated a Spanish phrase "me han laido" into "I have read" in English, while the correct translation was "they have read to me," thus making a syntactic error of subject-object confusion. This was criticized by one of the appellate judges, who stated "such a transposition of subject and object could matter mightily

when a suspect is giving his story in response to questioning" (*U.S. v. Romo-Chavez*, 9th Cir., 2012, p. 964, underlined by the author).

b. (1) Semantic issues on word mis-choice or misuse, lack of vocabulary

State v. Gonzalez-Hernandez (Washington, 2004) is a good example. In this case, the defendant, Gonzalez, convicted of child rape and molestation, had been interviewed through an officer interpreter, Officer Punzalan, who later testified in court but did not know or could not remember the Spanish words for "sorry" and "rape" as follows:

> …report stated that Gonzalez said he was sorry. But Punzalan could not recall if Gonzalez said he was sorry; he was also not sure he would have recognized the word "sorry" in Spanish. Punzalan testified that if Gonzalez "said he was sorry, it was probably in English." And when asked what the Spanish word for "rape" was, Punzalan stated that he believed he used the English word. (*State v. Gonzalez-Hernandez*, Washington, 2004, p. 56, underlined by the author)

When the most crucial point in convicting the defendant was his own confession that "he was *sorry* for the *rape*" he had committed, the interpreter could not recall or simply did not know these two most important terms in Spanish.

b. (2) Other semantic/meaning-related/residual issues.

This last category is for all the other, residual translation issues described in a ruling often as *inaccurate* but were too general to categorize specifically. *Hernandez v. State* (Georgia, 2008) is a good example of this last category. This was a case of a defendant charged with illegal drug trafficking who had been interviewed by a MANS (Multi-Agency Narcotics Squad) officer with the squad's bilingual assistant clerk, Loredo, serving as an interpreter. The interview had been audio-recorded, which was played in court, and the court interpreter was asked to verify the translation accuracy:

> The court-appointed translator indicated that Loredo had provided an inexact

> translation as to one of Hernandez's statements, and then testified that another translation was inaccurate… Before the tape…was played to the jury, defense counsel argued that "a lot" of Laredo's translation was incorrect, but did not specify in what way the translation was incorrect. (*Hernandez v. State*, Georgia, 2008, pp. 566–567, underlined by the author)

All parties at the trial recognized that there had been a number of translation errors but could not specify clearly in what way they were inaccurate.

A complete, detailed analysis of all the findings on the interpreting issues is shown in Appendix 4: Interpreting Issues Described in Court Rulings, presented under the following six category titles:[101]

1. Comprehension issues,
2. Factual discrepancy issues,
3. Syntactic tense issues,
4. Other syntactic issues,
5. Word choice issues, and
6. Other sematic issues. each listed in the order of interpreter profiles.

For each finding of an interpreting issue in one of these six categories, 1 point was assigned. If an interpreter was described with multiple interpreting issues, each one was recorded separately in one of the 6 categories, with each given 1 point.[102] The results

[101] In each of the six interpreting issue categories, the rulings with relevant descriptions are listed in the order of the 12 interpreter profiles.

[102] This method differed from the one used in Tamura (2019a), in which the point calculation was based on whether or not an interpreter had an interpreting issue (1 point for yes and 0 point for no), and if an interpreter had multiple issues, 1 point was divided among the issue categories, e.g., if two issue categories, .5 was assigned for each. This method was used in order to calculate the total number of interpreters with interpreting issues with the issue category breakdown (Tamura, 2019a, pp. 38–39). In the present thesis, however, the calculation was based on issue categories only, so if the same interpreter had interpreting issues in multiple categories, each was recorded separately as 1 point in each one of the six categories and was added to the category total. This means that the total number of interpreting issues became larger than the total number of interpreters who had interpreting issues.

were calculated for quantitative analyses by issue categories and profile categories. Table 3.10 below shows how the results came out for: court/certified interpreters, alternatively qualified interpreters, and law enforcement officer interpreters.

Table 3.10

Interpreting Issues by Profile: Example

		Total Number of Interpreters	Compre-hension Issues	Factual Discre-pancy	Tense	Other Syntactic Issues	Word Choice	Other Semantic Issus	Total Number of Issues	Ratio to Total Interpreters within Profile
Court/ Certified IT	F	4	0	0	0	0	0	0	0	0.0%
	S	28	0	2	2	0	0	1	5	17.9%
	TOTAL	32	0	2	2	0	0	1	5	15.6%
Ratio to Total Issues within Profile			0.0%	40.0%	40.0%	0.0%	0.0%	20.0%	100.0%	
Alternatively Qualified IT	F	2	0	0	0	0	0	0	0	0.0%
	S	7	1	0	0	0	0	0	1	14.3%
	TOTAL	9	1	0	0	0	0	0	1	11.1%
Ratio to Total Issues within Profile			100.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	
Law Enforcement Officer	F	18	1	2	1	1	1	2	8	44.4%
	S	53	6	6	2	0	3	5	22	41.5%
	TOTAL	71	7	8	3	1	4	7	30	43.3%
Ratio to Total Issues within Profile			23.3%	26.7%	10.0%	3.3%	13.3%	23.3%	100.0%	

Table 3.10 shows that with 32 total court/certified interpreters, there were 2 factual discrepancy issues, 2 tense issues, and 1 residual sematic issue, each accounting for 40.0%, 40.0%, and 20.0% respectively of the court/certified interpreters' total interpreting issues. Meanwhile, court/certified interpreters' total interpreting issue ratio was 15.6% (5 total issues with 32 interpreters). As for alternatively qualified interpreters, there was only 1 comprehension issue, and its ratio to the total of 9 interpreters was 11.1%. In comparison, 71 law enforcement officer interpreters came out with 7 comprehension issues, 8 factual discrepancy issues, 3 tense issues, 1 other syntactic issue, 4 word-choice issues, and 7 residual semantic issues, each accounting for 23.3%, 26.7%, 10.0%, 3.3%, 13.3%, and 23.3% respectively of the profile total, resulting in 43.3% total interpreting issue ratio (30 issues with 71 interpreters). Chapter Five presents the results

and analyses of these findings by issue categories and profile categories, comparing them with the courts' evidentiary admission ratio, the interpreters' in-court testimony ratio, as well as whether or not the interview was audio/video-recorded, in order to examine to what extent the courts were actually able to ensure and/or verify police interpreters' translation accuracy.

3.6.3 Operationalization of Interpreters' In-Court Testimonies

Finally, the thesis investigated to what extent the other end of the hearsay/conduit polarity, i.e., deeming language interpreters with fundamental skepticism, calling for mandatory in-court testimonies, seemed effective in verifying translation accuracy. This section explains how the data derived from court ruling texts were operationalized to explore this question.

Traditionally, the evidence law in the U.S. permitted witnesses to testify only to facts, i.e., the facts which these witnesses actually saw or heard directly. The line between a fact testimony and an opinion testimony, however, is often difficult to draw, and now the Federal Rules of Evidence (FRE hereafter) allows lay witnesses to present opinions by FRE 701, though in a more limited scope than what FRE 702 allows for expert witnesses (Orenstein, 2014, p. 165). As to who qualifies to testify as an expert witness is also stipulated by FRE 702 as one who testifies based on her/his "knowledge, skill, experience, training, or education," and those who are "qualified" to work as in-court interpreters under FRE 604 and "make an oath or affirmation to make a true translation" as "an expert" (Benmaman & Framer, 2015, p. 110) are generally regarded as qualified to testify as expert witnesses (Benmaman & Framer, 2015, p. 1113; García-Rangel, 2002, p. 3).

Out of all the 243 police interpreters who had translated in 228 total criminal cases investigated by the present thesis, 96 interpreters testified in court. However, none of these 96 interpreters who testified in court were specifically referred to or described as

expert witnesses defined by FRE 702 and its equivalent in each state's evidentiary rules. While many of them simply presented fact testimonies, i.e., testifying to what the suspect had actually stated, many also gave opinion testimonies about the accuracy of their own out-of-court translations. The question, therefore, remained as to what kind of testimonies these 96 interpreters gave and whether or not their testimonies sufficiently and/or effectively verified their translation accuracy. The present thesis explored the answer by operationalizing (Mellinger & Hanson, 2017, pp. 3–4) the court ruling descriptions on interpreter testimonies through data "coding" (Epstein & Martin, 2014, pp. 95–116) as are described below.

Regarding the 96 interpreters who testified in court, the court rulings contained descriptions, though often limited, on what kind of testimonies they made, i.e., what these interpreters testified to in court. Analyses of these descriptions led to the following three categories of testimony types: *fact-type* testimonies, *general-type* testimonies, and *accuracy-specific-type* testimonies, which are explained below.

1. *Fact-type* testimonies

Just as an interviewing officer would, the interpreter was able to recall and testify to what the defendant or other witnesses had stated during the interview, more as a fact witness. The following is an example from *Gomez v. State* (Texas, 2001), a DUI case:

> At trial, Andrade testified that when Officer Peters asked appellant if he had been drinking, appellant said that he had drunk two or three beers; Andrade relayed this information to Peters. (p. 457, underlined by the author)

Of the three testimony types, this first, *fact-type* testimonies were the closest to what evidentiary rules classify as a fact/percipient witness testimony, as these interpreters were actually able to recall and testify to what they had heard the witness state to an interviewing officer, which, however, would also present a conflict with interpreters' professional code of the confidentiality and impartiality, making such testimonies

ethically taxing or possibly unfeasible.[103]

2. *General-type* testimonies

The interpreter, with no qualifications to testify as an expert witness, only stated that she/he had translated accurately, with neither concrete explanations to substantiate the translation accuracy nor any reference to the actual content of what the defendant or other witnesses had said during the interview, often though not always for the reason that she/he no longer remembered, though with some interpreters the reason may possibly have been to abide by the code of confidentiality and impartiality. A good example of the former reason would be *U.S. v. Felix-Jerez* (9th Cir., 1982), a ruling on a prison escape case, which noted:

> At the trial, Tolavera [a camp guard]…testified that he acted as an interpreter at the interview between Hardeman [the interrogating officer] and defendant…, but that he had no independent recollection of the questions and answers and could not testify what they were. He said that his translations were accurate and that he had no difficulty in understanding the defendant's Spanish. (pp. 1298–1299, underlined by the author)

This second, *general-type* testimonies provided no substantial verification on the actual translation accuracy, except that these interpreters testified that they thought they had translated accurately. These testimonies provided neither what a fact testimony would corroborate nor any specific details to verify the translation accuracy.

Also, a description such as an officer interpreter later checking a written report (in English) prepared by an interviewing officer based on the officer interpreter's translation (into English) and confirming that the content of the report (in English) was accurate was also classified in this second category, for the reason that no actual verification of

[103] The ethical issue concerning conflict with interpreters' code of ethics is explained in detail in Chapter Five, Section 5.6.1.

the translation accuracy took place in this process. A good example would be a testimony given by Officer Velez, who served as an interpreter for Officer Riccio and the defendant in *State v. Colon* (Connecticut, 2004):

> Velez testified that he read what Ricci was typing on the computer screen and confirmed that it was, in fact, what he just had translated. ...Velez verified that the statement that Ricci was transcribing was an accurate representation of what the defendant had stated in Spanish. (p. 105, underlined by the author)

The only thing confirmed in a process of this type is that the content of the report written in English was the same as what the interpreter herself/himself conveyed in English to the report writer. Whether or not the interpreter accurately translated the defendant's foreign-language statement into English, not to speak of whether the interpreter accurately translated the interviewing officer's English question into the defendant's language, was never verified in this process.

In addition to testimonies such as the above, if a court ruling had only a passing description on the interpreter's testimony, which had no detail on the factual content or on how accuracy was ensured and/or verified, such testimonies were also classified into this *general-type* category.

3. *Accuracy-Specific-type* testimonies.

The interpreter, instead of testifying to the content of what had been stated by the suspect or other witnesses, only explained specific translation points that were relevant to translation accuracy, including translation strategies she/he had used to ensure accuracy, as well as possible reasons for any inaccuracy if it had possibly occurred. For example, in *Palomo v. State* (Texas, 2015), Alvarado, who had translated for a victim in a sexual assault case testified:

> that on two occasions, Ellen did not understand the question, and she had to make the question so Ellen could understand it…that [a]t least twice, she found it

necessary to rephrase the question when Ellen did not understand the word-for-word translation…that, if Ellen stated the phrase as Palomo claimed, then her translation would be incorrect. (p. 4, p. 10, underlined by the author)

Testimonies such as the above, which the present thesis calls *accuracy-specific-type* testimonies, were the only ones that effectively verified translation accuracy. In these testimonies, the interpreters explained: details on the specific translation issues relevant to accuracy, the translation strategies used to ensure and/or verify accuracy, and possible reasons for any inaccuracy that might have occurred.[104]

The present thesis categorized the 96 testimonies into the above three types to examine how realistically effective or even feasible this other end of the hearsay/conduit polarity seemed in verifying interpreters' translation accuracy, especially without creating a conflict with interpreters' professional code of the confidentiality and impartiality.[105]

3.7 Exploration of Power Relations in Hearsay/Conduit Polarity

As was stated in Section 3.1.2, the present thesis used Ian Mason's argument on three power relations in interpreter-mediated discourse (Mason, 2015b, pp. 314–316; Mason & Ren, 2012) as a theoretical framework to explore what kind of power relations may possibly have been at work behind the hearsay/conduit polarity. The thesis analyzed

[104] Testimony classification used by the present thesis differed slightly from what was used in Tamura (2019b, pp. 16-17). Tamura (2019b) used: *Fact-Witness*-type, *Neither-type*, and *Expert-type*, instead of the three categories used in the present thesis. While the *Expert-type* testimonies in Tamura (2019b) included certified/court interpreters' testimonies that they had translated accurately, the present thesis categorized them as *General-type*, not *Accuracy-Specific-type*, unless the testimonies included specific explanations on relevant translation-related issues and/or strategies or procedure used to ensure and/or verify accuracy, instead of simply stating that their translations were accurate. The classification criteria used for *Fact-Witness-type* remained the same as what was used for *Fact-type* in the present thesis.

[105] A complete list of testimony type analyses of the 96 interpreters' in-court testimonies with each relevant court ruling text is shown in Appendix 5: Testimony Types from Court Ruling Descriptions (by Profiles).

the results obtained from the empirical analyses of the hearsay circumvention theories and the quantitative analyses on the effectiveness of the hearsay/conduit polarity through the lens of these three power relations. The analyses, at the same time, were exploratory, not for hypothesis-testing (Pöchhacker, 2022, pp. 68–70). In other words, the thesis's discussion on whether and how these three types of power may have been at work in the creation and continuation of the hearsay/conduit polarity was only observational, substantiated by additional data collected by the present thesis for Data Base Two explained in Section 3.4.2, particularly languages used by the surveyed interpreters and the types of offenses these interpreters translated for.

3.8 Validity, Limitations and Delimitations

3.8.1 Validity

The present thesis, conducted as a single-coder analysis (Pöchhacker, 2022, p. 225), inherently carries a potential challenge to its validity, for the possible ascertainment of which the thesis made all the data used and the process of each operationalization as transparent as possible. A complete list of the thesis's raw data, i.e., the list of all the 228 criminal cases is presented in Appendix 1, and that of all the 73 civil cases is presented in Appendix 2. The detailed results of Operationalization 1: Interpreter Qualifications are presented in Appendix 3, those of Operationalization 2: Interpreting Issues in Appendix 4, and those of Operationalization 3: Interpreters' In-Court Testimonies in Appendix 5. The information relevant to the discussion in Chapter Six was sorted from Database Two, explained in Section 3.4.2, and is presented in Appendix 6.

Also, since the former version of the database (LexisNexis Academic) used for data collection was later renewed to the current version (Nexis Uni), the thesis presented in this chapter a comparison of the total number of original captures by both versions in Table 3.1 in Section 3.3.1. The comparison showed only a few minor discrepancies and did not affect the thesis's final selection list, shown in Table 3.3 in Section 3.3.2. Thus,

while all the analyses in the present thesis were conducted by the present author as single-person research, all the data (the raw and the operationalized) were made as transparent as possible to enable reproducibility of the present research and its analyses.

Nevertheless, data analyses are seldom error-free, and while presenting the results of the final analyses in the present thesis, the thesis did find a few discrepancies between those presented in this thesis and what the present author presented in Tamura (2019a) and Tamura (2019b), both of which used the same data and more or less the same operationalizations. The present thesis noted each found discrepancy in a footnote, explaining the cause of each discrepancy as well as how it was changed, revised, or corrected in the present thesis.

3.8.2 Limitations

As was mentioned in Chapter One, Section 1.7, the thesis based its analyses on the U.S. appellate court rulings which specifically dealt with the hearsay issue of police interpreters, using LexisNexis case law search engine. The collection method was made as exhaustive as possible, starting from 1850, the earliest possible accessible date with the old version of the search engine the present author used all the way up to 2018. For this reason, however, the results presented in the present thesis are only within the scope of those that appeared in the U.S. appellate rulings between 1850 and 2018. In addition, due to the very methodology chosen by the present thesis, the data analyzed and the conclusions drawn from those analyses are limited only within the scope of the information that was available from the collected court rulings (228 criminal cases and 73 civil cases).

However, as was also noted in Section 1.7, these court rulings have led to the creation of the current case law in the U.S. on this issue, Therefore, it would be safe to regard the accumulated information from these rulings to be a reasonable reflection of the current criteria used by both federal and state courts on the hearsay issue of

interpreters who translated for the law enforcement.

3.8.3 Delimitations

The major delimitation of the present research, as was also noted in Chapter One, Section 1.8, is that the data collection was specifically focused only on the *hearsay* issue of *interpreters* who translated for the *police* or *law enforcement*, not on the entire police interpreters in the U.S. in general. Therefore, police interpreter issues which were debated and resolved without involving the hearsay issue were not covered by the present research. The police interpreters covered in this research were only those with whom the appellants found a hearsay issue, though the lower courts had ruled the opposite. For this reason, the interpreters examined by the present research were only a limited portion of the entire police interpreter cohort in all the U.S. jurisdictions.

What the present research did instead, however, was to delineate the criteria created by U.S. courts on the qualifications and competence (e.g. whether there were any interpreting issues raised) of police interpreters, whom the judges of the surveyed courts determined would pass the constitutional due process muster without creating an extra layer of hearsay, and their judgments on how and why these interpreters' in-court testimonies, when they did testify, verified the accuracy of their out-of-court translations.

Chapter Four: Hearsay, Hearsay Circumvention, and Accuracy

Chapter Four[106] presents chronological analyses of the legal theories and their rationales the courts in the U.S. developed to circumvent the hearsay issue of police interpreters from interpreting studies perspective. The purpose is two-fold: (a) to investigate what kind of theories, based on what kind of views or notions about language interpreters, led to the creation of the current hearsay/conduit polarity applied to police interpreters; and (b) to examine how effective these hearsay circumvention theories are in ensuring police interpreters' translation accuracy.

In the U.S., whether in federal or state jurisdictions, no statutory law such as the Court Interpreters Act of 1978 yet exists for police interpreters. Thus, in the absence of relevant legislation, the courts in the U.S. have played the role of ensuring police interpreters' translation accuracy, either by resorting to hearsay exclusion and the Sixth Amendment Confrontation Clause (Ebashi, 1990, p. 24) or by using legal theories that would circumvent hearsay but also presumably provide persuasive reasons why an interpreter's translation added no extra layer of hearsay and why accuracy was ensured.

The chapter begins with early-time, rigid hearsay rulings and then examines what kind of hearsay circumvention theories U.S. courts developed with what kind of notions about interpreters, which are: *present sense impression theory*, *catch-all/residual exceptions*, other *hearsay exceptions*,[107] *agent theory*, *conduit theory*, and *agent and/or conduit theory*. The chapter empirically examines their validity as well as how they would or would not ensure accuracy and explores possible reasons why these theories, especially the last three, have become so prevalent, tracing them chronologically with

[106] Chapter Four incorporated the analyses and discussions presented in Ito (2016) and Tamura (2018, 2019a, 2019b) with revisions.

[107] As is explained in Section 4.3.1 and Section 4.4.5, the evidentiary rules in the U.S. (of both federal and states) draw a clear distinction between the concepts of *hearsay exceptions* (e.g., it is *hearsay*, but an *exception* is given, and *non-hearsay* (it is *not* hearsay). The first three on this list belong to the former category, and the latter three to the second category.

key court rulings.

4.1 Police Interpreters' Translation: Hearsay or Admissible?

As was explained in Chapter One, Section 1.1.1, common-law hearsay exclusion disallows admission of interpreter-mediated out-of-court statements without the interpreter's in-court testimony. This default mode actually was what U.S. courts used to apply rather rigidly in early times until the end of the 20th century.

4.1.1 Police Interpreters in the 19th and Early 20th Centuries

One of the oldest examples is *State v. Noyes*, an 1869 appellate ruling in Connecticut on a sexual assault conviction. During a jury trial, a prosecutorial witness named Frank Frazio testified through an Italian court interpreter that he had seen the defendant near the crime scene on the day of the assault. The defendant tried to contradict Frazio by calling in a man named William Lewis as an alibi witness, who testified that Frazio had told Lewis that he had seen the defendant at a different time. However, as Lewis had presumably talked with Frazio through another Italian interpreter who did not appear in court to testify, Lewis's testimony was excluded as hearsay, which the appellate court also affirmed (*State v. Noyes*, Connecticut, 1869, pp. 80-82).

A similar example is *State v. Epstein*, a 1903 ruling in another New England state on a Russian-speaking defendant convicted of murder. The appellate court ruled that the police officers' testimonies to what the defendant had told them through an interpreter "was clearly hearsay" and granted a new trial (*State v. Epstein*, Rhode Island, 1903, pp. 140–141). Also, a 1926 appellate ruling in New York on a Chinese-speaking defendant convicted of first-degree murder reversed the lower court's ruling and ordered a new trial, for the reason that the defendant's interrogation was conducted through two Chinese men acting as interpreters who did not testify in court, and thus making the evidence inadmissible hearsay (*People v. Chin Sing*, New York, 1926, pp. 422–424).

On the Western frontier, too, the courts strictly abided by the hearsay exclusion rule. A good example is an 1886 ruling by the Supreme Court of Montana, *Territory v. Big Knot on Head et al*. The defendants were Indians[108] of the Piegan tribe convicted of horse theft,[109] based on a prosecutorial testimony to the defendants' admission of the crime. Their statements, however, had been obtained through an interpreter employed by the U.S. government on the Piegan Indian reservation, who did not testify in court. The appellate judge reversed their conviction because the testimony "was manifestly hearsay" (*Territory v. Big Knot on Head et al.*, Montana, 1886, pp. 242–243). Similarly, in an 1896 murder case in Nevada, in which the defendant was also of an Indian tribe,[110] the appellate court ruled that the testimony to the defendant's confession obtained through an interpreter "should have been stricken out" because it was hearsay (*State v. Buster*, 1896, Nevada, pp. 346–347).

On the West Coast, too, most of the earliest rulings in California strictly abided by the hearsay rule (e.g., *People v. Ah Yute*, 1880;[111] *People v. Lee Fat*, 1880; *People v. Jan John*, 1902),[112] which, however, were overruled one century later in the same state of California, referring to them as "ancient" *(People v. Torres*, 1989, p. 1261) and "unrealistic and unworkable" (*People v. Torres*, 1989, p. 1261; *Correa v. People*, 2002, p. 461), as is explained in Section 4.7.

Some jurisdictions even today try (or tried till recently) to abide by hearsay

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[108] This is the expression used in the ruling to refer to Native Americans.

[109] Horse theft back in those days often led to a capital punishment (Row, 2011)

[110] This is also an expression used in the ruling and refers to a Native American tribe. The ruling did not specify the tribal name.

[111] There were several rulings with the same case name in 1880. This was *People v. Ah Yute*, 56 Cal. 119 (1880, CA).

[112] Though the APA citation rule is to list the sources alphabetically within the same parentheses, the present thesis lists the sources chronologically if the listed items are all related court rulings, as was done here, because chronological changes are one prime factor discussed in the present thesis.

exclusion, such as the Court of Appeals of Texas, the Fifth District in Dallas, in their 2008 ruling in *Saavedra v. State*. The defendant had been convicted of sexual abuse of his stepdaughter based solely on his statement made to the police through a Spanish interpreter, who did not testify in court. His stepdaughter later recanted her initial complaint and refused to testify because her younger sisters might have to grow up without a father. Thus, the prosecution relied solely on the hearsay evidence of the defendant's own confession obtained through the interpreter, citing other jurisdictions' hearsay circumvention theories as legal authority.[113] The presiding appellate judge, however, reversed the trial court's decision, adjudicating that his court would strongly refuse to use those hearsay circumvention theories and would strictly follow the jurisdiction's precedents that had ruled that "[a] person conversing with a third person through an interpreter is not qualified to testify to the other person's statements, because he knows them only through the hearsay of the interpretor [*sic*]" (*Saavedra v. State*, Texas, 2008, pp. 2–10).

While this strong tone of the Dallas appellate court epitomizes the inter-circuit split among U.S. courts, the U.S. is not the only common-law country which has faced this issue. Thus, before starting the discussion on U.S. courts, the chapter briefly notes how two other major common-law countries, the U.K. and Australia, have dealt with this issue. Since police interpreters' hearsay issue became a judicial predicament for them, too, their higher courts' rulings, whether hearsay or otherwise, both became landmark decisions, exemplified by the following two contrastive rulings.

4.1.2 U.K.

In the U.K., *R v. Attard,* a 1958 ruling by the Central Criminal Court in London, became such a milestone. The defendant spoke only Maltese, a Semitic language used

[113] This chapter explains these hearsay circumvention theories.

in Malta, a Mediterranean island country, and the police officer spoke only English. Thus, the communication between them was mediated by an interpreter. The officer later testified to what the defendant had told him through the interpreter, to which the defendant objected as hearsay. The prosecution presented two counter-arguments. The first was that the interpreter had acted as a "mere cypher," creating no hearsay. Secondly, they argued that this type of statements had never been challenged as hearsay in U.K. courts and thus would necessitate a large change in the judicial procedure (*R v. Attard*, 1958, p. 91). The metaphor "cypher" in their first argument is the same as all the other recurring metaphors such as "conduit" in a 1973 9th Circuit ruling in the U.S. (*U.S. v. Ushakow*, 9th Cir., 1973, p. 1245), as well as "telephone" and "mouthpiece" in *Gaio v. R*., a 1960 ruling by the Australian High Court (p. 422, p. 430) presented below. Their second argument was an attempt to diminish the extra layer created by an interpreter, by emphasizing the grave inconvenience incurred in the judicial process or even in society if interpreter-mediated communication was viewed as hearsay.

This was a novel issue for the judge, but in the end he ruled in favor of the defendant, acknowledging that "an interpreter is clearly a person who must use his intelligence" and can become a "competent witness," who therefore should testify in court (*R v. Attard*, 1958, pp. 91-92). Following this ruling, the Home Office urgently circulated a letter to Chief Officers of Police with two instructions: always ensure their interpreters would be available to testify in court, and advise them to make "notes of the interview" whenever possible for later use in trial (p. 92).

Thus, *R v. Attard* (1958) set a clear standard in the U.K. about the courts' position on out-of-court interpreters, which was to adhere to hearsay exclusion and require interpreters' in-court testimonies. More importantly, however, the U.K. enacted the Police and Criminal Evidence Act (PACE) in 1984, which paved a way for further accuracy verification by introducing mandatory audio/video-recording of police interviews (Ibusuki, 2016, p. 241). In other words, the introduction of this system made

a clear departure from the hearsay/conduit polarity.

4.1.3 Australia

In Australia, an opposite ruling was handed down in 1960 in *Gaio v. R*., a trial of a non-English speaking aborigine charged with murder in the Territory of New Guinea and Papua. When the defendant was interviewed by a police officer, another aborigine who spoke both English and Motu, the defendant's native language, was used as an interpreter. The interpreter later testified at trial but could only state that he had translated everything truly, unable to recall any details, which had to be supplied by the officer. The Australian High Court ruled that the interpreter created no hearsay because he had functioned like a "telephone" or "mouthpiece" (*Gaio v. R*, 1960, pp. 422–430), the same metaphors as "cypher" in *R v. Attard* (1958, p. 91) in the U.K., and which Laster and Taylor (1994) later criticized as a "legal fiction" (p. 113).

In Australia, too, however, audio/video-recording also became mandatory in the 1990s (Ibusuki, 2016, p. 7), enabling translation accuracy verification, and thus also making a departure from the hearsay/conduit polarity, as the U.K did. In June 1992, a group of Japanese tourists were arrested at Melbourne Airport on alleged drug trafficking, which is known in Japan as "*Meruborun jiken* [Melbourne Case]" (Meruborun jiken, 2012; Rule, 2002). The defendants, after going through highly problematic police interrogations with unqualified interpreters, were all convicted, and their appeals also failed. While they were still in prison, a team of lawyers and interpreting researchers in Japan formed a rescue team to appeal the case to the United Nations Human Rights Committee (Meruborun jiken, 2012, pp. 3–8). The core part of this mission rested upon a scrutinizing review of the violation of the defendants' due process rights caused by inadequate interpreting at the investigation stage. Their work was enabled by the fact that all these initial interviews by the law enforcement had been electronically recorded (*Katsuno et al. v. Australia*, 2006; Meruborun jiken, 2012).

While these two rulings in the U.K. and Australia epitomized the hearsay/conduit polarity, an important fact is that they both moved on to a more scientific procedure, i.e., mandatory audio/video-recording, a point the thesis returns to in Chapter Seven.

4.2 Measures Taken by U.S. Courts

The thesis now moves on to U.S. courts and presents what kind of theories with what kind of rationales were developed to cope with the same hearsay issue. As was mentioned in Chapter Three, Section 3.3, out of the total 710 downloads with *interpreter* and *hearsay* as two key words in the same paragraph, 301 relevant cases (both federal and states) were selected.[114] Table 4.1 below shows the breakdown by federal, states, civil, and criminal, as well as the interpreter's in-court testimony and evidentiary admission of interpreter-mediated statements, creating the following 4 categories:

Category I : Interpreter Testified; Translated Statement Not Admitted

Category II: Interpreter Did Not Testify; Translated Statement Not Admitted

Category III: Interpreter Testified; Translated Statement Admitted

Category IV: Interpreter Did Not Testify; Translated Statement Admitted

Table 4.1

Testimony and Evidentiary Admission: Federal/States & Civil/Criminal

	CIVIL				CRIMINAL				TOTAL
FEDERAL	I	II	III	IV	I	II	III	IV	
	0	11	1	7	1	4	15	31	
	19				51				70
STATES	I	II	III	IV	I	II	III	IV	
	1	19	7	27	15	33	56	73	
	54				177				231
TOTAL	73				228				301

Table 4.1 shows a dichotomic split in evidentiary admissions both in civil and

[114] A complete list of all the 301 cases are presented in Appendix 1 (228 criminal cases) and Appendix 2 (73 civil cases).

criminal cases and a difference between civil and criminal cases in the ratio of Category IV (Interpreter did *not* testify; Translated statement admitted) to Category II (Interpreter did *not* testify; Translated statement *not* admitted). The ratio in civil cases was: 34 (7 federal + 27 states) to 30 (11 federal + 19 states), which was 1.13, while in criminal cases, it was: 104 (31 federal + 73 states) to 37 (4 federal + 33 states), which was 2.81, more than twice higher. Category II abided by hearsay, whereas Category IV circumvented hearsay. Thus, the first question is: what kind of theories were created to overcome hearsay?

Table 4.2 below is a complete chronological chart which shows the number of court rulings in each decade starting from 1850 up to 2018, classified by:

a. civil cases and criminal cases,

b. evidentiary admission of interpreter-mediated out-of-court statements,

c. hearsay, non-hearsay, and hearsay exception decisions,[115]

e. legal theories used for non-hearsay and hearsay exceptions, and

d. whether or not the interpreter testified.

Table 4.2 reveals a number of important facts, the first one of which is that in both civil and criminal cases, *hearsay* rulings appeared throughout the entire period from 1850 to 2018, though in civil cases, they accounted for 42.5% of the total 73 cases, while in criminal cases they constituted only 23.2 % of the total 228 cases. This indicates that the use of hearsay circumvention theories was more frequent and widespread in criminal cases. Table 4.2 also shows clearly when the courts in the U.S. began to use what kind of hearsay circumvention theories (legal theories used for *non-hearsay* and *hearsay exceptions*) and how frequently they were used, which is the main discussion of this chapter, starting from Section 4.2.2 below.

[115] As was briefly noted in a footnote in Introduction, there is a legal distinction made between *non-hearsay* and *hearsay exceptions*, which is briefly explained in Section 4.2.2, Section 4.3.1, and in more detail in Section 4.4.5.

Table 4.2

Hearsay and Hearsay Circumvention Theories: Complete Chronology

Civil / Criminal	Inadmissible/ Admissible	Hearsay v. Non-Hearsay/ Hear-say Exceptions	Legal Reason/ Theory	Testified v. Not Testified	1850 - 1859	1860 - 1869	1870 - 1879	1880 - 1889	1890 - 1899	1900 - 1909	1910 - 1919	1920 - 1929	1930 - 1939	1940 - 1949	1950 - 1959	1960 - 1969	1970 - 1979	1980 - 1989	1990 - 1999	2000 - 2009	2010 - 2018	Sub-Total	Total	Inadmissible/ Admissible Ratio	Circumvention Theory Ratio		Non-Hearsay/ Hearsay Exception Ratio
Civil Cases (Federal & States)	Inadmissible	Hearsay		Testified											1							1	31	42.5%			
				Not Testified	3		1	1	1	1		2	3	1	1	3	1	1	1	6	4	30					
	Admissible	Non-Hearsay	Agent	Testified		1		2			2											5	22	57.5%	22	52.4%	71.4%
				Not Testified		1		1	4	2	3	1	2	1					1	1		17					
			Conduit	Testified																1		1	5		5	11.9%	
				Not Testified															1	2	1	4					
			Agent and/or Conduit	Testified																		0	3		3	7.1%	
				Not Testified																2	1	3					
		Hearsay Exceptions	Present Sense Impression	Testified																		0	1		1	2.4%	
				Not Testified																	1	1					
			Catch-All/ Residual	Testified																		0	0		0	0.0%	28.6%
				Not Testified																		0					
			Others	Testified																	2	2	11		11	26.2%	
				Not Testified		2		2	1		1						2			1		9					
			Total		3	4	1	6	6	3	6	3	5	2	2	3	3	1	3	13	9	73	73	100%	42	100%	100%
Criminal Cases (Federal & States)	Inadmissible	Hearsay		Testified						1	2		1				1	2	3	4	2	16	53	23.2%			
				Not Testified		1		5	1	3	2	3						3	3	10	6	37					
	Admissible	Non-Hearsay	Agent	Testified						3	1							3	4	1		12	22	76.8%	22	12.6%	62%
				Not Testified					1		2						1	2	1		3	10					
			Conduit	Testified							1						1		1	6	6	15	54		54	30.9%	
				Not Testified						1								1	1	20	16	39					
			Agent and/or Conduit	Testified														3	1	3	2	9	32		32	18.3%	
				Not Testified														2	6	10	5	23					
		Hearsay Exceptions	Present Sense Impression	Testified															1		1	2	2		2	1.1%	
				Not Testified																		0					
			Catch-All/ Residual	Testified														2		2	1	5	6		6	3.4%	38%
				Not Testified															1			1					
			Others	Testified				1	1		2	1				1	2	5	1	9	5	28	59		59	33.7%	
				Not Testified					1	1	3	1	1		1	2	2	1	2	8	8	31					
			Total			1		6	4	9	13	5	2		1	3	7	24	25	73	55	228	228	100%	175	100%	100%

4.2.1 Testimonies: Not Always Guarantee Admission?

Before starting an analysis on hearsay circumvention theories, this section first

points out one important fact Table 4.2 reveals: in-court testimonies never guaranteed automatic evidentiary admission, which is directly related to what the thesis explores in Chapter Five, Section 5.6. A comparison of the number of interpreters' in-court testimonies between civil and criminal cases when the courts ruled that interpreter-mediated out-of-court statements were inadmissible, i.e., ruled as *hearsay*, shows that while only in 1 out of 31 hearsay rulings in civil cases the interpreter testified, in criminal cases in as many as 16 out of 53 hearsay ruling cases the interpreter did testify. This indicates that interpreter's in-court testimonies did not always guarantee evidentiary admission, especially in criminal cases.

One good example is *People v. Jan John*, a 1902 ruling in California. The issue here was the evidentiary admissibility of a statement made by a Chinese-speaking defendant through an interpreter at a pre-trial hearing. When the trial began, the interpreter who had translated at the pre-trial hearing testified that he had translated everything accurately though he could not remember the content of what he had translated. Then, the stenographer who had recorded the interpreter's English translation at the pre-trial hearing also testified that he had written down everything faithfully. Judge Temple, however, flatly rejected these testimonies, with the following analogy. John Doe heard a crime confession from a defendant, but soon after he narrated it to Richard Doe, he forgot all the detail. Later Richard Doe testifies in court to what he heard from John Doe very accurately, and John Doe also testifies that at the time he narrated the confession to Richard Doe, he had a perfect memory though he cannot recall anything now. The judge stated that such testimonies, even given together, had no evidential value. (*People v. Jan John*, California, 1902, pp. 221–222). The ruling presents an important question as to what kind of testimonies are required to overcome hearsay, and whether such requirements are realistically and ethically possible, as is explored in Chapter Five.

4.2.2 Hearsay Circumvention Theories and/or Reasons

Table 4.2 above also shows that since 1850 up to 2018, U.S. courts primarily used the following six legal theories and/or reasons both in civil and criminal cases, to admit interpreter-mediated out-of-court statements:

1. *agent theory*,
2. *conduit theory*,
3. *agent and/or conduit theory*,
4. *present sense impression theory*,
5. *catch-all/residual*, and
6. others (other *hearsay exceptions*).[116]

As was in the case of hearsay rulings mentioned above, Table 4.2 also shows that these six legal theories and/or reasons were used not only when the interpreter did not testify but also even when the interpreter did testify, implying that even when hearsay circumvention theories and/or reasons were used, interpreters' in-court testimonies did not always guarantee an automatic evidentiary admission, which again is relevant to what the thesis discusses in Chapter Five, Section 5.6.

There is an important legal distinction that must be noted about these six legal theories and/or reasons. Of the above six, the first three, (1) *agent theory*, (2) *conduit theory*, and (3) *agent and/or conduit theory*, are legal theories which claim that interpreter-mediated out of-court statements are *not hearsay* (or *non-hearsay*), whereas the other three, (4) *present sense impression theory*, (5) *catch-all/residual*, and (6) other

[116] Legally, the last two (*catch-all/residual*, and others) are exceptions that fall under the Federal Rules of Evidence 807 and its state equivalents. Table 4.2 divided this category into two sub-categories, (5) *catch-all/residual* and (6) other *hearsay exceptions*, for the reason that six state rulings specifically referred to "circumstantial guarantees of trustworthiness" stipulated by the Federal Rules of Evidence 807(a)(1) and its state equivalents, which is the first and the most explicitly phrased condition of *catch-all/residual* exceptions. They were 4 rulings in Oregon: *State v. Letterman* (1980), *Alcazar v. Hill* (2004), *State v. Rodriguez-Castillo* (2007), *State v. Montoya-Franco* (2012); and 2 rulings in Arizona: *State v. Terrazas* (1989) and *State v. Tinajero* (1997). All the other reasons categorized in "(6) other *hearsay exceptions*" tended to have relatively terse or not very specific descriptions, as is explained in Section 4.3.4.

hearsay exceptions, are legal theories and/or reasons which claim that interpreter-mediated statements are *hearsay* but *exceptions* can be made for the reasons claimed by these theories. This distinction becomes crucial in the courts' use of the first three theories (*agent theory*, *conduit theory* and *agent and/or conduit theory*), as well as makes these first three theories the most controversial for the reasons presented later in Sections 4.4, 4.5, and 4.6. The thesis, therefore, first examines the latter three, *present sense impression theory, catch-all/residual*, and others (other *hearsay exceptions*).

4.3 *Present Sense Impression*, *Catch-All/Residual,* and Other Exceptions

4.3.1 Hearsay Exceptions

As was noted above, *present sense impression theory, catch-all/residual*, and other *hearsay exceptions* are all *hearsay exceptions*; i.e., these theories or reasons first admit that interpreter-mediated out-of-court testimonies are fundamentally *hearsay* but contend that exceptions can be made for some persuasive reasons or rationales. As is shown in Table 4.3 below, which is a simplified version of Table 4.2, among these three *hearsay exception* theories and/or reasons, *present sense impression theory* and *catch-all/residual* exceptions both began to appear rather recently and only in a very limited number. In civil cases they appeared only from the 2000s, and in criminal cases from the 1980s, while the remaining, other *hearsay exceptions* have been present from early on. The thesis begins with *present sense impression* and *catch-all/residual* exceptions, both of which require empirical scrutiny from interpreting studies perspective.

Table 4.3

Hearsay and Hearsay Circumvention Theories: Simplified Chronology

Civil (Federal & States)									Criminal (Federal & States)								
Year	Hearsay	Agent	Conduit	Agent and/or Conduit	Present Sense Impres-sion	Catch-All/ Residual	Others	Total	Year	Hearsay	Agent	Conduit	Agent and/or Conduit	Present Sense Impres-sion	Catch-All/ Residual	Others	Total
1850-1859	3							3	1850-1859								
1860-1869		2					2	4	1860-1869	1							1
1870-1879	1							1	1870-1879								
1880-1889	1	3					2	6	1880-1889	5						1	6
1890-1899	1	4					1	6	1890-1899	1	1					2	4
1900-1909	1	2						3	1900-1909	4	3	1				1	9
1910-1919		5					1	6	1910-1919	4	3	1				5	13
1920-1929	2	1						3	1920-1929	3						2	5
1930-1939	3	2						5	1930-1939	1						1	2
1940-1949	1	1						2	1940-1949								
1950-1959	2							2	1950-1959							1	1
1960-1969	3							3	1960-1969							3	3
1970-1979	1						2	3	1970-1979	1	1	1				4	7
1980-1989	1							1	1980-1989	5	5	1	5		2	6	24
1990-1999	1	1	1					3	1990-1999	6	5	2	7	1	1	3	25
2000-2009	6	1	3	2			1	13	2000-2009	14	1	26	13		2	17	73
2010-2018	4		1	1	1		2	9	2010-2018	8	3	22	7	1	1	13	55
	31	22	5	3	1	0	11	73		53	22	54	32	2	6	59	228

4.3.2 *Present Sense Impression* & Goffman

As is shown in Table 4.3 above, the *present sense impression theory* was used only in 1 out of 73 civil cases and in 2 out of 228 criminal cases, with federal and states combined. All of them were rather recent decisions, one in 1990, another in 2010, and the last in 2015. However, this theory epitomizes the fundamental perception gap between lawyers and interpreters, as it regards interpreting process as an automatic, stimulus-response behavior with no room for lies or fabrications, just like a sudden, impulsive outcry. Nonetheless, this theory also shares similar views with Erving Goffman's (1981) footing theory on the interpreting process (p. 146).

The common law has traditionally given a hearsay exception to a statement made by someone during or immediately after she/he perceived something, for the reason that it was contemporaneous or was an excited utterance made as a reaction to what had just been perceived. The underlying rationale is *res gestae*, which in Latin means "the thing itself" (Fishman, 2011, pp. 38–39), and is an old common-law principle that an

automatic, stimulus-response behavior has no room for lies or fabrications. A good example would be a sudden, impulsive outcry, such as "Gosh, the car's running the red light!" which is an *excited utterance*. A frequently cited example of *present sense impression* would be a quick re-telling or relaying of what one has just heard on the telephone to someone nearby (Binder, 2013, p. 264; Fishman, 2011, pp. 127–138).[117] As was noted in Chapter Two, Section 2.5, Binder's *Hearsay handbook* (2013) also has a brief note on interpreters' "contemporaneous translation" classified in this category, saying that it is no different from "a sports broadcaster's contemporaneous reporting of what he sees taking place on the ball field" (p. 880).

Interestingly, this theory has relevance to Erving Goffman's (1981) footing theory, often referred to by interpreting researchers (e.g., Nakane, 2014; Wadensjö, 1998) as was reviewed in Chapter Two, Section 2.1.2 and Section 2.3.1. As was already explained, according to Goffman (1981), a participant in a live discourse normally takes on one of the following three roles: *animator*, *principal*, and *author* (p. 144). The first one, *animato*r, is like a "sounding box" or a "talking machine" (p. 144), which is a role typically played by newscasters who must read the given news script verbatim or live radio sports broadcasters describing every single movement of the athletes on the field with accuracy and contemporaneity. The second one, *principal* is one "whose position is established by the words that are spoken" (p. 144), or one who speaks on one's own or as oneself. This happens when a newscaster, in the middle of reading a script aloud, says "if I pronounced that correctly" (p. 284), momentarily becoming herself/himself. The third one *author* selects "the sentiments that are being expressed and the words in which they are encoded" (p. 144), which means one who expresses one's own ideas and feelings. This happens when a newscaster adds her/his own comment after reading the

[117] Today, *present sense expression* is stipulated as a *hearsay exception* in the Federal Rules of Evidence 803(1) and (2), and in other similar state evidentiary rules. The legal implications of the term *hearsay exception* as opposed to *non-hearsay*, which were briefly referred to in Sections 4.2.2 and 4.3.1, are explained in Section 4.4.5 of this chapter.

news script. Based on these three classifications, Goffman (1981) categorized "simultaneous translation" as the same as *animator* (p. 146) or "the talking machine" (p. 144), which is the same category as newscasters just reading the script only (pp. 283–284).

However, as much as an interpreter's performance may seem effortlessly automatic, an interpreter's simultaneous interpreting is a much more complex cognitive multi-tasking activity (Gile, 2009; Setton & Dawrant, 2016, p. 296, p. 302). Also, while this hearsay exception relies on the reasoning that immediacy allows no time to *think* of lies or fabrications, this legal theory is at odds with what many interpreting researchers postulated with their information processing models, showing interpreters' highly cognitive (i.e., *thinking*) activities, which are also never free from errors (e.g., Moser-Mercer, 1978, p. 355; Moser-Mercer et al., 1997; Setton, 1999, p. 65; Mizuno, 2015; Pöchhacker, 2022, p. 63).

In addition, the theory also seems to be contradicted by the findings on the neurolinguistic aspect of interpreting activities, using electroencephalogram (EEG) (Kurz, 1994), positron emission tomography (PET) (Tommola et al., 2000), and pupil dilation (Hyönä et al., 1995), which demonstrated interpreters' high-level cognitive (i.e., *thinking*) involvement. As for lies and fabrications, there is a separate safeguard with professional interpreters who are bound by a code of ethics to be accurate, faithful, and impartial (e.g., NAJIT, 2016b), though in actual practice this is exactly where problems occur due to various reasons mentioned in Chapter Two, Sections 2.2 and 2.3. Perhaps for the reasons similar to the above, many judges may have had hesitancy to use this theory for language interpreters. As was mentioned above, the theory was used only in 2 out of 228 criminal cases and 1 out of 73 civil cases.

One was *US v. Kramer et al.*, a 1990 criminal case in the 11th circuit on three English-German interpreters who had translated for the U.S. government during a deposition in Liechtenstein of a key prosecution witness. The hearsay issue was raised

because these interpreters had not been officially sworn in before the deposition (*US v. Kramer et al.*, 11th Cir., 1990, pp. 893–894).[118] The ruling noted that they were all professional interpreters with a college degree in German-English translation. One was a graduate of the University at Erlangen, who worked for the U.S. State Department. Another had a degree in translation from Concordia University, of English, German, and French, and worked for the Austrian Trade Commission. The third also had a degree in translation from the University at Heidelberg. All of whom also testified later in court about the translation accuracy (p. 894). It would seem, therefore, the hearsay issue in this case was primarily a legal technicality of not having been sworn in before the deposition.[119]

This *present sense impression theory* used in *US v. Kramer et al.* (11th Cir., 1990) was later cited as a legal authority for *Palacios v. State*, a 2010 domestic violence case in Indiana. A daughter of the defendant had translated between an officer and her limited-English-speaking mother, who was the victim. Both the officer and the daughter testified in court, and the court admitted the officer's testimony, citing *US v. Kramer et al.* (11th Cir., 1990) as an authority (*Palacios v. State*, Indiana, 2010, pp. 1028-1033). The third case which used this theory was *New Jersey Division of Child Protection and Permanency v. H. A*., a 2015 civil case in New Jersey on child custody and protection from abusive parents. A caseworker had brought her bilingual co-worker as her interpreter to obtain statements from the mother, and the interpreter did not testify in court (*New Jersey Child Protection v. H. A*., New Jersey, 2015, pp. 2–3, pp. 16–17).

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[118] As was noted in Chapter One, Section 1.1.1, an interpreter who was not sworn in cannot be indited for perjury and thus could raise a hearsay issue from a legal standpoint.

[119] The deposition was of a key witness for the U.S. government (*US v. Kramer et al.*, 11th Cir., 1990, p. 893), which means that these interpreters had translated for a *non-party* witness (a witness who is not a party to the lawsuit), i.e., neither for *the U.S.* itself nor for *Kramer et al.* (defendants). Thus, it is very possible that the prosecution used *present sense impression theory,* which is a *hearsay exception* theory, because they could not use *non-hearsay* theory such as *agent and/or conduit theory*, as is explained in Sections 4.4.5.

These three rulings used the *present sense impression theory* most probably because the courts could not or chose not to use other, more dominant but controversial theories, which are discussed later in in Sections 4.4, 4.5, and 4.6. Though only three cases, perhaps two important observations are possible. First, once a legal precedent is made, it could open an expansive avenue for future cases, often deprioritizing interpreter qualifications. The same theory used for the three highly qualified German-English interpreters was used later as a precedent for a bilingual daughter or a bilingual friend. The second is that although *present sense impression* as a legal theory is typically uninformed of the actual cognitive process of an interpreting activity, it is at least a legitimate legal theory applied to foreign language interpreters based on the traditional common-law doctrine of *res gestae*, in contrast with the widely used *conduit theory*, which is based on no legal ground, as is discussed from Section 4.5.

4.3.3 *Catch-All/Residual* Exceptions and Interpreter's Testimony

Catch-all or *residual* exceptions as well as exceptions for other reasons are what the judges used when they could not or chose not to use other theories (e.g., *agent theory*, *conduit theory*, *agent and/or conduit theory*, and *present sense impression theory*) but still chose to admit the translated statements. *Catch-all* and *residual* are more or less synonymous, covering all the remaining instances which do not fit into any one of the other hearsay exceptions stipulated by the evidentiary rules.[120] These exceptions were made when the trial judge determined that although the testimony was hearsay, an exception could be made based on the stipulated conditions,[121] one of which was "circumstantial guarantees of trustworthiness" (Federal Rules of Evidence 807 and their

[120] These *hearsay exceptions* are stipulated by the Federal Rules of Evidence 803–807 and their equivalents in each state evidentiary rules.

[121] Today, the conditions for *catch-all* or *residual exception* are stipulated by the Federal Rules of Evidence 807 and its equivalent in each state's evidentiary rules.

equivalents in each state). In Table 4.2 and Table 4.3 presented above, the cases which specifically noted "circumstantial guarantees of trustworthiness" were classified into (5) *catch-all/residual*, and all the other exceptions with relatively terse or not very specific reasons were put into (6) others (other *hearsay exceptions*).[122]

Six state rulings explicitly noted "circumstantial guarantees of trustworthiness" in applying each state's *catch-all/residual* evidentiary rule, which were 4 rulings in Oregon: *State v. Letterman* (1980, p. 1153), *Alcazar v. Hill* (2004, p. 512, fn. 6), *State v. Rodriguez-Castillo* (2007, p. 494), *State v. Montoya-Franco* (2012, p. 670, pp. 673–674); and 2 rulings in Arizona: *State v. Terrazas* (1989, p. 361) and *State v. Tinajero* (1997, p. 355). The present thesis describes below *State v. Letterman*, a 1980 case in Oregon as an example, as this case also illustrates the cruciality of the content of a police interpreter's in-court testimony, which has important relevance to the discussion in Chapter Five, Section 5.6.

State v. Letterman (Oregon, 1980) was an appeal by a deaf defendant convicted of burglary following a police interview mediated by a sign language interpreter, Shirley Shisler. She was a highly qualified sign language interpreter, herself a sign language trainer at Oregon College of Education and the only sign language interpreter in Oregon with Legal Skill Certification[123] by the National Registry of Interpreters. At the witness stand, however, Shisler could not recall any detail of what she had translated, except that she had translated everything faithfully and accurately (*State v. Letterman*, 1980, pp. 1147–1148). For Judge Campbell, everything Shisler stated had "an aura of trustworthiness," but without any specific testimony to what the defendant had actually stated, not from the interviewing officer but from Shisler directly, it was extremely

[122] This sixth category also included a hearsay exception made in a very old case, which today would come under the Federal Rules of Evidence 804(b)(2) and its state equivalents on a dying declaration.

[123] The title of this credential is written exactly as it was described in this 1980 ruling (*State v. Letterman*, Oregon, 1980, p. 1148).

difficult to overcome hearsay (pp. 1151–1154).

This is but another example of how legal professionals who may not be very familiar with how interpreters use their cognitive skills may expect that interpreters can actually remember and provide a detailed account of what the suspect stated, which, even for this highly qualified interpreter was not possible.[124] In the end, the judge used *catch-all/residual* exception based on "circumstantial guarantees of trustworthiness" (*State v. Letterman*, Oregon, 1980, p. 1153), or what the U.S. Supreme Court called "indicia of reliability" (*Ohio v. Roberts*, 1980, p. 65).[125] This "circumstantial guarantees of trustworthiness" in *catch-all/residual* exception in each state evidentiary rule was what all the other five similar rulings referred to. In other words, these courts ruled that because these interpreters seemed trustworthy and reliable, particularly from their in-court testimonies,[126] their out-of-court translations *must have been* accurate, even though the actual content and/or the accuracy itself could not be confirmed.

4.3.4 Other Reasons for Hearsay Exceptions

Table 4.2 and Table 4.3 presented above also show that all the other exceptions in the final sixth category appeared from very early times, amounting also to rather large total numbers, especially in criminal cases. Out of 42 civil cases which admitted interpreter-mediated out-of-court statements, 11 (26.2%) were in this category, and in criminal cases, 59 out of 175 cases (33.7%) fell in this category, both appearing from

[124] Shisler, who was a professionally trained sign language interpreter, might have also felt an ethical dilemma about testifying to the content of the statements made by the defendant, though she would most probably have made a statement straightforward if she had, and the ruling has no mention of such reasons.

[125] As is explained later in Section 4.7.6, there was a period in the history of the U.S. Supreme Court, starting from *Ohio v. Roberts* (1980), in which the Court allowed a rather generous avenue for hearsay admissions. The key word was "indicia of reliability" (*Ohio v. Roberts*, p. 65).

[126] In all of these 6 examples (4 in Oregon and 2 in Arizona), the interpreters all testified in court, except for one in Arizona (*State v. Tinajero*, 1997).

the 1860s (civil) and the 1880s (criminal).

While hearsay exclusion is an important common-law principle, hearsay issues occur frequently in courts (Curry, 2021, p. 182), and various hearsay exceptions based on rules "rooted in history" have also been made regularly (Curry, 2017, p. 192).[127] Often the interpreters themselves testified, which the courts found sufficiently trustworthy, even if the interpreters could not always remember the actual content of what they had translated, as was in *State v. Letterman* (Oregon, 1980) described above. The criminal cases in Table 4.2 show that out of 59 hearsay exceptions made in this sixth category, 28 cases actually had the interpreters' in-court testimonies, whatever their probative value may have been. With the remaining 31 cases, the exceptions were granted for other reasons, often with the trial judge's discretion, with the decisions often made in limine, i.e., during pre-trial hearings (Curry, 2021, p. 182).

Examples include another common-law tradition of hearsay exception, which is a dying declaration,[128] now stipulated by the Federal Rules of Evidence 804(b)(2) and equivalent state rules. In *People v. Petruzo* (California, 1910), the court admitted a physician's testimony to an Austrian man's death-bed statement about who had shot him, which was translated by one of his peers then and there, ruling that this was a dying declaration though there was still an additional layer created by this interpreter (pp. 573–575).

In many of the other rulings in this category, however, the reasons if mentioned were often rather brief, especially if hearsay was not the main issue of the case. One common adjudication was that the introduction of interpreter-mediated out-of-court statements "does not affect the admissibility of the statement," but "it merely goes to the

[127] Mark S. Curry served as a prosecutor for 22 years and then as a Superior Court judge in Northern California (Placer County Superior Court) for 14 years (Curry, 2021, p. v).

[128] The common law has traditionally given a hearsay exception to statements obtained from someone at her/his deathbed, based on the belief that people who are about to die are very unlikely to tell a lie (Best, 2015, p. 131).

weight to be accorded…by the jury" (*State v. Rivera,* Arizona, 1963, p. 48, underlined by the author; also see *State v. Munoz*, Arizona, 2010, p. 15). This means more or less that although the statement is hearsay, particularly if the interpreter's in-court testimony is absent, the statements do not always become inadmissible, and it is the job of the jury to decide the reliability, i.e., accuracy, of the translated statements (though the jury may not understand the foreign language).

Another commonly observed appellate ruling was that even if the interpreter-mediated out-of-court statement had been inadmissible hearsay, any judgment "error" that might have occurred was "harmless" in light of the other probative evidence beyond reasonable doubt[129] (*U.S. v. Desire,* 11th Cir., 2012, pp. 822–823, underlined by the author), a point relevant to the discussion in Chapter Six, Section 6.3.

More often than not, the courts seem to have used their discretion and decided interpreters' translations were reliable, i.e., accurate. However, as to how the courts ensured and/or verified the interpreters' translation accuracy, particularly in the absence of the interpreters' testimonies, does require examination. In addition, even when the interpreters did testify, cases such as *People v. Jan John* (California, 1902) and *State v. Letterman* (Oregon, 1980) mentioned above do raise a question as to how effective such testimonies could be if the purpose is to verify translation accuracy, especially in light of interpreters' possible memory failure and note-taking methods,[130] while also

[129] This harmless error standard, which is based on the Federal Rules of Evidence 103(a) and its equivalent state rules, is used by appellate courts in deciding whether or not an error, if it had been made by a trial judge, was harmless, i.e., whether or not the error, even if it had occurred, was so harmless that it could not have reversed the lower court's ruling.

[130] In general, professionally trained interpreters do not take verbatim notes or short-hand notes in a way a court reporter produces a transcript but instead records ideas, links between ideas, and discourse structures, by using signs and symbols (Gillies, 2017, p.12; Rozan, 1956/2002; Setton & Dawrant, 2016, pp. 137–138), because verbatim dictation would impede contemporaneous interlingual translation of the intended meaning or "sense" of the speaker's statement (Pöchhacker, 2022, pp. 61-62; Seleskovitch, 1968/1998, p. 89) by causing source-language interference and obstruction of deverbalization (Setton & Dawrant, p. 137, p. 151, p. 207). Also, unless a clear legal provision is stipulated, an interpreter may be required (by the professional code of ethics) or asked (by the law enforcement) to destroy (or agree to a confiscation of) any notes that she/he produced during an interrogation (Bancroft et al., 2015, p. 11; Tsuda et al., 2016, p. 113).

presenting a possible ethical conflict. These are explored in Chapter Five, Section 5.6.

4.3.5 Chronological Trend of Theories

Table 4.2 and Table 4.3 presented above also indicate a rather different chronological trend between civil and criminal cases. Even allowing for a higher increase in the number of criminal cases over the past several decades, the increase during the same period of the use of the *agent theory*, the *conduit theory*, and the *agent and/or conduit theory* in criminal cases is rather distinct.

Of these three theories, both in civil and criminal, the *agent theory* emerged first, dating back to the mid-19th century, appearing first in civil cases and then also in criminal cases. In contrast, the *conduit theory*, except for the two isolated criminal cases in the early 20th century, emerged much later during the final decades of the 20th century, and from thereafter the number kept increasing primarily in criminal cases. With the emergence of the *conduit theory*, the *agent and/or conduit theory* also began to appear, the increase of which also seems distinct in criminal cases.

The thesis, therefore, moves on to how these three theories emerged in U.S. courts, particularly on what led to the emergence and increase of the *conduit theory* and the creation of the *agent and/or conduit theory* and its dominant use primarily in criminal cases. The thesis begins with the *agent theory* and then to the *conduit theory*, which appeared many years later and was combined into the *agent and/or conduit theory*.

4.4 *Agent Theory*

The *agent theory* for language interpreters in U.S. courts dates back to an 1865 civil case, which obtained its legal authority going further back to a 1773 pre-Revolutionary-War-era civil suit which took place in London over an incident that had taken place in Minorca, a Mediterranean island, which Britain obtained from Spain in 1713. The thesis begins with this case.

4.4.1 *Fabrigas v. Mostyn* (1773): Origin of *Agent Theory* in Minorca

The case is called *Fabrigas v. Mostyn*,[131] a 1773 ruling that took place in London, which is allegedly the original legal authority of the *agent theory* in the U.S. and dates back to the pre-Revolutionary-War time on the island of Minorca in the Mediterranean Sea, which Britain obtained from Spain in 1713 by the Treaty of Utrecht.

The plaintiff was Anthony Fabrigas, a well-to-do property owner in Minorca, who became increasingly discontented with the way General Mostyn, an English-speaking new governor of Minorca, was running things on the island. Fabrigas filed complaints repeatedly, but all remained in vain (*Fabrigas v. Mostyn*, 1773, pp. 119–122). He kept making visits to the governor's quarters to complain, with his discontent mounting, and one day in August 1771, after having been spurned again, he told the staff at the governor's quarters that he would come back "with a petition backed by one hundred and fifty men" in the Minorquin language, "a mixture of Italian and Spanish" or "a kind of bad Spanish" (*Fabrigas v. Mostyn*, 1773, p. 128). Since the staff at the governor's quarters did not understand Minorquin, their exchange was translated by the interpreters at the governor's quarters, John Vedall and Father Segui. For some reason, however, Fabrigas's statement that he "would come back with a petition backed by one hundred and fifty men" was communicated to the staff as Fabrigas "would come back the next day with one hundred and fifty men," which they took as a threat of sedition by a "mob" (*Fabrigas v. Mostyn*, 1773, p. 128, p. 169). Governor Mostyn took this opportunity and imprisoned Fabrigas.

Later, after having been released, Fabrigas sued Mostyn for the damages incurred

[131] *Fabrigas v. Mostyn*, 20 Howell's State Trials 82–238 (England, 1773). This is a trial that took place from 1773 to 1774 in London. This case was not available on LexisNexis Academic and was found in *A complete collection of state trials and proceedings for high treason and other crimes and misdemeanors from the earliest period to the present time, with notes and other illustrations, Volume XX. A. D. 1771–1777*, complied by T. B. Howell, Esq. F. R. S. F. S. A., published in London in 1814 by T. C. Hansard, Peterborough-Court, Fleet-Street (Howell, 1814, pp. 82–238).

by this wrong imprisonment, and the trial took place in London in 1773. The trial touched upon the unfortunate confusion and possible misunderstanding that might have taken place during the interpreter-mediated out-of-court exchanges. However, due to the absence of the two interpreters from the trial, the judge and the jury were unable to verify whether Fabrigas's original expression in the Minorquin language had meant that he would come back the next day "with one hundred and fifty men" or "with a petition backed by one hundred and fifty men" (*Fabrigas v. Mostyn*, 1773, pp. 125–128, p. 169). Nevertheless, whatever misunderstanding might have taken place, the interpreters were working for Governor Mostyn, the defendant. For this reason, Judge Gould ruled in favor of Fabrigas, by only stating, "I think it is very clearly sufficient evidence" (*Fabrigas v. Mostyn*, 1773, p. 123), implying that these interpreters were the defendant's agents, whose words and deeds the defendant was liable for as their employer.

4.4.2 *Camerlin v. Palmer* (1865): First *Agent Theory*

Nearly 100 years after *Fabrigas v. Mostyn* (1773), a small, seemingly frivolous civil case was appealed to the Supreme Court of Massachusetts, in which an interpreter-mediated out-of-court statement became an issue (*Camerlin v. Palmer*, Massachusetts, 1865). Mrs. Camerlin, who had to take care of many children by herself while her husband was away from home for a long time, went to the defendant's shop to purchase necessary goods to support the family. She spoke only French, so brought with her a woman named Lucy Mongois, presumably an acquaintance, to act as an interpreter between herself and the shop manager. Sometime later, her husband returned home and found that his children had been bound by a wage assignment agreement[132] with the shop owner, although his wife told him that she had never agreed to such an arrangement.

[132] Wage assignment is a method that allows a creditor to take money directly from the debtor's wages.

The husband sued the shop owner.[133] The shop manager testified at trial that he had told Mrs. Camerlin, through her interpreter, that she could purchase the goods by assigning her children's wages, i.e., having her children work for the defendant as a way to pay for her purchases, to which Mrs. Camerlin agreed through her interpreter. Mrs. Camerlin denied this, and Lucy, the interpreter, also testified supporting Mrs. Camerlin's version of the story, stating that Mrs. Camerlin had refused to assign her children's wages in advance but instead had told the shop manager that she would receive the children's wages first and then pay back the shop every month from the earned wages (*Camerlin v. Palmer*, Massachusetts, 1865, p. 539).

Judge Dewey, however, ruled in favor of the defendant, the shop owner. The reason was that whatever miscommunication might have occurred, Lucy Mongois had acted as Mrs. Camerlin's "agent…employed by her to communicate with" the defendant, and thus the "statements made through such interpreter…are to be taken to be truly stated" (*Camerlin v. Palmer*, Massachusetts, 1865, pp. 540–541). In other words, by asking Lucy to work as her interpreter, Mrs. Camerlin became the same as an employer who thereafter would become responsible for Lucy's words and deeds in the same way as an employer would for her/his employees' words and deeds. Thus, Lucy, the interpreter, became Mrs. Camerlin's agent, like an employee. To substantiate the rationale of this *agent theory*, the judge cited *Fabrigas v. Mostyn* mentioned above, a 1773 trial that took place in London, dating all the way back to the Pre-Revolutionary era.

4.4.3 *Respondeat Superior* and *Vicarious Admission*

This *agent theory*, i.e., *interpreter-as-an-agent theory*, derived from the common law's traditional notion of *agency,* which is based on two fundamental legal principles: *respondeat superior* (Kleinberger, 2012, p. 98), and *vicarious admission* (Binder, 2013,

[133] In the days of this lawsuit in the U.S., married women could not bring a lawsuit; only the husband had a legal right to become a party in a lawsuit (Cherlin, 2005, p. 40).

p. 847). *Respondeat superior* means that a *principal*, who is the *appointer* of an *agent* (typically an *employer*) will become responsible for the *agent*'s words and deeds as if they were their own words and deeds (Kleinberger, 2012, p. 98). This means that what an *agent* admits as true will also be regarded as the *principal*'s own admission of the truth. This admission is called *vicarious admission*, which means admission through one's *agent* or a *representative* (Binder, 2013, p. 847). Based on this rationale, the common law deems the statements made through an *agent* the same as if they had been made directly by the *agent*'s employer (legally called a *principal*), the *appointer* of an *agent*.

This *agency* rationale is also applied today to the doctrine of *enterprise liability* (Kleinberger, 2012, p. 101), which makes the employer responsible for the employees' misconduct or mistakes, if they occurred within the scope of the employment under the employer's control or supervision. The purpose and the rationale of this law is to protect ordinary people, such as consumers, from potentially dangerous or harmful products and services. The law gives the victims an opportunity to pursue a "deeper pocket" (Kleinberger, 2012, pp. 101–102), by enabling them to sue the employer who may be financially more capable of paying the damage compensation than a single employee who was more directly responsible.

Based on this legal rationale, if an interpreter is regarded as having served as the *agent* of a non-English-speaking person who brought the interpreter, then whatever translation the interpreter rendered to the other party will be regarded not as the interpreter's statement but as the statement made by the person who brought the interpreter, who also will be responsible for the content of the statement (Binder, 2013, p. 847). This rationale became the base for the *agent theory*.

4.4.4 *Commonwealth v. Vose* (1892): *Dual Agent* in Criminal Case

Fabrigas v. Mostyn (1773) and *Camerlin v. Palmer* (1865) explained above were

both civil cases. In both, the court ruled that the party that had employed or authorized the interpreter to work for them as their agent was liable or responsible for the interpreter's translation as if it had been the party's own words. Twenty-seven years after *Camerlin v. Palmer* (1865), this *agent theory* was employed for the first time in a criminal case in the same state of Massachusetts, in *Commonwealth v. Vose* (1892), which became a major ruling to be cited in numerous cases thereafter as a legal authority.

A French-speaking couple called upon Dr. Vose and asked him to perform an abortion on the woman. Vose did not speak French, but his wife did and thus acted as an interpreter between the woman and Vose before the alleged abortion. The woman died following the abortion, and Vose was indicted. At trial, the prosecution called the French man[134] to testify to the conversation that had taken place between Vose and the deceased woman, which the defendant challenged as hearsay and appealed. Judge Knowlton of the Supreme Judicial Court of Massachusetts, however, ruled that the French man's testimony for the prosecution was admissible, stating as follows:

> When two persons who speak different languages…converse through an interpreter, they adopt a mode of communication in which they assume that the interpreter is trustworthy, and which makes his language presumptively their own. Each acts upon the theory that the interpretation is correct. Each impliedly agrees that his language may be received through the interpreter. If nothing appears to show that their respective relations to the interpreter differ, they may be said to constitute him their joint agent…They cannot complain if the language of the interpreter is taken as their own…Interpretation under such circumstances is *prima facie* to be deemed correct. (*Commonwealth v. Vose*, Massachusetts, 1892, pp. 394–95, underlined by the author)

What *Vose* (1892) made clear is that the *agency* relationship between the interpreter and

[134] The ruling contained no further details, but *Fall River Daily Herald*, dated Nov. 11, 1891, noted that the French-speaking man, who had a wife and children, may have caused the deceased woman's pregnancy and brought her to Vose (Held in $10,000!: Dr. Vose arraigned, 1891).

the users of the interpreting service, based on the principles of *respondeat superior* and *vicarious admission*, applies to both parties, regardless of which party brought the interpreter. Thus, the *dual agent theory* by *Commonwealth v. Vose* (1892) stipulates as follows. When two parties speaking different languages start communicating through an interpreter, the following takes place regardless of which party brought the interpreter: (a) by this very action, both have appointed the interpreter as their joint-agent, assuming this interpreter's translation will be accurate; (b) this means the interpreter's words will become their own, as the interpreter will be acting as their joint agent, authorized to speak for them; and, therefore, (c) the parties cannot complain later if the interpreter's words are taken as their own, as they themselves are responsible for the interpreter's words.

In *Camerlin v. Palmer* (1865), the interpreter was someone the plaintiff had chosen to talk with the defendant, and in *Commonwealth v. Vose* (1892), the interpreter was Vose's wife. In both cases, it is not entirely deniable that there was a tacit approval by the users to appoint the interpreter as their agent, assuming the translation's accuracy. However, the reason why *Commonwealth v. Vose* (1892) became a significant ruling is that it later enabled the police and the prosecution to argue that the suspect who *began talking through an interpreter arranged by the police* approved the interpreter as a *dual agent*, i.e., an *agent* not only for the police but also for the suspect. This agency relationship, the theory says, commences the moment the suspect starts communicating through this interpreter. The prosecutors in many U.S. jurisdictions are now able to argue that the defendant cannot complain about the translation later, because the agency relationship made the agent's words (the interpreter's translation) the same as the suspect's own words. Furthermore, the prosecution can also argue that the defendant cannot complain about not having been given a chance to cross-examine the interpreter, as it would be the same as complaining of not having been given a chance to cross-examine herself/himself.

4.4.5 Police Interpreter: Same Identity as Suspect?

Further discussion of this *agent theory* would require some clarifications on the relevant legal issues and terminology, which this section does. The principle of *vicarious admission* used in the *agent theory* for out-of-court interpreters in the U.S. is now stipulated by the Federal Rules of Evidence and similar evidentiary rules in each state. These evidentiary rules in the U.S. today give an *agent* (e.g., interpreter) a very special and strong hearsay circumvention status labeled *non-hearsay*, as a person who can be regarded as having the same identity as the *principal* (e.g., suspect).

Non-hearsay is a legal term used to draw a clear distinction from other numerous *hearsay exceptions*. The Federal Rules of Evidence 801(d)(2) lists five types of statements that are *not hearsay* from the beginning, whereas the Federal Rules of Evidence 803–807 in later sections stipulate various *hearsay exceptions*, which are statements that *are hearsay* but will be admitted as *exceptions*. For example, the *present sense impression theory* explained in Section 4.3.2 is an example of a *hearsay exception* stipulated by the Federal Rules of Evidence 803(1) and (2). This theory regards an interpreter-mediated statement as fundamentally hearsay. However, because the act of interpreting took place within a very short time as if it had been a stimulus-response behavior allowing no time for lies or distortions, it is regarded as a *hearsay exception*. Similarly, the *catch-all exception* explained in Section 4.3.3 also regards an interpreter-mediated statement as fundamentally hearsay. However, if the trial judge determines that there are sufficient reasons to believe that the evidence obtained through the interpreter's translation is reliable, then it is admitted as a *hearsay exception* stipulated by the Federal Rules of Evidence 807.

Though hearsay exclusion is a fundamental rule in common law, in actual practice, various *hearsay exceptions* are stipulated in evidentiary rules, and the rulings that allowed hearsay exceptions also accumulate as case laws (Curry, 2017, p. 192, 2021, p.

182). These *hearsay exception* precedents are applied to both civil and criminal cases. The only difference between civil and criminal trials in the U.S. is that in criminal cases, the defendants are protected not only by the hearsay exclusion in evidentiary rules but also by the Sixth Amendment. The U.S. Constitution provides a separate, additional protection to criminal defendants by guaranteeing a right to confront a witness who testifies against her/him. Since the Constitution is the supreme law of the land, it could overrule any *hearsay exceptions* stipulated by the Federal Rules of Evidence 803–807 and similar evidentiary rules of each state. However, with *non-hearsay*, it becomes more controversial, and this is exactly what the *agent theory* does to language interpreters.

The Federal Rules of Evidence 801(d) lists five types of statements that are *not hearsay*. They are all out-of-court statements made previously by the other party (also called the *party-opponent*, e.g., the defendant from the prosecution's standpoint). In trial, testifying to what someone else stated out of court becomes hearsay. However, testifying to what the opponent in a trial (e.g., the defendant from the prosecution's standpoint) stated previously out of court *does not become hearsay*. For example, in a criminal trial, when the prosecution testifies to what the defendant stated previously during a police interview, it is *not hearsay*. Similarly, in a civil case, both parties can testify to what the other party stated previously out of court, because it is *not hearsay*.

In criminal cases, however, a statement which is *not hearsay* also gains a special power. If a testimony is *not hearsay* because it is simply what the other party (e.g., the defendant from the prosecution's standpoint) stated previously, then it does not invoke the Sixth Amendment Confrontation Clause issue, as the defendant cannot complain that she/he was deprived of the right to confront herself/himself.

The Federal Rules of Evidence 801(d)(2) has a list of five types of *non-hearsay* statements that are *regarded* as statements made previously by the other party (e.g., the defendant from the prosecution's standpoint). They are:

(A) what the other party (e.g., the defendant) stated previously;

(B) what the other party (e.g., the defendant) admitted previously as true;

(C) what someone who was authorized by the other party (e.g., the defendant) stated;

(D) what an employee or an agent of the other party (e.g., the defendant) stated; and

(E) what the co-conspirator of the other party (e.g., the defendant) stated.[135]

Of the above five, (A) and (B) are statements or admissions made previously by the other party (e.g., the defendant) herself/himself. However, the remaining three: (C), (D), and (E), are completely different individuals or identities. For example, (E) is the defendant's co-conspirator in a crime. However, the Federal Rules of Evidence and similar evidentiary rules in each state provide a special legal status to (C), (D), and (E), so the statements made by these individuals out of court could also be regarded as the same *as if they were made by the other party* (e.g., the defendant) *herself/himself*. The legal rationale for this provision is the agency law's *respondeat superior* and *vicarious admission* explained in Section 4.4.3.

Of the above five, (C) "someone authorized by the other party" and (D) "an employee or an agent of the other party" are often put together as "801(d)(2)(C) or (D)" to refer to statements made by an *agent* or an employee (e.g., the interpreter) of the other party (e.g., the defendant) within the scope of their assigned tasks, i.e., during the assigned interpreting work. Based on this legal ground, the prosecution can argue that because the interpreter became the suspect's *agent*, assuming the same identity as the suspect in the police interrogation room, any translated statements would be regarded as coming directly from the suspect. Furthermore, they could also argue that this pre-empts the constitutional issue of the Sixth Amendment Confrontation Clause, because the defendant cannot complain later that she/he was deprived of the right to cross-examine

[135] The wording of the provision has been simplified. The original provision stipulates as follows: (d) Statements That Are Not Hearsay. (2) An Opposing Party's Statement. The statement is offered against an opposing party and: (A) was made by the party in an individual or representative capacity; (B) is one the party manifested that it adopted or believed to be true; (C) was made by a person whom the party authorized to make a statement on the subject; (D) was made by the party's agent or employee on a matter within the scope of that relationship and while it existed; or (E) was made by the party's coconspirator during and in furtherance of the conspiracy.

herself/himself.

This is the legal rationale of the *agent theor*y applied to police interpreters that arguably circumvents not only the hearsay issue but also the Sixth Amendment Confrontation Clause of the U.S. Constitution. As was mentioned, other theories or exceptions such as the *present sense impression theory* or *catch-all/residual* exceptions are all *hearsay exceptions*, meaning that they still regard interpreters' out-of-court translations as fundamentally hearsay, and thus invoke the Sixth Amendment Confrontation Clause issue in criminal cases. With the *agent theory*, this constitutional issue can be preempted, and thus makes the procedure clean and simple for the prosecution (and for the courts). Of all the common-law jurisdictions in the world, the U.S. (federal courts and majority of state courts) is the only country that continues to use the *agent theory* for police interpreters in criminal cases to pre-empt hearsay and the defendant's constitutionally guaranteed confrontation right.[136]

4.4.6 *Fiduciary*, *Consent*, and *Control* in Police Interpreting?

However, the question again is whether the suspect can really be regarded as having approved or appointed the interpreter as her/his *agent* just by commencing a talk with the police through this interpreter. As was mentioned above, in civil cases such as *Fabrigas v. Mostyn* (1773) and *Camerlin v. Palmer* (Massachusetts, 1865), it may be possible to regard the interpreter who was employed by the defendant (*Fabrigas v. Mostyn*, 1773) or brought by the plaintiff (*Camerlin v. Palmer*, Massachusetts, 1865) as having worked as their *agents*.

In contrast, a non-English-speaking suspect in a typical police interrogation has

[136] Early rulings in Australia, such as *R v. Chi, Lim and Poy* in 1946 (St R Qd 154, 31 May 1946) used the agent theory for a police interpreter, citing authority from *Commonwealth v. Vose* (Massachusetts, 1892). The ruling in *Gaio v. R* (HCA 70; 104 CLR 419, 1960), mentioned in Section 4.1.3, however, denied the applicability of the agent theory to an interpreter translating between a police officer and a suspect (*Gaio v. R*, p. 428), whereas in civil cases, the use of the agent theory continued to appear in Australian courts at least up to 1970s (Ebashi, 1990, p.31).

practically no other choice but to communicate with the officer through whomever has been procured by the police as an interpreter. To assume an agency relationship to be established when the suspect starts talking though this interpreter would be like forcing the suspect to write a blank check on the spot. This is exactly what Berk-Seligson (2009) called a "stretch [of] one's credulity" (p. 30), referring to a 1989 ruling in California, which ruled that Officer Wagner, who acted as an interpreter, had become the suspect's agent (*People v. Torres*, 1989, p. 1259). Does an *agency* relationship really emerge in a police interrogation room, especially with an officer interpreter?

"Agency *vel non*," is a Latin term which means whether or not there was an agency relationship between the two parties, which often becomes the most critical issue in many civil litigations because an agency relationship carries "significant legal consequences" (Kleinberger, 2012, p. 210). If an agency relationship is proven to have existed, then the principal (e.g., an employer) may be held liable for the damage caused by her/his agent (e.g., an employee). The rationale for this, as was explained in Section 4.4.3, stems from the common-law doctrine of *respondeat superior* to protect an innocent third party, and such legal suits often result in a large sum of damage compensation paid by the principal (e.g., an employer). Due to such potentially dire consequences, the determination of agency in ordinary civil litigations is made based on a careful examination of three key factors that constitute agency: *fiduciary*, *consent*, and *control* (*Industrial Indem. Co. v. Harms*, 1994, 8th Cir.; Munday, 2013, p. 11).

The common law of agency is not a statutory law but an accumulation of many years of case laws. However, it has been compiled into documents such as the Second Restatement of the Law of Agency (1952) and the Third Restatement of the Law of Agency (2006). According to these documents, an agency relationship is first and foremost based on *fiduciary*, or mutual trust (Munday, 2013, p. 11). Thus, if this law was properly applied in a police investigation room, this would mean that a suspect appoints someone (e.g., an officer interpreter) as her or his interpreter, because the suspect trusts

the interpreter to do faithful work on her/his behalf.

In addition, whether an agency relationship was established or not is usually determined by two other key factors: *consent* and *control*. For example, in *Industrial Indem. Co. v. Harms*, a 1994 appellate ruling on a civil suit in the 8th Circuit, it was ruled that "[t]o establish an agency relationship, one must prove the manifestation of *consent* by one person to another that the other shall act on his behalf and subject to his *control*, and *consent* by the other so to act" (*Industrial Indem. Co. v. Harms*, 8th Cir., 1994, p. 762). Again, if applied in a police interrogation room, this would mean that the interpreter first expresses to the suspect clearly that she/he will act on behalf of the suspect and will be subject to the suspect's *control* or supervision, and the suspect also *consents* to this relationship. Similarly, on a 1998 civil case, *Chemtool, Inc. v. Lubrication Technologies, Inc.*, the 7th Circuit appellate court ruled that the key factor to determine the agency relationship is whether the principal has the right to *control* and supervise how the agent does the work (*Chemtool, Inc. v. Lubrication Technologies, Inc.*, 7th Cir., 1998, p. 745). Thus, if applied again to a police interrogation room, the determinant factor would be whether the suspect would be able to *control* and supervise the interpreter's work. Are these three conditions, i.e., *fiduciary*, *consent*, and *control*, really fulfilled in a typical police interrogation room?

As was mentioned above, a non-English-speaking suspect in a police interrogation has no other choice but to communicate through the interpreter procured by the police, who may also be just another police officer. In addition, while the agency law dictates that the principal (e.g., the suspect) must be able to *control* and supervise the work of the agent (e.g., interpreter), doing this would be very difficult for a suspect who understands only one language. As Mason (2015b) noted, the way *control* works in an interpreter-mediated discourse is usually the other way round, as it is the interpreter who has the interactional power to control the discourse (pp. 315–316) as the only bilingual person in the given communicative event (Santaniello, 2018, p. 97).

The reality, however, is that in the U.S. the *agent theory* continues to be used to pre-empt police interpreters' hearsay issue. Though the theory originally emerged in civil cases, the number of appeals in criminal cases over the use of this theory increased especially during the last several decades, as is evinced by Table 4.4 below.

Table 4.4

Use of Agent Theory in Civil and Criminal Cases

Years	Civil	Civil Sub-totals	Crimial	Criminal Sub-totals
1850-1859				
1860-1869	2			
1870-1879				
1880-1889	3			
1890-1899	4	9	1	1
1900-1909	2		3	
1910-1919	5		3	
1920-1929	1			
1930-1939	2			
1940-1949	1	11		6
1950-1959				
1960-1969				
1970-1979			1	
1980-1989			5	
1990-1999	1	1	5	11
2000-2009	1		1	
2010-2018		1	3	4
Total	22	22	22	22

Between 1850 and 1899, there were 9 civil case appeals over the use of the *agent theory*, while the number in criminal cases was only 1. From 1900 to 1949, the figures were 11 for civil and 6 for criminal. Changes, however, took place between 1950 and 1999, and while there was only 1 for civil, the total for criminal became 11. From 2000 to 2018, too, they was only 1 for civil but 4 for criminal. Thus, the changes seem to have taken place during the final decades of the 20th century.

Several factors may have contributed to these changes. First, in ordinary, non-confrontational activities in which a language interpreter is used, this agency relationship is presumably what took place between the interpreter and the service users, based on *fiduciary*. In such cases, the party who did not bring their own interpreter may

have had no problem relying on the interpreter brought by the other party and had no need to raise a hearsay issue unless or until some translation accuracy dispute occurred. Also, if and when such disputes took place, parties in civil cases may have had more financial resources to challenge the *agency* status of the interpreter in question and prevented the admission of their out-of-court translations. Similarly, in potentially confrontational business or legal transactions, it is likely that both parties brought their own interpreters who may also have mutually checked the accuracy of the other side's interpreter. Thus, any accuracy issues if they occurred may have been resolved then and there.[137] Such arrangements or resources, however, seem seldom available for criminal defendants or suspects in police interrogation rooms.[138]

Whatever factors led to these observable changes shown in Table 4.4, they seem to suggest that the *agent theory* may very possibly have become a rather convenient, expedient tool for the prosecution to circumvent the police interpreters' hearsay issue. Once the court determines that the police interpreter became the suspect's agent, the interpreter's translation would be regarded as the same as the suspect's own words. Needless to say, while the agency law dictates that the *principal* (e.g., suspect) "assumes" that the *agent* (e.g., interpreter) is reliable and trustworthy (*Commonwealth v. Vose*,

[137] Also, in international diplomatic talks, the protocol is for both parties to bring their own interpreters who translate one's own side's statements only. For example, in a bilateral talk between the Japanese Prime Minister and the U.S. President, the Japanese Prime Minister's statements are translated by his interpreter, and those of the U.S. President by his interpreter. One exception was when Shinzo Abe, the then Japanese Prime Minister visited President Elect Donald Trump on November 17, 2016 at Trump's home in New York. The entire conversation between them was translated by Abe's official interpreter, with Trump not preparing his own interpreter. The State Department seemed to have regarded such behavior of the then President Elect rather unwise and potentially risky (Landler & Shear, 2016).

[138] Out of all the 228 criminal cases the present thesis investigated, there were only two cases in which such check function was observed. One was *State v. Morales* (Connecticut, 2003), in which the defendant was able to bring another person whose role was "to make sure of the language translation" during the police interview (p. 37), but she was his daughter-in-law. In one more case, *Commonwealth v. Lujan* (Massachusetts, 2018), the defense counsel had a certified interpreter check the police interview recording, who discovered numerous interpreting issues (p. 97, p. 102), the details of which are discussed in Chapter Seven, Section 7.2.3. The ruling, however, did not mention who paid for this translation check.

Massachusetts, 1892, p. 395), this never actually guarantees that the translation will be indeed accurate and the interpreter will be impartial. Even if some accuracy question should arise later, the defendant is no longer able to cross-examine the interpreter. This accuracy issue may have been one of the reasons why many courts began to resort to the term *conduit*, starting with *U.S. v. Ushakow*, a 1973 appellate ruling by the 9th Circuit.

4.5 *Conduit Theory*

U.S. v. Ushakow (9th Cir., 1973) was an appeal in the 9th Circuit on the possession of marijuana with intent to distribute. The defendant objected to the admission of his own out-of-court statement translated by his co-conspirator, arguing that it was hearsay. In a single paragraph of only 80 words, the appellate court flatly rejected his appeal, ruling that his co-conspirator was "merely a language conduit" (*U.S. v. Ushakow*, 9th Cir., 1973, p. 1245). This extremely short ruling contained no legal reasoning to make *conduit* a legal theory. Nevertheless, *U.S. v. Ushakow* (9th Cir., 1973), became the most crucial turning point, providing a binding legal precedent that was to be cited in U.S. courts as the *conduit theory* from thereafter (Benoit, 2015, p. 308; Bolitho, 2019, p. 208; Klubok, 2016, p. 1410; Kracum, 2014, p. 437; Ross, 2014, p. 1948; Xu, 2014, p. 1509).

4.5.1 First *Conduit*: Metaphor for Accuracy

As was reviewed in Chapter Two, Section 2.1, in the field of interpreting studies, *conduit* was referred to as a metaphor primarily for two possible concepts. One was to denote the rigidly word-for-word translation dictum by the judicial community which the interpreting community repeatedly disapproved as a method that does not bring equivalent meaning (e.g., Morris, 1995, p. 26, p. 32; Morris, 1999, p. 6; Setton, 2015, p. 162; Tsuda et al., 2016, p. 84, p. 95; Yoshida, 2007). The other was to refer to a role of an interpreter who does no more than just translate only, which many researchers tried to repudiate empirically (e.g., Angelelli, 2004a, 2004b; Roy, 1989; Wadensjö, 1998),

though interpreting researchers' views vary on this second notion (e.g., Ozolins, 2015, 2016).

As was also mentioned in Chapter Two, Section 2.1.2, Roy (1989) was probably the first interpreting researcher who mentioned *conduit* as a commonly used metaphor for interpreters, stating that it was probably due to the image of conference interpreters transferring a message simultaneously (pp. 2–3). Roy also referred to Reddy (1979) on his observations of numerous English expressions about words being a "container" of thoughts (Roy, 1989, pp. 42–50). However, it may not have been a coincidence that just around the same time as the publication of Roy (1989), many jurisdictions in the U.S. began to use the *conduit theory* for language interpreters, possibly influencing the self-image of many judicial sign language interpreters, too.

In the judicial community, as was noted above, *U.S. v. Ushakow* (9th Cir., 1973) is generally cited as the first case that used the *conduit theory* for language interpreters (Benoit, 2015; Bolitho, 2019; Klubok, 2016; Kracum, 2014; Ross, 2014; Xu, 2014). Actually, however, the metaphorical use of the word *conduit* to refer to interpreters began in U.S. courts long before *U.S. v. Ushakow* (9th Cir., 1973) or Reddy's (1979) "conduit metaphor."

The first traceable use of the term *conduit* to refer to a language interpreter was *State v. Chyo Chiagk*, an 1887 ruling by the Supreme Court of Missouri. It was a case on a Chinese-speaking defendant who had been convicted of murder, primarily due to a co-defendant's incriminating testimony translated by an interpreter. The judge, commenting on the interpreter's accuracy and impartiality issues when the defendant was facing a death penalty in a completely incomprehensible foreign language in a far-away foreign land, reversed the ruling, stating that the defendant had a right to "an interpreter…capable and impartial; one who could and would be medium and conduit of an accurate and colorless transmission of questions…and answers" (*State v. Chyo Chiagk*, Missouri, 1887, p. 411, underlined by the author). Thus, the first use of *conduit*

was a metaphor for *accuracy* and impartiality.

The next verifiable use of the term *conduit* was 19 years later in *Fletcher v. Commonwealth*, a 1906 ruling by the Court of Appeals of Kentucky on an assault and rape of a young Austrian woman, who had recently arrived in the United States from Europe and was travelling through Kentucky with her family. Affirming the lower court's death penalty on the defendants, Chief Justice Hobson stated that the victim's testimony had been translated by a sworn interpreter, who "was a mere conduit by which the testimony…was conveyed to the grand jury" (*Fletcher v. Commonwealth*, Kentucky, 1906, p. 577, underlined by the author). In affirming the death penalty, the judge probably wanted to put in record that the entire due process was flawless, as the victim's statement in German had been accurately translated by the court interpreter. Thus, *conduit* here was also used as a metaphor for *accuracy*.

Then about a decade later in 1917, in *Commonwealth v. Brown* in the Supreme Court of Pennsylvania, the interpreter who had translated for the defendant in a former trial was called to testify to the defendant's prior statement but could not remember the defendant's exact words. Judge Kephart, referring to the interpreter as a "mouthpiece" (*Commonwealth v. Brown*, Pennsylvania, 1917, p. 527), a synonym of *conduit*, ruled that the translated statement was admissible. The judge also addressed Pennsylvania's judicial plight caused by the lack of an adequate legal theory to overcome the hearsay issue of interpreter-mediated out-of-court statements, while non-English-speaking population in Pennsylvania was increasing rapidly [139] (*Commonwealth v. Brown*, Pennsylvania, 1917, pp. 526).

From the above three cases, four observations can be made which seem to provide insights into why the courts initially used the conduit metaphor for language interpreters and how they viewed their own use of this term. The first one is that in the first two

[139] As is also mentioned below, Pennsylvania, with the nation's first capital Philadelphia located within, was seeing an increasing number of newly arriving immigrants (Klaczynska, n.d.).

earliest cases, the judge used the term *conduit* to clearly denote *accurate* translation, i.e., as a metaphor for *accuracy*, even if in an idealized image. Secondly, in all of the above three cases, the interpreters the judges referred to were all court interpreters, i.e., those who were working as the courts' official interpreters. In Pennsylvania, the Pennsylvania Act of March 27, 1865 had already been implemented as "legislation affecting the appointment and compensation of interpreters" (González et al., 2012, p. 4).[140] It would also seem that the institution of court interpreting was already in existence in the other two examples, and the judges used the term *conduit* as a metaphor for the type of translation rendered by such court interpreters. Translations by these interpreters who were formally hired to render interlingual translations may have seemed to these judges as something that could be distinguished from ordinary hearsay, i.e., some second-hand information obtained from an ordinary person.

The third point concerns what the judge in the third case mentioned already in as early as 1917 about the judicial plight of Pennsylvania, which was seeing a rapid increase in the non-English-speaking population. Pennsylvania, with the nation's first capital Philadelphia located within, was having a constant new influx of immigrants. Judge Kephart's comment about the state's need for a legal theory to overcome interpreters' hearsay issue (*Commonwealth v. Brown*, Pennsylvania, 1917, p. 526) already demonstrated that exigency could be a justification for a possibly controversial legal theory, a point that was repeated almost a century later by two appellate judges in California (*People v. Torres*, California, 1989, p. 1260; *Correa v. People*, 2002, California, p. 462, fn. 3), which is discussed further in Section 4.7.3.

[140] There is a clear record in *Commonwealth v. Sanson* (Pennsylvania, 1871), a ruling that stipulated that the Act of March 27, 1865, had two distinct provisions. One was a provision for procuring competent interpreters whose duty was to make oral and written translations of foreign invoices, manifests and other documents, which would become certified documents. The other authorized the Court of Common Pleas to appoint competent interpreters of foreign languages to serve as court interpreters (*Commonwealth v. Sanson*, Pennsylvania, 1871, p. 324).

The fourth important point is that despite all the above, the term *conduit* to refer to a language interpreter appeared only three times (1887, 1906, and 1917) among all relevant appellate cases, until a 1951 case by the U.S. Court of Military Appeals[141] and a 1973 9th Circuit case. As was shown by Table 4.2 and Table 4.3 above, the *conduit theory*, unlike other theories, was hardly ever used until the final decades of the 20th century, and only from thereafter the number increased rather rapidly. This could mean that most judges, as much as they wanted to, may generally have refrained from its use, perhaps because the term *conduit* was *not* a legal theory but only a metaphor or more like an unrealistically and/or conveniently idealized image of an interpreter, just as Laster and Taylor (1994) put it as only a "legal fiction" (pp. 112–113, p. 182).

4.5.2 Seed of Future Increase

Then within a decade after World War II, just around the same time when similar metaphors began to appear in other major common-law jurisdictions in the world, such as "cypher" in the U.K. (*R v. Attard*, 1958, p. 91) and "telephone" or "mouthpiece" in Australia (*Gaio v. R*, 1960, p. 422, p. 430) as was mentioned in Sections 4.1.2 and 4.1.3 above, the term *conduit* re-emerged in U.S. courts. The term appeared for the fourth time in the dissent opinion of *U.S. v. Plummer*, a 1952 ruling by the U.S. Court of Military Appeals on a rape case in Korea.[142]

The defendant had been convicted of raping a Korean woman with a dangerous weapon and appealed for a petition for review. The victim had gone to the American Aid Station immediately after the incident and was interviewed by Captain Cuprys through a Korean interpreter. Later in trial, Captain Cuprys testified in favor of the defendant,

[141] The Court of Military Appeals, the name of which changed to the United States Court of Appeals in 1994, is an appellate court that specializes in the litigations involving uniformed and ununiformed members of the United States Armed Forces, concerning their activities while on duty.

[142] This was a military court ruling, so it was not included in the final selection of 228 criminal cases of the present thesis, as was noted in Chapter Three, Section 3.3.1.

stating that the woman had not complained of any rape. The lower court, however, excluded this testimony as hearsay and convicted the defendant (*U.S. v. Plummer*, 1952, pp. 108–109). The defendant appealed and was granted a review. The military appellate court requested that the defendant call the said interpreter to testify in court. The defendant's counsel, however, made no such effort, presumably for the reason that the interpreter might actually testify against the defendant. In the end, the appellate court reversed the lower court's decision, and the defendant was acquitted.

Notwithstanding, one of the three judges, Judge Latimer, wrote a rather strong dissenting opinion, criticizing the exonerated defendant who had made no effort to subpoena the interpreter who might have testified against him. The judge noted, "Counsel for the accused…was going to develop the theory…that the interpreter was the conduit through which any conversation must travel" (*U.S. v. Plummer*, 1952, p. 112, underlined by the author). Writing this way, the dissenting judge scorned the *conduit* metaphor the defense counsel might have used to argue that Captain Cuprys's testimony was not hearsay because the Korean interpreter had acted only as a *conduit* for the victim creating no extra layer. Thus, while a new, even a global-level trend of the use of *conduit* as a metaphor to overcome hearsay may have emerged around a decade after World War II, it seems that some judges disapproved or even disdained this metaphor for its lack of legal ground (e.g., *U.S. v. Plummer*, 1952).

It was in such a climate when the 9th Circuit ruled in 1973 in *U.S. v. Ushakow* (9th Cir., 1973) mentioned above, that Carlon, who was Ushakow's co-conspirator in drug trafficking and had translated between Ushakow and another co-conspirator, was "merely a language conduit" who had created no hearsay (*U.S. v. Ushakow*, 9th Cir., 1973, p. 1245). This was a very short, single-paragraph ruling in a per curiam opinion, i.e., a unanimous but anonymous ruling. It contained no legal reasoning or definition of the term *conduit*. Thus, the *conduit* metaphor, once scorned by a Military Court judge for its lack of legal ground, was used by the 9th Circuit appellate court in a drug-

trafficking case, as if to almost imply that such a blatant criminal offense caught red-handed would not deserve a full due process procedure. This less-than-80-word anonymous ruling, however, became a firm seed of later increase that began in the last decades of the 20th century, as was shown by Table 4.2 and Table 4.3 above.

4.6 *Agent and/or Conduit Theory*

The *conduit* ruling in *U.S. v. Ushakow* (9th Cir., 1973), albeit its legal obscurity, became a clear turning point in the history of police interpreters' hearsay issue in U.S. courts. Again, as is clear from Table 4.2 and Table 4.3 above, the use of the *conduit theory* began to increase rapidly from thereafter only in criminal cases. What is also conspicuous from these two tables is the emergence and increase of what is referred to as the *agent and/or conduit theory*, also predominantly in criminal cases. This section, therefore, explores how the *conduit theory* led to the creation of the *agent and/or conduit theory*. The thesis begins with *U.S. v. Da Silva*, a 1983 ruling by the 2nd Circuit, and then explains *U.S. v Nazemian* (1991) by the 9th Circuit, which is now the most dominant case law in both federal and many state courts.

4.6.1 *U.S. v. Da Silva* (1983): *Agent and/or Conduit* Interpreter?

On January 17, 1983, Manoel Rodrigues Da Silva arrived at John F. Kennedy International Airport, flying from Rio de Janeiro, Brazil. At customs inspections, an officer found cocaine hidden in his baggage, and Da Silva was taken to a secondary examination room for questioning by Raymond Tripicchio, a Drug Enforcement Administration Agent (DEA Agent, hereafter). Since Da Silva did not speak English, Mario Stewart, a Customs Inspectional Aide who was a "certified Spanish interpreter" raised in Panama, accompanied them as an interpreter (*U.S. v. Da Silva*, 2nd Cir., 1983, p. 829, underlined by the author). Though Da Silva's native language was Portuguese, when Stewart entered the examination room, Da Silva asked Stewart in Spanish if

Stewart spoke Spanish. When Stewart replied affirmatively, Da Silva said in Spanish, "Thank God,"[143] and the interrogation began (*U.S. v. Da Silva*, 2nd Cir., 1983, p. 829, underlined by the author). Stewart read Da Silva's *Miranda* rights in Spanish and mediated the interview thereafter between Spanish and English, with no major communication issues. Later in trial, Tripicchio, the interviewing officer testified to what Da Silva had told him, and Da Silva was convicted (*U.S. v. Da Silva*, 2nd Cir., 1983, pp. 829–830).

Da Silva appealed arguing that Tripicchio's testimony to Stewart's translation was hearsay. However, the 2nd Circuit appellate court denied this, ruling that if "there is no motive to mislead and no reason to believe the translation is inaccurate, the agency relationship may properly be found to exist," and by citing *U.S. v. Ushakow* (9th Cir., 1973), the court ruled that "[i]n those circumstances the translator is no more than a 'language conduit'" (*U.S. v. Da Silva*, 2nd Cir., 1983, p. 832, underlined by the author). By this ruling, *U.S. v. Da Silva* (2nd Cir., 1983) combined the *agent theory* and the *conduit theory* for the first time among all the U.S. courts, making this fusion into the *agent and/or conduit theory*. Also, *U.S. v. Da Silva* (2nd Cir., 1983) for the first time explicitly used the term "translation accuracy" as what is denoted by the term "conduit" (p. 832).

4.6.2 *U.S. v. Nazemian* (1991): 4-Tier Criteria for *Agent and/or Conduit*

This fusion of the *agent theory* and the *conduit theory* was made into a full-fledged case law by *U.S. v. Nazemian* (1991), a 1991 ruling by the 9th Circuit. It was also a drug trafficking case but of a heroin trafficking conspiracy on a larger, more international scale. Jaleh Nazemian, an Iranian woman, was convicted with other conspiracy members, and appealed, focusing on the hearsay issue of a testimony made by a DEA Agent Eaton

[143] The court deemed such reaction from Da Silva as his authorization of Stewart to interpret as his agent (*U.S. v. Da Silva*, 2nd Cir., 1983, p. 832).

about her conversations with him in Paris in June 1986. The conversations between them took place through a French-speaking interpreter, who did not testify in court, and whose identity was never made very clear (*U.S. v. Nazemian*, 9th Cir., 1991, pp. 524–525).

The 9th Circuit appellate court, however, denied Nazemian's appeal, and adjudicated the following 4-tier criteria to determine whether an interpreter in question was an *agent and/or conduit*:

(a) which party supplied the interpreter;

(b) whether the interpreter had any motive to mislead or distort;

(c) the interpreter's qualifications and language skill; and

(d) whether actions taken subsequent to the conversation were consistent with the translated statements; i.e., no inconsistency appeared between them.

Based on this pre-trial, 4-tier criteria assessment, if the trial judge single-handedly determines that there were no issues about the accuracy[144] of the interpreter's out-of-court translation, then the judge can decide that the interpreter served as the suspect's "agent" and/or a "mere language conduit" creating no extra layer of hearsay (*U.S. v. Nazemian*, 1991, pp. 527–528).

With these four sets of criteria, *U.S. v. Nazemian* (9th Cir., 1991) thereafter became a strong case law, cited by many jurisdictions up to this day, including *U.S. v. Aifang Ye* (9th Cir., 2015) mentioned in Chapter One, Section 1.1.2. In 2019, the Minnesota Supreme Court cited *U.S. v. Nazemian* (9th Cir., 1991) to admit the defendant's statement made through a "Language Line [*sic*]"[145] interpreter (*State v. Lopez-Ramos*, 2019, pp. 420–421), the certiorari for which was also denied by the U.S. Supreme Court. A 2020 ruling in Massachusetts also cited *U.S. v. Nazemian* (9th Cir., 1991) to admit the

[144] The ruling also used the wording "an accurate conduit," clearly denoting what is meant by the term *conduit* (*U.S. v. Nazemian*, 9th Cir., 1991, p. 524, fn. 4).

[145] The company's official name is spelled as one word, LanguageLine (LanguageLine Solutions, 2020).

defendant's statement translated by an assistant bank manager (*Commonwealth v. Delacruz*, 2020, p. 3). More recently, *People v. Slade* (New York, 2021) also relied on the *agent and/or conduit theory* (pp. 140–141). As was shown by Table 4.2 and Table 4.3 above the use of the *agent and/or conduit theory* increased only in criminal cases over the past several decades, along with the *agent theory* and the *conduit theory*.

4.6.3 Logical Fallacy of *Agent and/or Conduit*

The present thesis argues, however, that *U.S. v. Nazemian* (9th Cir., 1991) is a highly problematic case law. By the introduction of a non-legal term *conduit*, which generally denotes *accuracy*, this case law bases itself on a typical circular or question-begging logic, which becomes clear if the following four questions are addressed.

1. Does an interpreter become an *agent* because the interpreter is a *conduit*?
2. Does an interpreter become a *conduit* because the interpreter is an *agent*?
3. Does an interpreter become an *agent* and a *conduit* at the same time?
4. Does an interpreter become either an *agent* or a *conduit*?

Each line of the above four logic patterns presents problems as follows. Frist, does an interpreter become an *agent* because the interpreter is a *conduit* (accurate)? The answer is no. Starting from *Commonwealth v. Vose* (Massachusetts, 1892), the theory's only condition for the establishment of *agency* relationship is that the two parties commence a line of communication through an interpreter, *assuming* that the interpreter's translation is *prima facie* accurate (*conduit*). A proven *conduit* (accuracy) status is not a condition for the commencement of the *agency* relationship.

Second, does an interpreter become a *conduit* (accurate) because the interpreter is an *agent*? The answer again is no. Just making an interpreter one's *agent* would not make the interpreter *conduit* (accurate). *Assuming* that one's interpreter will be accurate never makes this interpreter actually become accurate, unless some magical power is at work.

Third, does an interpreter become an *agent* and a *conduit* at the same time? The

answer once again would be no, for the same reason as the second one. Appointment of an interpreter as one's *agent* commences when one *assumes* that this interpreter will act as a *conduit* (accurate). Trusting that this interpreter will be a *conduit* (accurate) is one thing, while the interpreter actually becoming a *conduit* (accurate) is a completely different matter, the latter requiring a separate proof.

Finally, does an interpreter become either an *agent* or a *conduit*? The answer again would be no, as this would make the law simply opportunistic and arbitrary, making an interpreter sometimes just an *agent* or a *conduit* and at other times both *agent and conduit*. As bizarre as it may sound, this is exactly how *U.S. v. Nazemian* (9th Cir., 1991) is phrased, i.e., *agent and/or conduit*. In other words, with this phrasing the law basically provides a generous latitude to trial judges in the use of their discretion, so they can use the *agent theory* for the defendants with an additional *conduit* label (unverified *accuracy*) but can switch to the *conduit theory* when the *agent theory* is not applicable.[146] To obscure this faultiness, *U.S. v. Nazemian* (9th Cir., 1991) as a case law purposely uses the wording *agent and/or conduit* (pp. 527–528). Today, many jurisdictions simply use the *conduit theory* alone when the *agent theory* is inapplicable, as if the name of the theory could *self-authenticate* the interpreter's translation *accuracy*. In short, what *conduit* as is used in the *agent and/or conduit theory* really means is *unverified* translation *accuracy*, which the theory by its name tries to *self-authenticate*.

4.7 Why *Conduit* with No Legal Ground?

The term *conduit* is only a metaphor with no legal or scientific substantiation. Therefore, the question is why the courts in the U.S. began to rely on the *conduit*

[146] As was explained in Section 4.4.5, the *agent theory* can be used only for the statements made by the defendant, for the purpose of overcoming hearsay. The Federal Rules of Evidence 801(d)(2)(C) or (D) and similar states rules allow its use only for *the other party* (e.g., the defendant in a criminal case, from the prosecutor's standpoint). Thus, the *agent theory* does not overcome hearsay of interpreter-mediated statements made by victims and other witnesses, as is explained in Section 4.7.5.

metaphor, making it sound as if it were a legitimate legal theory? As has been noted, the fact that from 1887 up to 1917, the term *conduit* appeared only three times indicates that most judges were probably aware that the term *conduit* was *not* a legal theory, and thus resorted to other theories or measures, as was shown by Table 4.2 in Section 4.2 and Table 4.3 in Section 4.3.1.

Legally, the *agent theory* alone should have sufficed to overcome hearsay if an agency relationship can be established. The theory dictates that just by commencing a communication with a law enforcement officer through an interpreter, the suspect, even if tacitly, can be regarded as having agreed to appoint the interpreter as her/his agent. From thereafter, the suspect would become responsible for the interpreter's translation based on *respondeat superior*, and whatever translation may come along, the suspect would have to accept it based on *vicarious admission*, thus creating no hearsay obstacle. This was the rationale of the *agent theory*. Therefore, why did the courts start adding *conduit*? The present thesis contends that there are six possible reasons, each of which is discussed in the following sections.

4.7.1 *Conduit* to Supplement Accuracy?

The first most possible reason would be the *accuracy* issue. The *agency* relationship binds the suspect with *respondeat superior*, making the suspect liable for any translation errors that might occur. While accuracy is presumably the first and foremost important issue in police interpreting, the *agent theory* alone provides no such guarantee. As was noted in Sections 4.4.6, if this was a high-stake international civil litigation between two wealthy corporations, both would hire most competent interpreters based on *fiduciary*, *consent*, and *control*, as in depositions in civil suits (Takeda, 1992). As the hirers of the interpreting service, both parties would take necessary measures not only to ensure one's own interpreters' accuracy but also to check

the other party's translation accuracy.[147] If one's own interpreter performance does not meet the expectations, they could always replace a problematic interpreter with a new one. Here, these corporations as a *principal/appointer/employer* have much more *control* over the work of the interpreters they hire. An indigent, non-English-speaking suspect in a police interrogation room would never have such luxury.

Thus, even if a suspect seems to have *consented* to communicate through an interpreter, unless the suspect can exercise *control* over this interpreter and supervise their translation, there could be no *agency* relationship between the suspect and the interpreter from a strictly legal standpoint.[148] If, however, the term *conduit* is inserted even as a vague metaphor, it could denote accuracy, even if it is only in the form of *self-authentication*. This may have prompted many judges to start combining *conduit* with *agent* to imply that an *agent* interpreter is also an accurate interpreter, possibly facilitated further by the implementation of the 1978 Court Interpreters Act, which leads to the next, second possible reason.

4.7.2 Judges' Proximity to Court Interpreters' Image?

The second possible reason is that at least initially, the use of the term *conduit* seems to have primarily assumed fully qualified, professional interpreters. As was noted in Section 4.5.1, in the three earliest rulings which used the *conduit* metaphor, i.e., *State v. Chyo Chiagk* (1887) in Missouri, *Fletcher v. Commonwealth* (1906) in Kentucky, and

[147] Similarly, criminal trials of magnitudinous importance would naturally institute a check interpreter system of this type. One example was elucidated by Takeda (2008, 2010), as was mentioned in Chapter Two, Section 2.1.4, on the complicated three-tier interpreting accuracy monitoring system that was employed at the IMTFE (International Military Tribunal for the Far East), commonly known as the Tokyo War Crimes Tribunal, that took place from 1946 till 1948 in Tokyo, Japan. The system consisted of: (a) locally-hired Japanese interpreters; (b) nisei or second-generation Japanese Americans who belonged to the U.S. Military and worked as monitors; and (c) Caucasian U.S. Military officers as arbiters.

[148] A few, though not many, jurisdictions in the U.S. explicitly criticized the use of the agent theory for interpreters selected by the law enforcement, calling it an "artifice" (e.g., *State v. Terrazas*, 1989, Arizona, p. 360, fn. 3).

Commonwealth v. Brown (1917) in Pennsylvania, the judges were all referring to official court interpreters. The judges used the *conduit* metaphor which denoted *accuracy*, most probably because these interpreters' task was to achieve source-target correspondence between the two languages, unlike ordinary hearsay statements.

The Court Interpreters Act of 1978 and many states following with similar legislations to procure qualified interpreters may have created a similar mindset for the judges in using the *conduit* metaphor to refer to interpreters. The thesis's examination of both federal and state cases which started using the term *conduit* in their rulings seems to verify this point. As was mentioned in Section 4.6.1, in *U.S. v. Da Silva* (2nd Cir., 1983), the first case that used the *agent and/or conduit theory*, the interpreter in question was a certified interpreter (*U.S. v. Da Silva*, 2nd Cir., 1983, p. 829). Two state court rulings ensued and cited *U.S. v. Da Silva*'s (2nd Cir., 1983) *agent and/or conduit theory* as a legal authority. Both were in Missouri, and in both, a certified sign language interpreter was used (*State v. Randolph*, Missouri, 1985; *State v Spivey*, Missouri, 1986). The fourth state case that used the *agent and/or conduit theory* was also on a certified sign language interpreter in North Carolina (*State v. Felton*, North Carolina, 1992).

4.7.3 Exigency Even Without Legal Ground?

The third possible reason is exigency. In *People v. Torres* (California, 1989), which used the *agent and/or conduit theory* for a putatively bilingual officer, Judge Scotland noted the rapid increase of interpreter-requiring cases as one reason why the *agent and/or conduit theory* was necessary. The judge mentioned that the "ancient," rigid approach for hearsay was "unrealistic and unworkable" when "California's population continues to grow in number and diversity" (*People v. Torres*, California, 1989, p. 1260).

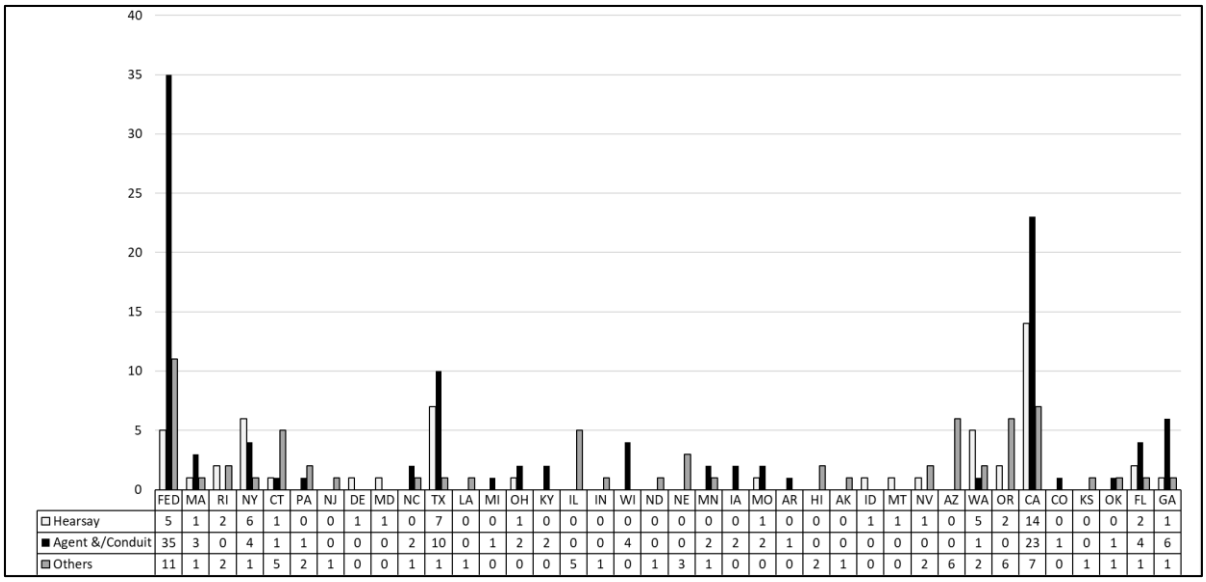
Similarly, in *Correa v. People*, a 2002 ruling in California that admitted statements interpreted by two Spanish-speaking neighbors, the court justified their decision by emphasizing that in California, 224 languages were being used, even without including

dialects, and that every year their courts used interpreters for more than 100 languages (*Correa v. People*, California, 2002, p. 462, fn. 3). These two judges' comments were exactly the same as what Judge Kephart mentioned almost a century earlier in a 1917 appellate ruling in Pennsylvania, using "mouthpiece" as a metaphor, addressing the judicial plight while non-English-speaking population in Pennsylvania was increasing rapidly (*Commonwealth v. Brown*, Pennsylvania, 1917, pp. 526–527).

Figure 4.1 below would perhaps validate this third reason, which shows the breakdown of three categories of criminal case decisions by jurisdictions: (a) *hearsay*, (b) *agent and/or conduit* (including the *agent theory* and the *conduit theory)*, and (c) *other theories or reasons*.

Figure 4.1

Agent and/or Conduit Dominant Jurisdictions (Criminal)



	FED	MA	RI	NY	CT	PA	NJ	DE	MD	NC	TX	LA	MI	OH	KY	IL	IN	WI	ND	NE	MN	IA	MO	AR	HI	AK	ID	MT	NV	AZ	WA	OR	CA	CO	KS	OK	FL	GA
Hearsay	5	1	2	6	1	0	0	1	1	0	7	0	0	1	0	0	0	0	0	0	0	0	1	0	0	0	1	1	1	0	5	2	14	0	0	0	2	1
Agent &/Conduit	35	3	0	4	1	1	0	0	0	2	10	0	1	2	2	0	0	4	0	0	2	2	2	1	0	0	0	0	0	0	1	0	23	1	0	1	4	6
Others	11	1	2	1	5	2	1	0	0	1	1	1	0	0	0	5	1	0	1	3	1	0	0	0	2	1	0	0	2	6	2	6	7	0	1	1	1	1

Each jurisdiction has three bars. The far-left white bar represents *hearsay* (Hearsay). The middle black bar represents admissions by the *agent and/or conduit theory*, including the *agent theory* and the *conduit theory* (Agent &/ Conduit), and the far-right gray bar represents admissions by *other theories or reasons* (Others). Among

all the jurisdictions listed, FED (federal circuits) shown on the farthest left represents a total of all the 11 federal circuits. To the right are a total of 37 states, each shown in two-letter abbreviations, starting from Massachusetts (MA) all the way to Georgia (GA). The states not shown on this chart did not have any relevant appellate rulings on this hearsay issue between 1850 and 2018 surveyed on LexisNexis.[149]

As is shown above, the federal courts seem to have relied on the *agent and/or conduit theory* rather strongly, followed by states with a large immigrant population such as California (CA), Texas (TX), and Florida (FL).[150] Georgia (GA), while raking 18th in the ratio of foreign-born population, ranked 8th in the ratio of Spanish-speakers (Spanish-speaking states, 2023). Also, the competing numbers of *hearsay* and the *agent and/or conduit theory* in California (CA), Texas (TX), and New York (NY) suggest that these courts most probably have gone through a judicial split as well as revisions in their appellate views regarding this issue. Another observation possible from Figure 4.1 is that, while as many as 20 states and the federal circuits have used the *agent and/or conduit theory*, some states seem to have refrained from its use, e.g., Illinois (IL), Arizona (AZ), and Oregon (OR), and others applied it only marginally, e.g., Connecticut (CT) and Washington (WA). This may mean that the *agent and/or conduit theory*, as strong as it may be, is also regarded as a rather controversial, or problematic case law.

4.7.4 Need to Use Officer Interpreters?

The fourth possible reason is that the need to respond to the increase in the immigrant population mentioned in the third reason also increased the need to rely on officer interpreters, whether for exigency or for cost-saving purposes. As was mentioned in Chapter Two, Section 2.3.5, the use of police officers as interpreters is prohibited in

[149] A complete list of all the 228 criminal cases classified here is presented in Appendix 1

[150] Regarding the foreign-born population in 2021, California ranked 1st, Florida 4th, Texas 8th, and Georgia 18th (Percentage of foreign-born, 2023).

the U.K. and Australia in order to ensure "objectivity and impartiality" (Mulayim et al., 2015, p. xxix). In the U.S., however, this seems to be a rather widespread practice,[151] which was criticized by Berk-Seligson (2000, 2002b, 2009) and González et al. (2012, pp. 443-530), among others. Perhaps the first and foremost concern about officer interpreters would be the potential bias/partiality. Berk-Seligson (2002) noted that "a police detective who is in the footing of interpreter might easily turn out to be a wolf in a sheep's clothing" (p. 142), and that, therefore, their use would be the same as "playing with fire" (Berk-Seligson, 2009, p. 217).

Despite such criticisms, however, many U.S. courts consistently approved the practice. *Commonwealth v. Carrillo* (Pennsylvania, 1983) and *Baltazar-Monterrosa v. State* (Nevada, 2006) even stated that the fact there is a law requiring the use of qualified, non-officer interpreters for sign language but not for foreign languages is a manifestation of the law-makers' intension not to extend the same protection to non-English-speaking persons (*Commonwealth v. Carrillo*, Pennsylvania, 1983, pp. 127-128; *Baltazar-Monterrosa v. State*, Nevada, 2006 pp. 612–613). *Commonwealth v. Carrillo* (Pennsylvania, 1983) also mentioned that the ability to respond to urgency as well as cost saving were the main advantages of officer interpreters (p. 131, fn. 4).

Of the total 228 criminal cases from 1850 to 2018 investigated by the present thesis, at least in 22 out of 50 states and in 7 out of 11 federal circuits, their appellate rulings approved the use of law enforcement officers as interpreters: Massachusetts, Rhode Island, Connecticut, New York, Delaware, Pennsylvania, North Carolina, Texas, Illinois, Wisconsin, Minnesota, Nebraska, Alaska, Arizona, California, Montana, Nevada, Oregon, Washington, Kansas, and Georgia; and the 2nd, 3rd, 4th, 5th, 8th, 9th, and 11th circuits. One of the most commonly used arguments in these rulings to deny an officer interpreter's bias was that the officer, who has been assigned to do the interpreting work,

[151] Using law enforcement officers as interpreters is also an approved practice in Japan, too, with the nation's major police departments, such as the Tokyo Metropolitan Police Department, hiring full-time interpreting/translation specialists every year (*Reiwa yonendo keishichō saiyō saito*).

is only serving as an impartial *agent and/or conduit* interpreter.[152]

For example, in *U.S. v. Da Silva* (2nd Cir., 1983) discussed in Section 4.6.1, the court ruled, "[t]he fact that Stewart was an employee of the government did not prevent him from acting as Da Silva's agent for the purpose of translating and communicating Da Silva's statements to Tripicchio" (*U.S. v. Da Silva*, 2nd Cir., 1983, p. 832). As was noted with the first reason above, the use of the *agent theory* alone to argue that the interpreter supplied by the police became the suspect's agent in a police interrogation room was already rather controversial, as this meant there was a clear *consent* from the suspect to approve this interpreter as her/his agent based on *fiduciary* with the suspect's *control* over the interpreter. Since this line of argument, as was also noted above, already sounded like an "artifice" to some judges (e.g., *State v. Terrazas*, 1989, Arizona, p. 360, fn. 3), the need very possibly arose to fortify the *agent theory* by supplementing *conduit* even if it meant nothing more than self-authentication of accuracy.

In *U.S. v. Nazemian* (9th Cir., 1991), also explained in Section 4.6.2 above, the ruling noted that "[o]ther circuits have not held that the fact that the interpreter is provided by the government, in and of itself, is dispositive of the agency question…We likewise do not find it dispositive in this case" (*U.S. v. Nazemian*, 9th Cir., 1991, pp. 527–528). What this means is that the court moved the burden of proof to the defendant to show that there was a significant bias that caused a material harm; i.e., the alleged bias resulted in a seriously biased and inaccurate translation. In other words, bias or partiality of an officer interpreter cannot be proven until a patently serious, inaccurate translation which has resulted from the officer's bias/partiality is verified. This is an impossibly high bar to clear without the means and resources to make interlingual translation accuracy verification, a point discussed in Chapter Five, Section 5.2

[152] As was noted in a footnote in Chapter Two, Section 2.3.5, the findings by Shaffer & Evans (2018), which mentioned that in their survey of 299 law enforcement officers from approximately 20 states, 53.4% responded that they most often use colleagues as interpreters, while only 24.3% responded that they use professionals (p. 156), largely corroborate these findings.

4.7.5 *Conduit* for Testimonies by Victims and Other Witnesses?

The fifth and perhaps the most important judicial reason may have been that *conduit* enabled the application of this case law to victims and other witnesses, in addition to the defendants. As was explained in Section 4.4.5, the *agent theory* is only applicable to statements made previously by the other party (also called the *party-opponent*, e.g., the defendant from the prosecution's standpoint). The *vicarious admission* by an *agent* for hearsay circumvention, as is stipulated by the Federal Rules of Evidence 801(d)(2)(C) or (D) and by similar state court rules, only applies to one's opponent (e.g., the defendant from the prosecution's standpoint). This vicarious admission by an *agent* does not apply to interpreter-mediated statements made by victims and other witnesses who do not testify in court, as they are *not* a *party* to the case. Also, this may become double-hearsay, as an interpreter's translation would add an extra, second layer of hearsay. If, however, an interpreter can become not only an *agent* but also a *conduit*, then the interpreter can become a *conduit* regardless of whom she/he translated for: the suspect, victims, or other witnesses, as it would seem absurd that an interpreter becomes a *conduit* only when translating for the suspect but not for the victims or other witnesses.

The application of *conduit* for an interpreter for *victims* becomes especially important for sexually abused children not old enough to testify in court. As is explained in the sixth reason below, both federal and state courts today have special hearsay exceptions for such minor-age victims (Binder, 2013, pp. 1117–1129). However, if their statements were obtained through a language interpreter, the admission of their statements would face a double-hearsay challenge.

Similarly, in domestic violence cases (as well as domestic rape or sexual abuse cases), the victims who initially made statements about their family's offenses to officers who arrived at the scene often recant their previous statements or refuse to testify in

court for various reasons (often to protect their family member who is now in trial facing a sentence).[153] Such officers' testimonies would also become double hearsay if they were obtained through a language interpreter.[154] If, however, an interpreter could be deemed a *conduit* regardless of whether the interpreter translated for a suspect or a victim, then the double hearsay would be reduced to a single layer of hearsay, which may become easier to overcome.

This was enabled for the first time by the 2nd Circuit's use of the *conduit theory* for a third-party witness in a 1989 tax evasion case, *U.S. v. Koskerides* (2nd. Cir., 1989), on a defendant who was a naturalized citizen originally from Greece and owned several restaurants in Connecticut. To investigate the case, the IRS (Internal Revenue Service) obtained statements from the defendant's relatives in Greece, using an interpreter who was employed at the American Embassy in Greece. The interpreter did not testify at trial, but the court admitted, over the defendant's objection, the statements the government had obtained in Greece through this interpreter. In so doing, the 2nd Circuit cited *U.S. v. Ushakow* (9th Cir., 1973) and *U.S. v. Da Silva* (2nd Cir., 1983), and ruled that an interpreter was a *conduit* (*U.S. v. Koskerides*, 2nd. Cir., 1989, pp. 1131–1135).

An important point again, however, is that in this first case, too, which allowed the use of the *conduit theory* for witnesses other than the defendant, the interpreter was formally employed by the U.S. Embassy in Greece, implying sufficient competence. However, once a floodgate opens, expansive applications follow, as was the case with

[153] For example, in *People v. Ma* (California, 2008), on a case of cocaine possession for sale with a firearm and threats, the mother of the defendant initially told the police about the violent, criminal behavior of her son through her bilingual daughter, but later changed her story and testified that her son was a "good kid" who had never threatened anyone (pp. 2–5). The Court of Appeals of California admitted the officer's testimony to the mother's original statements, ruling that her bilingual daughter had acted as a language conduit (pp. 13–14).

[154] *Saavedra v. State* (Texas, 2008) mentioned in Section 4.1.1 is a good example of a sexual abuse victim recanting her original story to protect her family (p. 2). The officer's testimony to the victim's original statement was already hearsay even if it had been obtained without an interpreter, so if it was obtained through an interpreter, it would have become double-hearsay.

the use of the *present sense impression theory* in Section 4.3.2.[155]

Two major rulings in California at the beginning of the 21st century symbolize such floodgate-opening: *Correa v. People* (California, 2000) and *Correa v. People* (California, 2002),[156] both the same case, the second reversing the first. It was a domestic violence case, and two officers who arrived at the scene needed to rely on two Spanish-speaking neighbors to get statements from the victim and other Spanish-speaking family members. The two neighbors who had served as ad hoc interpreters later testified in court, but neither was perfectly fluent in English. One even had trouble understanding some of the questions asked by the prosecutor (*Correa v. People*, California, 2000, pp. 633–634).

The first ruling, *Correa v. People* (California, 2000), did not admit the statements translated by these ad hoc interpreters for the reason that their translation added an extra layer of hearsay (*Correa v. People*, California, 2000, p. 639). Two years later, however, this ruling was reversed by *Correa v. People* (California, 2002), which decided that these Spanish-speaking neighbors were sufficiently skilled in providing accurate translations to the officers as language conduits (*Correa v. People*, California, 2002, pp. 462–467). Thus, a new avenue was opened for the *conduit theory* to be applied for the statements of victims and other witnesses, translated typically by ad hoc interpreters such as family members, neighbors, by-standers, and putatively (or even hardly) bilingual officers, as was in *People v. Santay* (California, 2018).[157]

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[155] The *present sense impression theory* used for the three professional English-German interpreters in *US v. Kramers et al*. (11th Cir., 1990) was used as a precedent for a bilingual daughter in a domestic violence case in *Palacios v. State* (Indiana, 2010).

[156] *Correa* v. *People* (California, 2002) was briefly mentioned in Section 4.7.3, in the explanation of the third reason.

[157] *People v. Santay* (California, 2018) was a domestic violence case in California. An officer who arrived at the scene after a 911 call, found an injured, Spanish-speaking wife of the defendant. The officer, with his limited Spanish vocabulary combined with gestures, managed to hear from her that the injury had been caused by her violent husband (pp. 6–8). The wife, however, refused to testify to what she had told the officer at the scene, because "she still loved [the] defendant" (pp. 12–13). The Court of Appeals of California admitted the officer's testimony, ruling that the officer,

To verify this fourth possible reason, the thesis calculated how many of what kind of legal theories were used in criminal cases for: defendants, victims, and other witnesses, as is shown in Table 4.5 below. The federal cases are shown on the left, and the state cases on the right.

Table 4.5

Theories for Defendants, Victims, and Other Witnesses

Federal						States					
Witness Types	Agent	Agent and/or Conduit	Conduit	Others	Total	Witness Types	Agent	Agent and/or Conduit	Conduit	Others	Total
Defendants	5	11	13	8	38	Defendants	16	16	12	37	81
Victims	0	0	2	1	3	Victims	1	4	20	10	35
Others	0	0	4	2	6	Others	0	1	3	9	13
Total	5	11	19	11	46	Total	17	21	35	56	129

The federal cases on the left show that the *agent and/or conduit theory* and the *conduit theory* were both used primarily for the defendants, 11 out of 11 with the former and 13 out of 19 with the latter, while the *conduit theory* was used for victims only in 2 out of 19 cases. In state cases, on the other hand, the use of the *conduit theory* was more targeted toward victims, 20 out of 35 cases. This seems to indicate that the *conduit theory* which originally emerged in federal courts to circumvent the hearsay issue of interpreter-mediated defendants' out-of-court statements later spread to state courts to overcome the hearsay issue with victims' statements. Here, the difference in the typical offense types between federal and state cases may also have been a contributing factor, which is explored in Chapter Six, Section 6.3.

despite his limited Spanish, had acted as a language conduit (pp. 28–29).

4.7.6 Generous Judicial Climate with *Ohio v. Roberts* (1980)?

The sixth possible reason, which is also related to the fifth reason above, is the overall judicial climate in the U.S. from around 1980, that opened a rather generous avenue for hearsay exceptions, allowing trial judges to use extended discretion. This was an era which started with *Ohio v. Roberts*, a 1980 U.S. Supreme Court ruling with the key word, "indicia of reliability" or trustworthiness, as was mentioned in Section 4.3.3, (*Ohio v. Roberts*, 1980, pp. 67–77).

Generous hearsay criteria, however, come with advantages and disadvantages for all members of society. The biggest advantage would be that *substantive justice* might be served more easily, which means, as was briefly explained in a footnote in Chapter Three, Section 3.3.2, a crime conviction is enabled so that the punishment will "fit the crime" (Bergman & Berman, 2013, p. 358) with facts correctly determined (Blackwell & Cunningham, 2004, p. 61, fn. 17). A good example would be allowing an officer to testify to a statement made by a child who became a victim of heinous sexual abuse when the child herself/himself cannot testify in court (Binder, 2013, pp. 1117–1129). Also, as was the case in *State v. Letterman* (Oregon, 1980), mentioned in Section 4.3.3, an interpreter might not be able to recall any concrete details of the defendant's statements and may only testify that she/he accurately translated (*State v. Letterman*, Oregon, 1980, p. 1147). In *State v. Letterman* (Oregon, 1980), the court determined that the interpreter's testimony had "trustworthiness" (*State v. Letterman*, Oregon, 1980, p. 1153) or "indicia of reliability" (*Ohio v. Roberts*, 1980, p. 65), and found her out-of-court translation admissible.

Nevertheless, the biggest drawback of such generous hearsay criteria would be a likely compromise of *procedural justice*. Binder (2013) warned how easily it could lead to convicting people falsely accused of child abuse, and noted that this is "an erosion of the hearsay principle," arguing that it is better to have one-hundred people go scot-free than to see one innocent person become convicted based on hearsay evidence (p. 1129).

From around 1980, however, the criminal justice in the U.S. began to tilt more toward generous hearsay exceptions, during which the *conduit theory* to overcome police interpreters' hearsay also gained full force, until the U.S. Supreme Court's jurisprudence swung back strongly in 2004, which also had a significant impact on interpreter-mediated out-of-court statements, as is explained in the next section.

4.8 Other End of Polarity: Pendulum Swings Back

It is often said that "a pendulum" swings back in the Supreme Court of the United States when the Court's common sense begins to perceive its judicial balance tilting in one direction (Hurley, 2020).[158] As was mentioned above, starting with *Ohio v. Roberts* (1980), there was an era in the U.S. Supreme Court's jurisprudence from around 1980, in which the door opened rather widely for various hearsay exceptions if a trial judge determined there was an "indicia of reliability" or trustworthiness (*Ohio v. Roberts*, 1980, pp. 67–77). As Binder (2013) stated, however, this trend was also perceived as an "erosion" of the common law's long-standing hearsay exclusion doctrine, as it could very possibly convict "one innocent person" in a lofty attempt to convict "one hundred guilty people" (Binder, 2013, p. 1129).

4.8.1 *Crawford v. Washington* (2004): Confrontation Clause Reinforced

In 2004, the U.S. Supreme Court's pendulum swung back rather strongly with the ruling on *Crawford v. Washington* (2004) (Eldridge, 2005, p. 1393). The petitioner (defendant), who had been convicted of assault and attempted murder of a man who had tried to rape his wife, appealed to the U.S. Supreme Court with a hearsay argument. He contended that the prosecution had violated his Sixth Amendment confrontation right by introducing an out-of-court statement made by his wife who did not testify in court

[158] Hurley (2020) described the late U.S. Supreme Court Justice Luth Bader Ginsburg's comment on the pendulum which Ginsburg made in her 2017 interview with BBC.

(*Crawford v. Washington*, 2004, pp. 38-40). His wife, who had accompanied her husband to the victim's house, had witnessed the assault scene of her husband stabbing the victim. While the defendant claimed self-defense to the police, the wife, in a separate interview with the police, gave a slightly different account as to how the stabbing took place. When the trial began, however, his wife did not testify because of the state's marital privilege,[159] so the police introduced the wife's tape-recorded interview statement, applying the state's hearsay exception rule (*Crawford v. Washington*, 2004, p. 40). This, Crawford argued, violated his confrontation right.

Ruling in favor of Crawford, the U.S. Supreme Court brought back the common law's hearsay exclusion doctrine into the center of the nation's jurisprudence, when the U.S. was becoming increasingly involved in counter-terrorism operations, following the 9/11 terrorist attacks in 2001, with questions arising about the U.S. military commissions operating overseas, such as Guantanamo Bay, including their extensive use of hearsay evidence (Gaston, 2012, p. 1).[160]

Raising much controversy thereafter, due to its extremely strict and strong reinforcement of hearsay doctrine and unconditional abidance by the Sixth Amendment Confrontation Clause, *Crawford v. Washington* and its progeny[161] stipulated that if, for example, the prosecution wants to introduce the result of a drug test or a breathalyzer test, the very analyst who conducted the test must appear in court to testify to the result and be cross-examined by the defendant. Sending the analyst's co-worker or a proxy for a "surrogate testimony," according to the U.S. Supreme Court, does not meet the constitutional requirement (*Bullcoming v. New Mexico*, 2011, p. 652), even if the very

[159] Washington's marital privilege generally bars a spouse from testifying without the other spouse's consent (*Crawford v. Washington*, 2004, p. 40).

[160] A number of appeals began to reach the U.S. Supreme Court, e.g., *Hamdan v. Rumsfeld*, (2006), which questioned the commissions' regular use of hearsay evidence against terrorist detainees (Gaston, 2012, p. 2).

[161] "Progeny" here particularly refers to *Melendez-Diaz v. Massachusetts* (2009) and *Bullcoming v. New Mexico* (2011).

analyst who conducted the test possesses "the scientific acumen of Mme. Curie and the veracity of Mother Theresa" (*Melendez-Diaz v. Massachusetts*, 2009, p. 319, fn. 6).

4.8.2 *U.S. v. Orm Hieng* (2012): Can Sixth Amendment Verify Accuracy?

Seven years after *Crawford*, the 9th Circuit still continued to use *U.S. v. Nazemian*'s (1991) *agent and/or conduit theory* for *U.S. v. Orm Hieng* (2012, 9th Cir.) ruling, a drug offense case of a Cambodian-speaking defendant. The interpreter, Rithy Lim, was a competent court interpreter, who had served not only for the defendant's police interview but also as the interpreter for the trial as well, and perhaps for this reason the prosecution did not call Lim to the witness stand to testify during the trial (*U.S. v. Orm Hieng*, 9th Cir., 2012, pp. 1136–1139). On appeal, the defendant challenged the testimony by the interviewing police officer as hearsay, and contended that it was a violation of his Sixth Amendment confrontation right, in light of the post-*Crawford* jurisprudence.

Although the ruling affirmed the lower court's decision, one member of the panel, Judge Berzon, expressed a grave concern in her concurring opinion about the continued application of the *agent and/or conduit theory* in the post-*Crawford* era. She wrote that this appellate ruling relied on the pre-*Crawford* hearsay and Confrontation Clause analysis, which, in her view, created a great tension with *Melendez-Diaz v. Massachusetts* (2009) and *Bullcoming v. New Mexico* (2011), the progeny of *Crawford v. Washington* (2004), when translation is "much less of a science than lab tests," noting:

> [T]hat a translator's out-of-court version of a testimonial statement need not be subject to cross-examination at trial--seems in great tension with the holdings of *Melendez-Diaz v. Massachusetts*… (2009), and *Bullcoming v. New Mexico*… (2011), that laboratory reports may not be admitted without testimony by the individuals who conducted the laboratory tests. Translation from one language to another is much less of a science than conducting laboratory tests, and so much more subject to error and dispute. Without the ability to confront the person who

> conducted the translation, a party cannot test the accuracy of the translation in the manner in which the Confrontation Clause contemplates. (*U.S. v. Orm Hieng*, 9th Cir., 2012, p. 1149, underlined by the author)

Despite the above concern by Judge Berzon, the judgment was affirmed in *U.S. v. Orm Hieng* (9th Cir., 2012), while her concern was inherited and made into a more full-fledged ruling one year later by Judge Barkett in *U.S. v. Charles* (11th Cir., 2013), which the thesis introduced in Chapter One, Section 1.1.1.

Notwithstanding, however, the above statement by Judge Berzon makes it rather clear that while the legal dispute here was about hearsay and the Confrontation Clause right, the argument calling for the cross-examination of a police interpreter assumed that doing so would actually enable effective *accuracy verification*, which is what the present thesis explored, the result of which is presented in Chapter Five, Section 5.6.

4.8.3 *Agent and/or Conduit Theory* Continues to Survive

Despite the above-described newly reinforced interpretation of the Sixth Amendment Confrontation Clause by the U.S. Supreme Court, which also brought about a return to a more rigid application of hearsay exclusion on police interpreters, such as *U.S. v. Charles* (11th Cir., 2013), noted in Chapter One, Section 1.1.1, and *Taylor v. State* (Maryland, 2016), which is explained in Chapter Five, Section 5.3.3, the *agent and/or conduit theory* nonetheless continues to survive in most of the courts in the U.S.

One major reason for this survival, at least from a legal standpoint was explained in Section 4.4.5, its expediency. The theory continues to enable the prosecution to argue that because the interpreter was an *agent and/or conduit*, the out-of-court statement translated by the interpreter would become the same as if it had been stated by the suspect (defendant) herself/himself, and thus making it *non-hearsay*, based on the Federal Rules of Evidence 801(d)(2)(C) or (D) and its state equivalents. The theory thus enables the prosecution to argue, and for the court to rule, that because the translated

statement was *not* hearsay (*non-hearsay*), the Sixth Amendment Confrontation Clause does not apply, and that therefore, the defendant cannot argue/complain that she/he was deprived of the opportunity to cross-examine herself/himself.

However, as was contended in Section 4.6.3, the *conduit* end of the hearsay/conduit polarity is legally fallacious, based solely on a circular logic of self-authentication, which, nonetheless continues to be applied by a majority of U.S. courts. On the other hand, a possible return to the *hearsay* end of the polarity discussed in this section, i.e., requiring interpreters' in-court testimony, also seems uncertain in terms of its feasibility and effectiveness in accuracy verification. Thus, the conclusion of this section as well as of this chapter is that neither end of the hearsay/conduit polarity seems effective for ensuring or verifying police interpreters' translation accuracy, which the present thesis examines quantitatively in Chapter Five.

Chapter Five: Hearsay/Conduit Polarity and Accuracy Verification

Chapter Five[162] presents the thesis's quantitative analyses on how effective the hearsay/conduit polarity is in ensuring and/or verifying police interpreters' translation accuracy, and in enabling the interpreters to fulfill their professional accountability. In the absence of legislation on police interpreters' qualifications, the courts in the U.S. supposedly have played the role of ensuring these interpreters' translation accuracy, by applying evidentiary rules (Ebashi, 1990, p. 24) and resorting to the hearsay/conduit polarity based on the Sixth Amendment Confrontation Clause. The analyses of the hearsay circumvention theories on the *conduit* end of the polarity presented in Chapter Four, however, revealed U.S. courts' deprioritization of translation accuracy. On the other hand, the *hearsay* end of the polarity, requiring interpreters' in-court testimonies, also seemed uncertain regarding its feasibility and effectiveness in accuracy verification.

Thus, three quantitative analyses were conducted on: interpreter qualifications, interpreting issues, and interpreters' testimonies, through coding and operationalization of the data (Epstein & Martin, 2014; Mellinger & Hanson, 2017) collected from court ruling texts on 243 interpreters who served in 228 appellate criminal cases (51 federal and 177 states). The chapter begins with the *conduit* end of the polarity and presents the analyses of what kind of interpreters with what kind of qualifications were approved by the courts as conduits who did not create an extra layer of hearsay by rendering accurate translations. Secondly, the chapter presents what kind of interpreting issues were detected with the interpreters surveyed, and how the courts decided on these issues. Finally, the chapter presents the analyses of the *hearsay* end of the polarity, which requires police interpreters' in-court testimonies. The testimonies of 96 interpreters are examined as to whether or not their testimonies helped to verify translation accuracy.

[162] Chapter Five incorporated the analyses and discussions presented in Tamura (2019a, 2019b) with revisions.

5.1 Interpreter Qualifications and Evidentiary Admission

Unlike the Court Interpreters Act of 1978 and its equivalents in each state regarding required qualifications of in-court interpreters, no such legislation yet exists on police interpreters. Thus, appellate court rulings in the U.S., both federal and states, have set precedents on acceptable qualification criteria. This section presents the thesis's quantitative analyses on appellate rulings on police interpreter qualifications and examines whether they ensured competence to produce accurate translation.

5.1.1 Interpreter Profiles

The thesis first investigated what kind of individuals actually served as interpreters and appeared in the 228 appellate criminal cases (51 federal and 177 states), the result of which is shown in Table 5.1 below.

Table 5.1

243 Police Interpreter Profiles (189 in States & 54 in Federal)

Profiles	Federal		States		Total	
	Number of Interpreters	Ratio to Total	Number of Interpreters	Ratio to Total	Number of Interpreters	Ratio to Total
Law Enforcement/Government Officer	18	33.3%	53	24.0%	71	29.2%
Unknown	9	16.7%	33	18.4%	42	17.3%
Court/Certified Interpreter	4	7.4%	28	15.6%	32	13.2%
Neighbor/By-Stander	4	7.4%	19	10.6%	23	9.5%
Family Member	2	3.7%	19	10.6%	21	8.6%
Telephone Interpreter	5	9.3%	10	5.6%	15	6.2%
Alternatively Qualified Interpreter	2	3.7%	7	3.9%	9	3.7%
Co-conspirator	7	13.0%	2	1.1%	9	3.7%
Co-worker/Employee	2	3.7%	7	3.9%	9	3.7%
Acquaintance	0	0.0%	8	4.5%	8	3.3%
Informant	0	0.0%	3	1.7%	3	1.2%
Inmate	1	1.9%	0	0.0%	1	0.4%
TOTAL	54	100.0%	189	100.0%	243	100.0%

More than 1 interpreter was used in some of the total 228 cases, so the total number of

interpreters came out as 243 (54 interpreters in 51 federal cases, and 189 in 177 state cases).[163] Their identity descriptions were diverse, some very detailed and some with only limited information. The thesis classified these 243 interpreters into the following 12 profile categories, as are listed in Table 5.1 above with each number breakdown and the ratio to the total:

1. 71 law enforcement/government officers, 53 in state cases[164] and 18 in federal cases. Out of 71total, 12 officers served as bilingual interviewers who interviewed the suspects or witnesses directly in the foreign language, and 59 served only as interpreters. Also, 3 out of 53 officer interpreters in state cases (1 of these 3 served in two separate cases, thus in real terms just 2 officers) and 1 out of 18 officer interpreters in federal cases were described as *certified* but were included in this category rather than as certified/court interpreters, as they were employees of the police or government organizations, working as their legal agents.[165]
2. 42 unknown persons, meaning that the rulings did not mention their identities or profiles.
3. 32 certified interpreters or court interpreters, including those who served prior to the legislation of the Court Interpreters Act of 1978. This category also included sign

[163] The total number in Tamura (2019a, 2019b) was 242 but the present thesis revised it to 243, for the reason that in *U.S. v. Desire* (11th Cir., 2012), not just 1 but 2 employees of the American Airlines served as interpreters, with the latter replacing the former in the middle (*U.S. v. Desire*, 11th Cir., 2012, p. 820).

[164] As was noted in Chapter Three, Section 3.6.1, a college student who served as a police intern in *Commonwealth v. Lujan* (Massachusetts, 2018) was categorized as an acquaintance (of the police department) in Tamura (2019a, 2019b) for the reason that technically he was still a civilian college student. However, the present thesis re-categorized him as a law enforcement officer for the reason that this intern, who had been interpreting for the West Springfield Police Department for almost 9 years on a regular basis (*Commonwealth v. Lujan*, Massachusetts, 2018, p. 98), was legally "under close supervision" of the West Springfield Police Department, who was his employer (Temporary and leased employees, interns and volunteers: Massachusetts, 2022).

[165] Legal implications of the agency status of the employees of law enforcement/government officers were presented in Chapter Four, Section 4.4.3 and Section 4.4.6. As employees of their organizations, they first owe a fiduciary duty of loyalty to act for the benefit of their employers (Munday, 2013, p. 164), i.e., the law enforcement/government organizations.

language interpreters, as the U.S. implemented the Registry of Interpreters for the Deaf (RID) as early as in the 1960s, which stipulated the use of "qualified sign language interpreters" in police interviews.[166]

4. 23 neighbors or by-standers, meaning any bilinguals who happened to be at the site and were asked to or volunteered to help.
5. 21 family members, out of whom 13 were adults and 8 were children.
6. 15 telephone interpreters, i.e., interpreters who translated via telephone, none of whose identities were mentioned in the rulings.
7. 8 acquaintances, meaning bilingual friends or acquaintances.[167]
8. 9 *alternatively qualified* interpreters, meaning that they were working as interpreters under some kind of contract or as a freelance, though their qualifications or certification status was not always mentioned. This category also included hospital interpreters, i.e., those working for the hospitals as interpreters, where suspects, victims, or other witnesses were brought in. They were not ad hoc interpreters, i.e., bilingual workers at these hospitals, such as bilingual cleaners or maintenance persons. Such bilingual hospital workers were included in Category 10 (Co-workers and Employees). The term *alternatively* was used to avoid confusion with "otherwise," which is used as one of the official qualification categories for federal court interpreters.[168]

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[166] The Registry of Interpreters for the Deaf (RID), founded in 1964, is a professional association of American Sign language interpreters and the only organization in the U.S. that issues sign language interpreter credentials. The establishment of the RID led to a certification system and the establishment of the code of ethics (Roy, Brunson, and Stone, 2018, p. 39).

[167] The interpreter who translated for the victim in *People v. Wang* (2001, California) was included in this category in Tamura (2019a, 2019b), but was moved to Category 10 (Co-workers and Employees) for the reason that the victim had become the interpreter's superior at the time of the interrogation (*People v. Wang*, 2001, California, p. 127). Included also in this category was a wife of a police officer (*State v. Fuentes*, 1998, Wisconsin) for the reason that she was a civilian.

[168] Administrative Office of the U.S. Courts (2021) defines *otherwise qualified interpreters* as interpreters who are either "professionally qualified" or "language skilled/ad hoc" (p. 3).

9. 9 co-conspirators, meaning members of the same crime, who did ad hoc interpreting for the defendant and/or others.
10. 9 co-workers, meaning bilingual co-workers, employees, including bilingual teachers at the schools which the victims or other witnesses attended.[169]
11. 3 informants, meaning bilingual persons who agreed to cooperate with the police.
12. 1 inmate, who was bilingual and translated for another inmate in the prison.

The 12 profiles and their total ratio presented in Table 5.1 above revealed a rather strong ad hoc nature of the 243 interpreters in the 228 appellate criminal cases between 1850 and 2018. Except for 32 court or certified interpreters (Profile 3), comprising 13.2% and 9 alternatively qualified interpreters (Profile 8), comprising 3.7%, the remaining profiles were all ad hoc interpreters, including the controversial category of law enforcement or government officers (Profile 1), accounting for nearly 30% (29.2%).

5.1.2 Ad Hoc Interpreters and Evidentiary Admission

Despite the strong ad hoc nature of these 243 interpreters, the courts' evidentiary admission ratio was rather high, as is shown by profiles in Table 5.2 below.

Out of all the 243 interpreters, 187 interpreters had their out-of-court translations admitted by the courts, thus making the total average admission ratio 76.5% (186/243). The results from highest down were: an inmate at 100.0%, alternatively qualified interpreters, co-conspirators, and co-workers/employees all at 88.9%, neighbors/by-standers at 87.0%, telephone interpreters at 86.7%, law enforcement/government officers at 80.3%, family members at 76.2%, court/certified interpreters at 68.8%, unknown at 64.3%, acquaintances at 62.5%, and an informant at 33.33%.

[169] The total number in this category had been 7 in Tamura (2019a, 2019b) but was changed to 9 in the present thesis for the reasons that: the interpreter in *People v. Wang* (2001, California) was moved from Category 9 (Acquaintances) to this category; and in *U.S. v. Desire* (2012, 11th Cir.), 2 employees of the American Airlines served as interpreters (p. 820).

Table 5.2

Translation Admission Ratio by Profiles

Profiles	Total Number of Interpreters	Out-of-Court Translation Admitted	Evidentiary Admission Ratio
Inmate	1	1	100.0%
Alternatively Qualified Interpreter	9	8	88.9%
Co-conspirator	9	8	88.9%
Co-worker/Employee	9	8	88.9%
Neighbor/By-Stander	23	20	87.0%
Telephone Interpreter	15	13	86.7%
Law Enforcement/Government Officer	71	57	80.3%
Family Member	21	16	76.2%
Court/Certified Interpreter	32	22	68.8%
Unknown	42	27	64.3%
Acquaintance	8	5	62.5%
Informant	3	1	33.3%
Total/Total Average	243	186	76.5%

As to why court/certified interpreters' admission ratio was rather low, one possible reason may be that a relatively large percentage of them appeared in the appellate rulings from the 19th century, when more courts applied a stricter hearsay exclusion even to court interpreters if they could not remember what they had translated in a prior trial, as was exemplified by a 1902 ruling in California, *People v. Jan John* (1902), mentioned in Chapter Four, Section 4.2.1, which is substantiated by Table 5.3 below.

Table 5.3 shows the number of interpreters in each profile presented chronologically by decades from 1850 to 2018. The table shows that until the mid-20th century, except for a few sporadic appearances of other profiles, interpreters who appeared in the appellate rulings were either court interpreters or unknown interpreters. Unknown interpreters' evidentiary admission ratio was similarly low at 64.3%.

Table 5.3

Police Interpreter Profiles Over 170 Years

Years	Inmate	Inform-ant	Co-Worker	Co-Con-spirator	Alter-natively Quali-fied	Ac-quaint-ance	Tele-phone	Family	Neigh-bor/By-Stander	Court/ Certi-fied	Un-known	Law Enforce-ment	Total
1850-1859													
1860-1869											1		1
1870-1879													
1880-1889										4	1	1	6
1890-1899								1		1	2		4
1900-1909						1				5	3		9
1910-1919						2				5	5	1	13
1920-1929				1							4		5
1930-1939										1	1		2
1940-1949													
1950-1959											1		1
1960-1969									1		1	1	3
1970-1979	1			2					1	1		2	7
1980-1989			1	1		1		3	2	3	3	10	24
1990-1999		2		2	1	1		3	3	5	3	8	28
2000-2009		1	5	3	3	3	5	12	11	1	10	26	80
2010-2018			3		5		10	2	5	6	7	22	60
Total	1	3	9	9	9	8	15	21	23	32	42	71	243

5.1.3 Qualifications and Evidentiary Admission

In order to further investigate how the courts assessed the "qualifications and language skill" (*U.S. v. Nazemian*, 9th Cir., 1991, p. 527) of these 243 police interpreters in the 12 profile categories, the thesis conducted quantitative analyses of these interpreters' qualification attributes. As was explained in Chapter Three, Section 3.6.1, the analyses were based on the following five operationalized qualification attributes. As was also explained in Chapter Three, Section 3.6.1, based on the results of Hale et al. (2019) on trained and untrained interpreters, the five qualification attributes found in court ruling descriptions were assigned the following weighted points:[170]

a. Linguistic Competence: 10 points

b. Job Experience: 5 points (non-interpreting language use) / 25 points (interpreting)

c. Formal education or training: 5 points (language study) / 30 points (interpreting skill

[170] A complete, detailed evaluation of all the 243 interpreters side by side with each specific court ruling text are presented in Appendix 3: Interpreter Qualifications and Evidentiary Admission by Profiles, in the order of 12 profiles.

training)

d. Certification/Court interpreter: 30 points

e. In-court testimony about one's own qualifications: 5 points.

The results are shown in Table 5.4 below, which has two rows for each profile: the upper row showing the by-profile total points in each category, and the lower row showing the by-profile average per interpreter in the same category. The profiles are listed in the order of the per-interpreter average from highest down.

Table 5.4

Interpreter Qualification Points by Profile

Profile Category	Number of Inter-preters		(a) 1st/N/H Lang/ Fluent (10 pts)	(b) Regular/Long-time Job Exp (5/25 pts)	(c) Formal Ed/ Trg (5/30 pts)	(d) Certified/ Court IT (30 pts)	(e) Testimony on Qualification (5 pts)	Total (100 pts)
Court/Certified IT	32	By-Profile Total Points	30	125	125	960	40	1280
		Ave/Interpreter	0.94	3.91	3.91	30.00	1.25	**40.00**
Alternatively Qualified IT	9	By-Profile Total Points	30	225	5	0	10	270
		Ave/Interpreter	3.33	25.00	0.56	0.00	1.11	**30.00**
Law Enforcement/ Government Officer	71	By-Profile Total Points	450	625	55	120	110	1360
		Ave/Interpreter	6.34	8.80	0.78	1.69	1.55	**19.16**
Telephone	15	By-Profile Total Points	30	125	90	0	0	245
		Ave/Interpreter	2.00	8.33	6.00	0.00	0.00	**16.33**
Co-Worker/Employee	9	By-Profile Total Points	60	60	0	0	15	135
		Ave/Interpreter	6.67	6.67	0.00	0.00	1.67	**15.00**
Neighbor/By-Stander	23	By-Profile Total Points	150	10	0	0	30	190
		Ave/Interpreter	6.52	0.45	0.00	0.00	1.30	**8.26**
Acquaintance	8	By-Profile Total Points	30	25	0	0	5	60
		Ave/Interpreter	3.75	3.13	0.00	0.00	0.63	**7.50**
Family	21	By-Profile Total Points	70	0	0	0	5	75
		Ave/Interpreter	3.33	0.00	0.00	0.00	0.24	**3.57**
Co-Conspirator	9	By-Profile Total Points	10	0	0	0	0	10
		Ave/Interpreter	1.11	0.00	0.00	0.00	0.00	**1.11**
Unknown	42	By-Profile Total Points	10	25	0	0	0	35
		Ave/Interpreter	0.24	0.60	0.00	0.00	0.00	**0.83**
Informant	3	By-Profile Total Points	0	0	0	0	0	0
		Ave/Interpreter	0.00	0.00	0.00	0.00	0.00	**0.00**
Inmate	1	By-Profile Total Points	0	0	0	0	0	0
		Ave/Interpreter	0.00	0.00	0.00	0.00	0.00	**0.00**

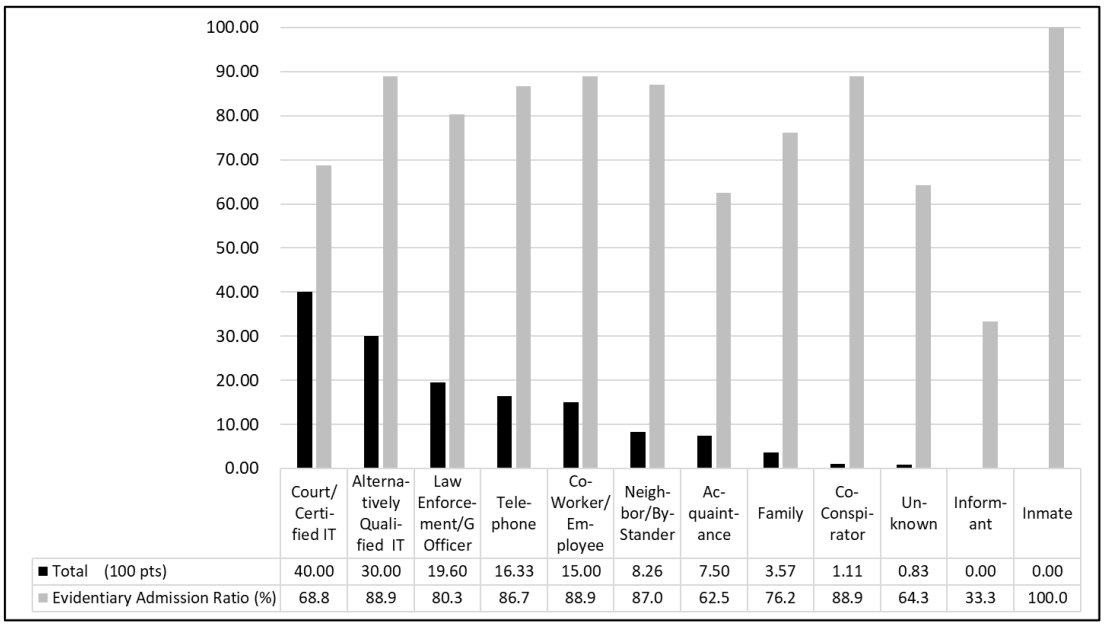
As was explained in Chapter Three, Section 3.6.1, basing the described weighted points on Hale et al. (2019), the thesis regarded 30 points as a minimum to be considered as qualified. As is rather evident, however, only court/certified interpreters and alternatively qualified interpreters scored 30 points or above for the per-interpreter average, 40.00 points and 30.00 respectively. Law enforcement/government officers, though they came in third, scored only 19.16 points, followed by telephone interpreters at 16.33 points, co-workers/employees at 15.00 points. As to neighbors/by-standers, acquaintances, and family members, the points went further down to only 8.26 points, 7.50 points, and 3.57 points, respectively. With the remaining profiles (unknown, co-conspirators, informants, and an inmate) the average points were around or below 1 point.

Table 5.4 above also reveals courts' efforts to make up for the interpreters' lack of valid qualifications with descriptions on (a) linguistic competence, with descriptions such as: *first* or *native language*, *raised* or *brought up speaking the language*, *language used at home* (*heritage language*), or *spoke fluently*. Out of 10 points assigned to this category (a), co-workers/employees scored 6.67 points, followed by neighbors/by-standers at 6.52 points, and law enforcement/government officers at 6.34 points.

Moreover, these rather low by-profile qualifications did not seem to demonstrate any clear relation with the courts' decisions on the evidentiary admission of out-of-courts statements translated by each profile, as is shown by Figure 5.1 below, which is a bar graph showing by-profile qualification points side-by-side with each by-profile evidentiary admission ratio shown by Table 5.2 in Section 5.1.2.

Figure 5.1

Qualifications and Evidentiary Admission: No Clear Relation



	Court/ Certified IT	Alternatively Qualified IT	Law Enforcement/G Officer	Telephone	Co-Worker/ Employee	Neighbor/By-Stander	Acquaintance	Family	Co-Conspirator	Unknown	Informant	Inmate
Total (100 pts)	40.00	30.00	19.60	16.33	15.00	8.26	7.50	3.57	1.11	0.83	0.00	0.00
Evidentiary Admission Ratio (%)	68.8	88.9	80.3	86.7	88.9	87.0	62.5	76.2	88.9	64.3	33.3	100.0

Therefore, in order to further investigate whether the interpreters' qualifications contained in the court rulings to substantiate the courts' evidentiary admission decisions showed a significant difference between the interpreters whose out-of-court translations were not admitted and those whose translations were admitted, the thesis conducted a *t*-test on the data presented in Appendix 3: Interpreter Qualifications and Evidentiary Admission by Profiles.

Table 5.5 below shows how many out of the total 243 interpreters who were divided into these two categories (*admitted* and *not admitted*) scored among 21 individual score point brackets, starting from 0 all the way up to 100 qualification points, and the result of a *t*-test of these two groups assuming unequal variance. The result showed a *p*-value (two-tailed) at 10.0817%, which clearly indicated no statistically significant difference in the qualification points between those whose translations were found admissible by the courts and those who were not, in all of the 228 criminal cases.

Table 5.5

Qualification Points & Evidentiary Admission: No Significant Difference

Individual Qualification Points	Number of Interpreters Whose Translation Was Admitted	Number of Interpreters Whose Translation Was Not Admitted	Total
0	79	29	108
5			
10	31	7	38
15	10	4	14
20	3	2	5
25	10	2	12
30	19	8	27
35	12	3	15
40	8	1	9
45	5		5
50			
55	2		2
60			
65	3		3
70			
75		1	1
80			
85			
90	3		3
95			
100	1		1
Total Number of Interpreters	186	57	243
Total Points	2980	680	2980
Ave/Interpreter	16.02	11.93	15.06

t-Test: Two-Sample Assuming Unequal Variances		
	Admitted	Not Admitted
Mean	16.02150538	11.92982456
Variance	393.545481	243.5307018
Observations	186	57
Hypothesized Mean Difference	0	
df	117	
t	1.618858716	
P(T<=t) one-tail	0.054085131	
t Critical one-tail	1.657981659	
P(T<=t) two-tail	0.108170261	
t Critical two-tail	1.980447599	

Thus, the next question becomes: with such rather unclear or lenient qualification assessment, to what extent did interpreting issues emerge in what kind of areas, and how were they resolved by the courts?

5.2 Interpreting Issues & Audio/Video-Recording

Before presenting the result of interpreting issue analyses, a note must be made on audio/video-recording and interpreting issue detection with the findings shown on Table 5.6 below. The 228 criminal cases on the police interpreter's hearsay issue investigated by the present thesis ranged from 1850 to 2018, until the later years of which the technology of audio/video-recording was not available. While this may have been one of the reasons why the number of cases which specifically mentioned an audio/video-recording was very limited, most of the more recent cases had no mention of audio/video-recording, either, except for those shown on Table 5.6 below.[171]

Table 5.6

Audio/Video-Recording and Interpreting Issue Detection

	Total Number of Cases	(a) Total Number of Inter-preters	(b) Total Number of Inter-preters with Inter-preting Issues Detect-ed	(c) Total Inter-preting Issues Detect-ed	(d) Inter-preting Issue Ratio to Total Number of Inter-preters (c)/(a)	(e) Inter-preters Who Were Audio/ Video-Record-ed	(f) Inter-preters Who Were Not Audio/ Video-Record-ed	(g) Audio/ Video-Record-ing Ratio (e)/(a)	(h) Issues Detect-ed with Audio/ Video-Record-ing	(i) Issues Detect-ed w/out Audio/ Video-Record-ing	(j) Detect-ion Ratio with Audio/ Video-Record-ing (h)/(e)	(k) Detect-ion Ratio w/out Audio/ Video-Record-ing (i)/(f)
Federal	51	54	10	12	22.2%	1	53	1.9%	1	11	100.0%	20.8%
States	177	189	52	55	29.1%	13	176	6.9%	8	47	61.5%	26.7%
Total	228	243	62	67	27.6%	14	229	5.8%	9	58	64.3%	25.3%

Table 5.6 above shows the following the data, presented separately by federal cases, state cases, and their total:

(a) the total number of interpreters surveyed;

(b) the total number of interpreters found with interpreting issues;

(c) the total number of interpreting issues detected;

[171] The thesis referred to the legal background which most probably was the cause of this paucity of audio/video-recorded cases in Chapter One, Section 1.4.1, and re-visits this issue in Chapter Seven.

(d) the interpreting issue ratio to the total number of interpreters, i.e., (c)/(a);

(e) the total number of interpreters who had been audio/video-recorded;

(f) the total number of interpreters who had *not* been audio/video-recorded;

(g) the audio/video-recording ratio, i.e., (e)/(a);

(h) the total number of issues detected with audio/video-recording;

(i) the total number of issues detected without audio/video-recording;

(j) the interpreting issue detection ratio with audio/video-recording, i.e., (h)/(e); and

(k) the interpreting issue detection ratio without audio/video-recording, i.e., (i)/(f).

Table 5.6 first shows that out of 243 interpreters (54 interpreters in 51 federal cases and 189 interpreters in 177 state cases) who served in 228 criminal cases, 62 interpreters (10 in federal and 52 in state cases) were found with interpreting issues.

Out of these 62 interpreters with interpreting issues, 1 interpreter in a federal case had 3 different interpreting issues (*U.S. v. Romo-Chavez*, 9th Cir., 2012). Also, 1 interpreter in a state case had 2 different interpreting issues (*Commonwealth v. Lujan*, Massachusetts, 2018), and 1 more interpreter in another state case had 3 different interpreting issues (*Commonwealth v. Carrillo*, Pennsylvania, 1983). Thus, the total number of interpreting issues became 67 (12 issues made by 10 interpreters in federal cases, and 55 issues made by 51 interpreters in state cases). Accordingly, the ratio of the total number of interpreting issues to the total number of interpreters (243 interpreters in 228 cases) was 27.6% (22.2% in federal cases and 29.1% in state cases).

Though these figures may not seem very large in light of the fact that these 243 interpreters were predominantly ad hoc with below-minimum qualifications, these seemingly low interpreting issue detection ratios may very possibly have been due to the absence of audio/video-recording. As is shown, only 1 out of 54 interpreters in federal cases (1.9%) and 13 out of 176 interpreters in state cases (6.9%) had their interpreting audio/video-recorded or had access to the source language audio/video-recording.[172]

[172] For example, in *U.S. v. Sharif* (9th Cir., 1989), an audio-recording of an intercepted

Thus, the average audio/video-recording ratio of the 243 interpreters was very low at 5.8%. This means that most interpreting issues, including translation issues, were argued without any tangible evidence to substantiate their contentions.[173]

In federal cases, with the 1 interpreter who had been audio-recorded, 1 interpreting issue was detected, thus making the detection ratio 100.0% with audio/video-recording, while only 11 issues were detected with 53 interpreters without audio/video-recording, thus reducing the detection ratio to 20.8%. In state cases, out of 13 interpreters who had been audio/video-recorded, 8 interpreting issues were detected, thus making the detection ratio 61.5% with audio/video-recording, while with the remaining 176 interpreters who had not been audio/video-recorded, only 47 issues were detected, thus reducing the detection ratio to 26.7% without audio/video-recording.

Thus, the figures shown by Table 5.6 indicate that the use of audio/video-recording was critical in the detection of interpreting issues, while how helpful such recordings were for the courts in assessing each issue was another matter, as is discussed below.

5.3 Interpreting Issues and Evidentiary Admission

As was explained in Chapter Three, Section 3.6.2, the present thesis conducted interpreting issue analyses based on the descriptions found in court rulings and classified them into six categories: (1) Comprehension issues, (2) Factual discrepancy issues, (3) Syntactic Tense issues, (4) Other syntactic issues, (5) Word choice issues, and (6) Other semantic issues. Table 5.7 below shows an overview of the result of these analyses.[174]

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telephone conversation was translated (p. 5).

[173] The findings were based solely on what was or was not written in these court rulings.

[174] Complete details of these finding are presented in Appendix 4: Interpreting Issues Described in Court Rulings.

Table 5.7

Interpreting Issues, Evidentiary Admission, & Audio/Video-Recording

	I. Testified & Not Admitted (# of R)	II. Not Testified & Not Admiited (# of R)	III. Testified & Admitted (# of R)	IV. Not Tesified & Admitted (# of R)	Total	Ratio to Total Issues	Eviden-tiary Admis-sion Ratio	Video/ Audio-Recorded	Ratio of Video/ Audio-Record-ing to Total Issues	Non-Admis-sion Ratio with Video/ Audio-Record-ing	Admis-sion Ratio with Video/ Audio-Record-ing
1. Comprehension Issues											
Federal	0	0	1	0	1	17.9%	**50.0%**	0	16.7%	100.0%	0.0%
States	3 (2R)	3	3	2	11			2			
2. Factual Discrepancies											
Federal	0	2	0	1	3	44.8%	**66.7%**	0	0.0%	NA	NA
States	4	4	10	9	27			0			
3. Syntactic Tense Isues											
Federal	0	0	1	0	1	7.5%	**20.0%**		40.0%	100.0%	0.0%
States	2	2 (2R)	0	0	4			2			
4. Other Syntactic Issues											
Federal	0	0	1	0	1	3.0%	**50.0%**	0	0.0%	NA	NA
States	0	1	0	0	1			0			
5. Word Choice Issues											
Federal	0	1	1	2	4	13.4%	**77.8%**	0	0.0%	NA	NA
States	0	1	1	3	5			0			
6. Other Semantic Issues											
Federal	0	1	1 (1R)	0	2	13.4%	**55.6%**	1	55.6%	20.0%	80.0%
States	3 (1R)	0	3 (2R)	1 (1R)	7			4			
Total											
Federal	0	4	5 (1R)	3	12	100.0%	**60.6%**	1	13.4%	18.5%	10.0%
States	12 (3R)	11 (2R)	17 (2R)	15 (1R)	55			8			
Federal & States Total	12	15	22	18	67			9			

The far-left column shows the six issue categories, each one of which has two rows: one for federal cases and the other for state cases. The next four columns to the right are four combination categories of interpreters' in-court testimonies and the courts' decisions on evidentiary admission:

Category I : Interpreter Testified; Translated Statement was Not Admitted

Category II: Interpreter Did Not Testify; Translated Statement was Not Admitted

Category III: Interpreter Testified; Translated Statement Admitted

Category IV: Interpreter Did Not Testify; Translated Statement was Admitted

The total number of interpreting issues is shown in each category, with federal and state cases in two separate rows. Also, next to each number, the number of issues which had been audio/video-recorded is shown inside the parentheses with R as (#R). The next column to the right shows the total number of issues in each issue category by federal

and states separately, followed by the courts' evidentiary admission ratio in each issue category. The next two columns show the numbers of audio-video recordings out of each category total, followed by its ratio. The two farthest right columns show the evidentiary admission ratios with and without audio/video-recording.

For example, regarding comprehension issues shown in the top rows, there were a total of 12 issues (1 in federal and 11 in state cases), which comprised 17.9% of all the 67 issues. With the 1 comprehension issue in a federal case, the interpreter testified, and the court admitted this interpreter's translation. Of the 11 comprehension issues in state cases, 3 were found inadmissible even with the interpreters' testimonies, of which 2 issues had been audio-recorded (2R). In addition, 3 more issues were found inadmissible without the interpreters' testimonies, 3 more found admissible with testimonies, and 2 more also found admissible even without testimonies. Thus, the total admission ratio came out as 50.0%, and out of the total 12 cases, 2 had been video/audio-recorded, comprising 16.7% of the total issues detected, also making the non-admission ratio with audio/video-recording 100.0%, and admission ratio with audio/video-recording 0.0%.

The results of the interpreting issue analyses in each category are presented in the following sections.

5.3.1 Comprehension Issues: 50.0% Admission

With comprehension issues, which constituted 17.9% of all the issues detected, the courts seem to have been relatively stringent, at the admission ratio of 50.0%. Out of the total 12 comprehension issues, 3 were found inadmissible although the interpreters did testify, and 3 more found inadmissible without the interpreter's testimonies. Only 2 out of 11 were admitted without the interpreter's in-court testimony, making the total admission ratio 50.0%. Table 5.8 below shows some of the examples with which the courts denied evidentiary admission. A/NA hereafter stands for admission/non-admission.

Table 5.8

Inadmissible Comprehension Issues

Case	A/ NA	Court Ruling Descriptions
State v. Morales 2012 (WA) *Un-Recorded*	NA	There is a clear distinction between a defendant's testimony translated through an interpreter and an interpreter's translation to the defendant of a statutory right to have a blood sample independently tested. A defendant has a much greater constitutional right in an accurate translation of his or her own words (pp. 567–568). ...The legislature has explicitly indicated a desire to ensure non-English-speaking persons are afforded the full protection of the law...Brunstad [the officer] testified that he could not say that the interpreter read any rights to Morales because he had no idea what they were talking about. All that Brunstad could say was that he asked the interpreter to read the 308 warning; he could not say that the interpreter did so (pp. 573–574).
State v. Rodriguez-Castillo 2008 (OR) *Recorded*	NA	Defendant testified that he tried to explain what had happened to the officer, but the officer did not speak Spanish "very well; 50, 60 percent." Defendant testified that their difficulty communicating occurred either because of the officer's limited Spanish or because the officer was trying to get him to say that he had touched the victim's vagina. Additionally, defendant called an expert, who testified that the officer's Spanish was "poor" (p. 54).
Common-welath v. Lujan 2018 (MA) *Recorded*	NA	The judge credited the testimony of Jakub, a court-certified interpreter, that the defendant often did not understand even basic everyday words in Russian, let alone legal terms. By way of example, Jakub testified that the defendant did not know the Russian verb to "brush," a term that was central to the investigation and one the intern led the defendant to adopt (p. 102).

Comprehension issues often implicate Miranda administration and the suspect's understanding of his rights before and/or during the interview, and some courts seem to have been rather cautious on these matters.[175] The first example, a 2012 DUI hit-and-run case in Washington, was one of such examples. The defendant had been taken to the hospital and was given a blood sample test, but the officer later became unsure if the hospital's emergency room interpreter had read the 308 warning, which notifies the test-taker of its legal consequences,[176] but this exchange had not been audio-recorded, and the interpreter did not testify. The appellate court determined that the state failed to prove that the 308 warning was properly read to the defendant through the interpreter and

[175] As was noted in Chapter Two, Section 2.3.6, Miranda has special legal consequences in the U.S., despite its linguistic complexity (Ainsworth, 2008; Shuy, 1997, 1998), which becomes compounded when translated, as Russel (2000) and Nakane (2007) showed with similar cautions.

[176] Washington State Legislature, RCW 46.20.308 Implied consent, Test refusal, Procedures. https://app.leg.wa.gov/rcw/default.aspx?cite=46.20.308

found the blood test results inadmissible. (*State v. Morales*, Washington, 2012, p. 578).

The second example is a 2008 sexual abuse case in Oregon. The officer who interviewed the defendant in Spanish had low proficiency, resulting in comprehension issues, which was also corroborated by an expert witness (*State v. Rodriguez-Castillo*, Oregon, 2008). The last example is a 2018 case in Massachusetts on an alleged inappropriate sexual conduct, in which the police used a college intern as an interpreter, who created numerous comprehension and other interpreting issues (*Commonwealth v. Lujan, Massachusetts*, 2018). These two cases were also audio/video-recorded.

5.3.2 Factual Discrepancy Issues: 66.7% Admission

In contrast to the above comprehension issues, factual discrepancy issues do not seem to have been treated with similar rigor, although they accounted for the largest percentage of all the 67 issues, at 44.8%, nearly half of all the issues. Out of the total 30 issues, the courts admitted 10 without the interpreters' testimony, and another 10 with testimonies. While 4 were found inadmissible even with testimonies and 6 more without testimonies, the admission ratio was 66.7%.[177] In addition, none of them had been audio/video-recorded, so they all seem to have become a typical *he-said-she-said* issue, but now with an interpreter in-between.

In criminal procedure they are usually treated as the defendant's prior inconsistent statements, i.e., a defendant saying something different in a trial from what she/he had previously stated during a police interview. However, with an interpreter's language mediation adding an extra layer, there was no way of verifying whether the discrepancy was a result of an inaccurate translation or of the defendant not being truthful and using the interpreter as a scapegoat. If the case was the latter, the interpreter usually had no way to defend oneself unless the interaction had been audio/video-recorded.

[177] Complete details of all these 30 factual discrepancy statements are presented in Appendix 4: Interpreting Issues Described in Court Rulings.

Table 5.9 below shows an example of a factual discrepancy intentionally created by the defendant to discredit the interpreter. The defendant testified to his age in court which was different from what he had given earlier through an interpreter in order to damage the previous interpreter's reliability (*Garcia v. State*, Nebraska, 1955). Such issues could be easily resolved today with the use of audio/video-recording.

Table 5.9

Factual Discrepancy (Intentional)

Garcia v. State 1955 (NE) Un-Recorded	A	There had also been a question raised as to defendant's age. He testified he was 29 at the time (A) whereas in his statement taken on August 5, 1953, he stated he was 27 (B). This was apparently done for the purpose of affecting the credibility of Julian W. Lopez, who acted as interpreter in taking defendant's statement, and to thereby discredit his signed confession (p. 575).

5.3.3 Syntactic Tense Issues: 20.0% Admission

As is shown by Table 5.8 below, the courts were most strict with syntactic tense issues, though they constituted only 7.5% of the total 67 issues. Out of 243 interpreters who appeared in 228 criminal cases, 5 interpreters were described to have had syntactic tense issues, 1 in a federal case and 4 in state cases.

The first one was an officer interpreter in the 9th Circuit, who had a rather basic verb tense issue, using the present tense ("I sign") for what should have been in the present perfect tense ("I have signed"), though the 9th Circuit admitted his translation (*U.S. v. Romo-Chavez*, 9th Cir., 2012).

The second one, *Taylor v. State* (Maryland, 2016), was a case on an alleged inappropriate sexual conduct by a deaf defendant. The appellate judge denied the *agent and/or conduit theory* used by the lower court, calling it a "legal fiction" (*Taylor v. State,* Maryland, 2016, p. 365). In the lower court, the defendant maintained that he had told the interviewing officer that "if he had done so, it would have been an accident, for

which he would have apologized,"[178] but the two sign language interpreters had allegedly translated it as an admission of "specific incidents of inappropriate touching" (p. 325). The trial judge had, nonetheless, neither allowed the interpreters to testify nor the jury to actually watch the video-recording, maintaining that the two interpreters had acted as *agents and conduits* of the defendant, which the appellate judge reversed.[179]

Table 5.10

Tense Issues

Case	A/ NA	Court Ruling Descriptions
United States v. Romo-Chavez 2012 (9th) Un-Recorded	A	Similarly, Hernandez translated a phrase as "I sign this document," whereas the [court] interpreter translated it as "I have signed this document." ...this kind of verb tense mistake is one that someone with a good grasp of Spanish should not be making (p. 964).
Taylor v State 2016 (MD) Recorded	NA	Taylor has contested the accuracy of the interpreter's assertion that he admitted to specific incidents of inappropriate touching: he contends that he never admitted to having actually touched any of the young women's breasts or buttocks, but merely to have stated that if he had done so, it would have been an accident, for which he would have apologized (p. 325).
	NA	Taylor has contested the accuracy of the interpreter's assertion that he admitted to specific incidents of inappropriate touching: he contends that he never admitted to having actually touched any of the young women's breasts or buttocks, but merely to have stated that if he had done so, it would have been an accident, for which he would have apologized (p. 325).
State v. Gracia-Trujillo 1997 (WA) Un-Recorded	NA	Bejar testified that he now remembered some of the questions and answers he had translated when he acted as an interpreter for Detective Moser. Specifically, he remembered translating the question, "Do you know how old [V.C.] is?" and Garcia's answer, "No." He also remembered translating the question "How old do you think she is?" but remembered only that Garcia's response was an age under 18. The State then recalled Detective Moser, who testified that he had asked five or six questions regarding V.C.'s age, including "how old he thought [V.C.] was" and "how old did he think that she was" (p. 206).
People v. Rosales 2005 (CA) Un-Recorded	NA	Although there is absolutely no evidence Flores misled or distorted the information, there was the potential for inaccurate translation. Rosales testified he told Flores in Spanish, "[he] wasn't driving any car." This may have been interpreted by someone unqualified as "I don't drive" (p. 21).

[178] This is a direct quote from the court ruling text, so "he" here refers to the defendant.

[179] The 2 interpreters were an ASL (American Sign Language) interpreter and a CDI (Certified Deaf Interpreter), who is "deaf or hard of hearing" and has "demonstrated knowledge and understanding of interpreting, deafness, the deaf community, and deaf culture" (Certified deaf interpreters, 2020). In this case, the CDI interpreter performed relay interpreting with the ASL (American Sign language) interpreter. For the sake of these two sign language interpreters, the present thesis refers to the court record which shows that the police interrogation continued for nearly five straight hours (*Taylor v. State*, 2016, p. 324), which was far beyond the average working conditions by any standards (Pöchhacker, 2022, 187–188). In addition, since the lower court did not allow the evidentiary admission of the video-recording, as to whether or not these sign language interpreters had actually made those errors was never verified; they might have (or might not have) rendered accurate translation.

The third one, as was already explained in Chapter Three, Section 3.6.2, was a case on statutory rape, in which the tense confusion by the officer interpreter in confirming whether the defendant knew how old the victim was became an issue (*State v. Garcia-Trujillo*, Washington, 1997).

The fourth one, *People v. Rosales* (California , 2005) was a theft case which also shows a basic syntactic error of the past progressive tense ("I wasn't driving") replaced by the present tense ("I don't drive"), all of which were found inadmissible, though neither had been audio/video-recorded. Thus, out of the total 5 tense issues, 4 were found inadmissible, at 20.0% admission ratio, which shows courts' stringency with tense issues.

5.3.4 Other Syntactic Issues: 50.0% Admission

Table 5.11 shows other syntactic issues, the total number of which was 2 (1 in federal and 1 in state cases), comprising only 3% of all the issues but at 50.0% evidentiary admission ratio.

Table 5.11

Other Syntactic Issues

Case	A/ NA	Court Ruling Descriptions
United States v. Romo-Chavez 2012 (9th) Un-Recorded	A	...the court interpreter translated the phrase "me han leido" as "they have read to me," whereas Hernandez translated it is "I have read." Obviously, such a transposition of subject and object could matter mightily when a suspect is giving his story in reponse [*sic*] to questioning (p. 964).
People v. Pantoja 2004 (CA) Un-recorded (Written Document)	NA	The text of the handwritten declaration, with its many spelling and grammatical errors, is reproduced as it appears in the record. The spelling and grammatical errors in the declaration itself certainly suggest that whoever wrote it was not particularly skilled as an English speaker. Thus, there is no assurance that the critical phrase emphasized by the prosecution, that defendant told Montero he would kill her if she did not "go back" with him, was accurately translated and transcribed. (p. 12)

The first one, a federal case (*U.S. v. Romo-Chavez*, 9th Cir., 2012) already explained in Chapter Three, Section 3.6.2, was a syntactic error of subject-object

confusion by an officer interpreter. The second one was a 2004 domestic violence case in California, in which the defendant killed the victim despite the victim's application for a restraining order which included the victim's written declaration. This written declaration, however, was full of spelling and grammatical errors. Since the victim spoke almost no English, the court determined that the declaration had been translated and written by an unidentified interpreter whose language skills were far from sufficient and thus did not act as the victim's *conduit* (*People v. Pantoja*, California, 2004, p. 12).

Tense and other syntactic issues are relatively basic language skill issues which are also comparatively easy to identify, if specifically pointed out. Also, according to the Interagency Language Roundtable (ILR) proficiency level conversion chart by the American Council on Teaching of Foreign Languages (ACTFL), the operation of *past, present, and future tenses* are listed at Level 2 and Level 2+ on the 5-Level scale (Oral Proficiency, 2015), which are all rather basic. More complicated operations involving *subjunctive mood* for hypothetical discussions, with which even certified sign language interpreters in *Taylor v. State* (Maryland, 2016) supposedly (though not verified) had a translation issue, is listed at Level 3 on the same scale.

Regarding the cruciality of accurate syntactic tense operations during police interviews, Kobayashi (2019), a court interpreter in Japan, noted the critical importance of being able to use the *past-perfect tense*, saying that even a small error could become fatal (p. 67). These may have been the reasons why tense and other syntactic issues were treated stringently by the courts if and when they were specifically pointed out.

5.3.5 Word Choice Issues: 77.8% Admission

As for word choice issues, which accounted for 13.4% of the total 67 issues, the courts seem to have been even less stringent at 77.8% admission ratio, higher than with factual discrepancy issues. There were a total of 9 issues, out of which 7 were found admissible, with 5 of them without the interpreters' testimonies. Only 2, which were

without testimonies, were found inadmissible. None of these 7 were audio/video recorded. Table 12 below shows some of the examples.

Table 5.12

Word-Choice Issues: Admitted & Not Admitted

Case	A/NA	Court Ruling Descriptions
United States v. Charles 2013 (11th) Un-Recorded	NA	...when the interpreter supposedly said that Charles told her the document "didn't fit her profile," ...no opportunity to cross-examine the interpreter regarding whether Charles used those actual words or different words... Likewise, when the interpreter said Charles knew the form was "illegal,"...no cross-examination about what actual words Charles used and whether the words she used in Creole could have had other meanings than "illegal" (pp. 1321–1322).
United States v. Aifang Ye 2015 (9th) Un-Recorded	A	Ye further contends that the use of the word "forged" in Zhenyan's original translated statement is in fact evidence of pro-government distortion because Zhenyan would not have used such a loaded word (p. 401).
State v. Morales 2003 (CT) Un-Recorded	A	During the Defendant's cross-examination of Hawkins [the detective], the following exchange took place: Q: Okay. And do you recall there being a discussion, whether it was in English or in Spanish amongst the woman, Nilsa Morales [Defendant's bilingual daughter-in-law who assisted Gonzalez]; Detective Gonzalez [the officer interpreter]; and quite possibly, the Defendant, about the word "toto" and the words "private parts" versus "vagina"?... A: No, I don't recall. I don't have anything written down (p. 44, fn. 10).
State v. Gonzalez-Hernandez 2004 (WA) Un-Recorded	NA	But Punzalan could not recall if Gonzalez said he was sorry; he was also not sure he would have recognized the word "sorry" in Spanish. Punzalan testified that if Gonzalez "said he was sorry, it was probably in English." And when asked what the Spanish word for "rape" was, Punzalan stated that he believed he used the English word (p. 56).
In re Gilberto 2007 (CA) Un-Recorded	NA	G.S. "offered to translate," and...told Oborski that N.O. said, "Gilberto choked her with his hands" (p. 3). ...N.O. testified that Gilberto had not intentionally choked her, but instead grabbed her shirt "strongly" around her neck to assist her after she lost her balance. ..."A: No. He was not asphyxiating me" (p. 5). ..."INTERPRETER: Not asphyxiate, but maybe—she is using 'ahorcar,'...but that technically in English means to 'hang somebody with a rope.' So there might be something erroneous in the use of the word." "THE COURT: Well, the record is going to have to reflect that the word that was used in Spanish was 'ahorcar' as opposed to 'asfixaido'...In other words, he was hanging her. That's the word they use in Mexico. I am going to take that as synonymous with strangling...I am going to try this. You can translate this in Spanish. He was placing pressure on her neck causing her to not be able to breathe." "THE WITNESS: Yes" (p. 7).
State v. Castillo-Dominguez 2017 (WI) Un-Recorded	A	Dr. Brazelton testified that...he understood Castillo-Dominguez to have said, "I killed my baby" based on both his knowledge of Spanish and the interpreter's translation. Dr. Brazelton testified that he could not "remember exactly what [Castillo Dominguez's] words were," but that he recalled her saying "Y-o l-e m-a-t-o...with an accent over the O" (p. 18). ...Castillo-Dominguez's trial counsel, a native Spanish speaker, testified that "Yo le mato," does not "literally" mean "I just killed my baby." Counsel testified that he did not "think there is a comprehensible or a literal [translation] that would be comprehensible or...grammatically correct." Counsel testified that "I killed my baby" is stated "Yo mate mi bebe" in Spanish (pp. 18–19).

The first two were what the present thesis discussed in Chapter One. The first one was a 2013 11th Circuit case which denied the *agent and/or conduit theory*, ruling that the defendant's original Creole expression for the English translation "didn't fit the profile" and "knew the form was illegal" should have been verified by the interpreter's in-court testimony (*U.S. v. Charles*, 11th Cir., 2012). The second was a 2015 9th Circuit

case which applied the *agent and/or conduit theory*, though the defendant objected to the word "forged" as a loaded translation (*U.S. v. Aifang Ye*, 9th Cir., 2015). In neither case, an audio/video-recording was submitted as evidence, so there was no way to confirm the facts.

The third example, *State v. Morales* (Connecticut, 2003), and the fourth one, *State v. Gonzalez-Hernandez* (Washington, 2004), which was explained in Chapter Three, Section 3.6.2, were both on a rape case, and both had similar crucial word-choice issues. With the former, the court found the interpreter's out-of-court translation admissible based on the *agent and/or conduit theory*, whereas the court in the latter denied the admission.

The fifth was a 2007 case in California, in which the mother of the defendant, a victim of his domestic violence, changed her testimony from what she had previously given to the officer through an acquaintance serving as an interpreter (*In re Gilberto T.*, California, 2007). Previously, she had told the officer that her son had "choked" her, but during the trial she kept refusing to use the Spanish word "asfixaido," which the court interpreter used to mean "asphyxiate," but kept insisting on a Spanish word "ahorcar," which for the court interpreter basically meant to "hang." The frustrated judge re-phrased it as "[h]e was placing pressure on her neck causing her to not be able to breathe," to which the mother agreed. In the end the judge decided not to admit the mother's earlier translated statement (pp. 3–7).

The last example was a reckless homicide of a baby boy by his mother (*State v. Castillo-Dominguez*, Wisconsin, 2017). When the doctor pronounced the baby dead, the doctor heard her cry out in Spanish "Y-o l-e m-a-t-o [Yo le mató]" meaning "I killed him," which the telephone interpreter translated as "I killed my baby," replacing the pronoun "him [le]" with "my baby." The defense counsel attacked this translation, arguing that "Yo le mató" did not literally mean "I just killed my baby."[180] The court

[180] This was originally included in other semantic issues in Tamura (2019a, p.39) but was re-

admitted the interpreter's translation, ruling that the telephone interpreter had acted as the defendant's *agent*.

There were 3 more issues in this category, 2 of which were admitted without the interpreters' testimonies, thus at the total admission ratio of 77. 8%. With these specific word-choice examples, therefore, the decisions seem to have largely depended on each judge's discretion and priority judgment, which was probably not too difficult to make as each one presented a rather specific word-choice issue.

5.3.6 Other Semantic Issues: 55.6% Admission

The final category, other remaining semantic issues, often with disputes on numerous translation errors, seem to have been more difficult for the courts to make decisions on. Out of the total 9 in this category, comprising 13.4% of the total 67 issues, 4 were found inadmissible, with 2 of them with interpreters' testimonies and 1 with a testimony and an audio-recording. Meanwhile, the remaining 5 were all admitted, 3 of which with testimonies and audio-recordings, 1 with a testimony only, and 1 with a recording but without a testimony.

As was also shown by Table 5.7 in Section 5.3 this final category had the highest audio/video-recording ratio at 55.6%, which indicates that the translation error issues were often detected with audio/video-recordings. At the same time, however, 80.0% of all these recorded issues were found admissible by the courts. Table 5.13 below shows some of these examples in which translation errors were pointed out by the defendants, which nonetheless were found admissible by the courts.[181]

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classified as a word-choice issue in the present thesis for the reason that the defense counsel seemed to be simply pointing out the interpreter's word switch from the pronoun "him" to "my baby," rather than the intricate semantic changes from Spanish to English caused by this replacement.

[181] A complete list and the details are presented in Appendix 4: Interpreting Issues Described in Court Rulings.

Table 5.13

Difficulties with Other Semantic Issues

Case	A/ NA	Court Ruling Descriptions
Common-wealth v. Carrillo 1983 (PA) Un-Recorded	A	...there were mistakes in the translation of the officer-interpreter, as noted by the appellant's counsel, the official court interpreter present to aid the appellant and the court. However, "[o]ccasional errors in translation do not demonstrate that an interpreter is not qualified (p. 132, fn. 5).
Baltazar-Monterossa v. State 2006 (NV) Recorded	A	At trial, the videotapes of Baltazar-Monterrosa's two interviews were played for the jury, and the two police interpreters testified that, upon review, their translations were accurate. Afterwards, however, the defense raised a translation issue, noting that the court interpreters informed them that the police interpreters' translations in the video were not word-for-word and that there were additions and omissions (p. 611).
	A	
Hernandez v. State 2008 (GA) Recorded	A	The court-appointed translator indicated that Loredo had provided an inexact translation as to one of Hernandez's statements, and then testified that another translation was inaccurate (p. 566, fn. 6), ...Hernandez, who also spoke some English, testified that he was unable to tell during the interview whether she translated correctly or incorrectly. Before the tape on the interview was played to the jury, defense counsel argued that "a lot" of Loredo's translation was incorrect, but did not specify in what way the translation was incorrect (p. 567).

In the first example, *Commonwealth v. Carrillo* (Pennsylvania, 1983), the court ruling said that occasional errors do not demonstrate an interpreter's incompetence (p. 132, fn. 5). In the next example, *Baltazar-Monterrosa v. State* (Nevada, 2006), the two police interpreters testified that their translations were accurate though the defense counsel raised translation issues found from the audio-recording, which the court did not regard as a serious problem. In the final one, *Hernandez v. State* (Georgia, 2008), too, the defense argued that there were numerous inaccurate translations made by the officer interpreter, which the court dismissed, saying that the defense did not specify in what way they were incorrect (p. 567).

These point to the fact that even when the interview was audio/video-recorded, which arguably contains numerous translation errors, unless the defendant, i.e. the defense counsel, is able to obtain professional help to analyze what kind of errors have been made as well as how these errors might have affected the trial's outcome, the recording might remain not very useful. At the same time, for the courts, too, if their priority is to maintain their power to exercise discretion and latitude, the use of

audio/video-recording may seem more trouble than help, as it might invite what for them may seem rather frivolous translation disputes which might jeopardize *substantive justice* (Bergman & Berman, 2013, p. 358; Blackwell & Cunningham, 2004, p. 61, fn. 17). For interpreters, however, mandatory audio/video-recording would be the only means to protect themselves and fulfill their professional accountability, a crucial point the thesis explores in Chapter Seven.

5.3.7 By-Profile Interpreting Issues and Evidentiary Admission

Finally, this section presents which profile categories were found with higher interpreting issue ratio, and whether the by-profile interpreting issue ratio showed any clear relation with the courts' by-profile evidentiary admission ratio.

Table 5.14 below shows by-profile calculations of how many interpreting issues were found in each of the 6 issue categories. The three columns on the right show: the total number of issues with each profile, its ratio to the by-profile total number of interpreters, and by-profile evidentiary admission ratio which was shown on Table 5.2 in Section 5.1.2. The profiles are listed from the highest issue ratio to the lowest.

As is rather evident, the law enforcement/government officers, who comprised as many as 29.2% of the 243 total interpreters, also came out with the highest interpreting issue ratio at 42.3%, with issues found in all of the 6 categories. This was followed by co-workers/employees at 33.3%, though co-workers/employees only had factual discrepancy and semantic issues. Families and unknown interpreters came in third both at 28.6%, both primarily in the factual discrepancy issue category, indicating that the content of what family members translated changed later rather often, as well as the difficulty with unknown interpreters to verify the facts unless the conversation had been audio-recorded. Acquaintances, co-conspirators, telephone interpreters followed, at 25%, 22.2%, and 20.0% respectively.

Table 5.14

Interpreting Issues by Profile

	Total Number of Interpreters	Copre-hension Issues	Factual Discre-pancy	Tense	Other Syntactic Issues	Word Choice	Other Semantic Issus	Total Number of Issues	Ratio to Total Interpreters	Evidentiary Admission Ratio
Law Enforcement Officer	71	7	8	3	1	4	7	30	**42.3%**	80.3%
Ratio to Total Issues		23.3%	26.7%	10.0%	3.3%	13.3%	23.3%			
Co-Worker/Employee	9	0	2	0	0	0	1	3	**33.3%**	88.9%
Ratio to Total Issues		0.0%	66.7%	0.0%	0.0%	0.0%	33.3%			
Family	21	0	6	0	0	0	0	6	**28.6%**	76.2%
Ratio to Total Issues		0.0%	100.0%	0.0%	0.0%	0.0%	0.0%			
Unknown	42	1	9	0	1	0	1	12	**28.6%**	64.3%
Ratio to Total Issues		8.3%	75.0%	0.0%	8.3%	0.0%	8.3%			
Acquaintance	8	0	1	0	0	1	0	2	**25.0%**	62.5%
Ratio to Total Issues		0.0%	50.0%	0.0%	0.0%	50.0%	0.0%			
Co-Conspirator	9	0	1	0	0	1	0	2	**22.2%**	88.9%
Ratio to Total Issues		0.0%	50.0%	0.0%	0.0%	50.0%	0.0%			
Telephone	15	1	0	0	0	2	0	3	**20.0%**	86.7%
Ratio to Total Issues		33.3%	0.0%	0.0%	0.0%	66.7%	0.0%			
Court/Certified IT	32	0	2	2	0	0	1	5	**15.6%**	68.8%
Ratio to Total Issues		0.0%	40.0%	40.0%	0.0%	0.0%	20.0%			
Neighbor/By-Stander	23	2	1	0	0	0	0	3	**13.0%**	87.0%
Ratio to Total Issues		66.7%	33.3%	0.0%	0.0%	0.0%	0.0%			
Alternatively Qualified IT	9	1	0	0	0	0	0	1	**11.1%**	88.9%
Ratio to Total Issues		100.0%	0.0%	0.0%	0.0%	0.0%	0.0%			
Informant	3	0	0	0	0	0	0	0	**0.0%**	33.3%
Ratio to Total Issues		0.0%	0.0%	0.0%	0.0%	0.0%	0.0%			
Inmate	1	0	0	0	0	0	0	0	**0.0%**	100.0%
Ratio to Total Issues		0.0%	0.0%	0.0%	0.0%	0.0%	0.0%			

One comprehension issue listed with telephone interpreters was a 2016 DUI case in Massachusetts (*Commonwealth v. AdonSoto*, Massachusetts, 2016), in which the defendant's telephone-interpreter-assisted breathalyzer test failed allegedly due to a miscommunication that occurred, which could not be verified as it had not been audio-recorded. This prompted the Supreme Judicial Court of Massachusetts to make audio/video-recording of all interpreter-mediated police interviews mandatory from thereafter (*Commonwealth v. AdonSoto*, Massachusetts, 2016, p. 507), which the thesis discusses in Chapter Seven.

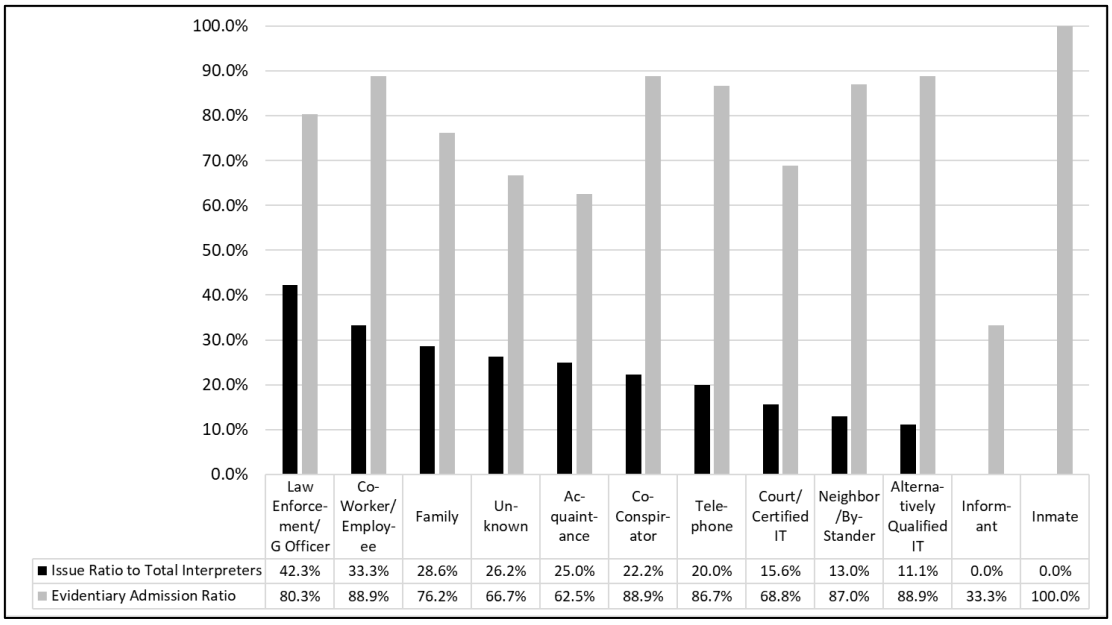
Court/certified interpreters, neighbors/by-standers, and alternatively qualified interpreters had a relatively low interpreting issue ratio at 15.6%, 13.0%, and 11.1%

respectively. The low ratio of neighbors/by-standers may very possibly be due to the type of situation they were more likely to encounter, e.g., to help officers to communicate with the victim in a relatively simple emergency-situation, which they would not have volunteered unless they had reasonably sufficient language proficiency.[182]

Finally, the present thesis also compared the by-profile interpreting issue ratio with the by-profile evidentiary admission ratio, which is shown below by Figure 5.2.

Figure 5.2

By-Profile Interpreting Issue Ratio and Evidentiary Admission



	Law Enforcement/ G Officer	Co-Worker/ Employee	Family	Unknown	Acquaintance	Co-Conspirator	Telephone	Court/ Certified IT	Neighbor/By-Stander	Alternatively Qualified IT	Informant	Inmate
Issue Ratio to Total Interpreters	42.3%	33.3%	28.6%	26.2%	25.0%	22.2%	20.0%	15.6%	13.0%	11.1%	0.0%	0.0%
Evidentiary Admission Ratio	80.3%	88.9%	76.2%	66.7%	62.5%	88.9%	86.7%	68.8%	87.0%	88.9%	33.3%	100.0%

As was the case with the comparison of by-profile qualifications and their evidentiary admission ratio shown by Figure 5.1, in Section 5.1.3, Figure 5.2 above also suggests that the courts' findings of interpreting issues did not always influence their evidentiary admission decisions with these 12 profiles in a logical pattern. While with such profiles as acquaintances, court/certified interpreters, neighbors/by-standers, and alternatively

[182] For example, among all the 19 state cases in which neighbors/by-standers served as interpreters, 12 translated for victims, of which 6 were in theft cases and the other 6 in DV cases.

qualified interpreters, Figure 5.2 seems to show some logical trend of lower interpreting issue ratios resulting in higher evidentiary admission ratios. However, this trend is clearly missing with other profiles such as law enforcement/government officers, co-workers/employees, family members, and unknown interpreters, particularly with the first profile, law enforcement/government officers, who also constituted the largest percentage of all the 243 interpreters at 29.2%. Possible reasons are also explored in Chapter Six.

5.4 *Conduit* End of the Polarity Does Not Ensure Accuracy

The preceding sections in this chapter so far presented quantitative inquiries into how effectively the *conduit* end of the polarity ensured police interpreters' translation accuracy when the courts applied hearsay circumvention theories. In Section 5.1, the thesis investigated how the courts assessed the qualifications of 243 police interpreters through the operationalized 5 qualification attributes. The results, however, showed that except for court/certified interpreters and alternatively qualified interpreters, all the rest fell short of the minimum qualification criteria from interpreting studies' standpoint. In addition, a *t*-test on the qualification points of interpreters whose translation was found admissible and those found inadmissible demonstrated that in fact there was no statistically significant difference in the courts' descriptions of their qualifications.

The thesis next investigated how the courts dealt with interpreting issues raised during the trial. The investigation first discovered that only 5.8% of the 243 police interpreters had been audio/video-recorded, though a total of 67 issues (at the ratio of 27.6% of 243 interpreters) were raised and discussed in the rulings. Of the total 67 issues, 44.8% were of the typical *he-said-she-said* type factual discrepancy issues, none of which had been audio/video-recorded, but 66.7% of which were admitted. Though the courts were relatively strict with syntactic tense issues when specifically pointed out, they comprised only 7.5% of the total issues, and 40.0% of them had been audio/video-

recorded.

Finally, with some profile groups, the courts seem to have been using somewhat different evidentiary admission criteria, especially with law enforcement/government officers, as despite their below-minimum qualifications and highest interpreting issue ratio, they maintained a comparatively high evidentiary admission ratio at 80.3%. These findings in Sections 5.1, 5.2, and 5.3 above quantitatively substantiated what the present thesis discussed and concluded in Chapter Four, that the *conduit* end of the polarity seems to have deprioritized accuracy over what the courts deemed of higher priority, i.e., substantive justice, which the thesis explores further in Chapter Six.

5.5 *Hearsay* End of the Polarity: Police Interpreters' In-Court Testimonies

While the *conduit* end of the polarity did not seem to ensure accuracy, to what extent did the *hearsay* end of the polarity verify translation accuracy through police interpreters' in-court testimonies? This is the final inquiry in this chapter, which begins with 243 interpreters' by-profile in-court testimony ratio and evidentiary admission ratio. In Table 4.1 presented in Chapter Four, Section 4.2, the thesis showed that out of 228 criminal cases (51 federal and 177 state cases), police interpreters testified in 87 cases (16 federal and 71 state cases). In some of them, more than 1 interpreter was used and/or testified, so out of the total 243 interpreters who served in 228 criminal cases, a total of 96 interpreters testified in 87 criminal cases. In 16 federal cases, a total of 18 interpreters testified, and in 71 state cases, 78 interpreters testified, totaling to 96 interpreters, as is presented by Table 5.15 below.

Table 5.15

By-Profile Testimony Ratio and Evidentiary Admission Ratio

Profiles	Total Number of Interpreters			Testified			Out-of-Court Trans-lation Admitted	Tetimony Ratio	Eviden-tiary Admis-sion Ratio
	Fedral	States	Total	Federal	States	Total			
Law Enforcement/Government Officer	18	53	71	11	33	44	57	**62.0%**	80.3%
Co-worker/Employee	2	7	9	0	4	4	8	**44.4%**	88.9%
Court/Certified Interpreter	4	28	32	3	11	14	22	**43.8%**	68.8%
Family Member	2	19	21	1	7	8	16	**38.1%**	76.2%
Acquaintance	0	8	8	0	3	3	5	**37.5%**	62.5%
Neighbor/By-Stander	4	19	23	1	7	8	20	**34.8%**	87.0%
Alternatively Qualified Interpreter	2	7	9	0	3	3	8	**33.3%**	88.9%
Informant	0	3	3	0	1	1	1	**33.3%**	33.3%
Unknown	9	33	42	1	9	10	27	**23.8%**	64.3%
Co-conspirator	7	2	9	1	0	1	8	**11.1%**	88.9%
Telephone Interpreter	5	10	15	0	0	0	13	**0.0%**	86.7%
Inmate	1	0	1	0	0	0	1	**0.0%**	100.0%
Total/Total Average	54	189	243	18	78	96	186	**39.5%**	76.5%

Table 5.15 shows the by-profile testimony ratio side by side with by-profile evidentiary admission ratio. Officer interpreters' in-court testimony ratio was by far the highest at 62%, though the rest ranged between 44.4% and 0.0%, with the total average at 39.5%, which was not very high and was in sharp contrast with the much higher by-profile evidentiary admission ratio, averaging at 76.5%. Such data, along what the thesis demonstrated on these interpreters' largely insufficient qualifications accompanied by the courts' treatment of interpreting issues, would likely re-invite a legal argument for a return to a more stringent application of hearsay and the Six Amendment Confrontation Clause to police interpreters, explained in Chapter Four, Section 4.8.

However, the question once again is: would a simple return to the *hearsay* end of the polarity improve the status quo? To explore this question, the present thesis examined how effective these 96 interpreters' in-court testimonies were in verifying their translation accuracy. The thesis explored the answer by operationalizing the court ruling descriptions on interpreter testimonies through data coding (Mellinger & Hanson, 2017;

Epstein & Martin, 2014), and classifying them into three categories,[183] as was explained in Chapter Three, Section 3.6.3. The results are presented in the following sections,

5.6 What Police Interpreters Testified To: Three Testimony Types

Traditionally, the evidence law in the U.S. permitted witnesses to testify only to facts, but now the Federal Rules of Evidence (FRE hereafter) and equivalent state rules permit an opinion testimony not only from expert witnesses (FRE 702) but also from lay witnesses (FRE 701), though in a more limited scope (Orenstein, 2014, p. 165). As to who qualifies to testify as an expert witness is stipulated by FRE 702 as one who:

1. is qualified as an expert by knowledge, skill, experience, training, or education;
2. testifies in the form of an opinion or with scientific, technical, or other specialized knowledge;
3. testifies based on sufficient facts or data; and
4. has applied reliable principles and methods.

Generally, those who are "qualified" to work as in-court interpreters under FRE 604 and "make an oath or affirmation to make a true translation" as "an expert" (Benmaman & Framer, 2015, p. 110) are regarded as ones who would also qualify to testify as expert witnesses (García-Rangel, 2002, p. 3; Benmaman & Framer, 2015, p. 1113). However, as was already presented in Section 5.1, out of the 243 interpreters examined by the present thesis, these court/certified interpreters constituted only 13.2%, a majority of whom had served before the Court Interpreters Act of 1978. There were also alternatively qualified interpreters, but they were not judicial interpreters and only accounted for 3.7% of the total. The remaining 202 interpreters were all ad hoc, accounting for 83.1% of the total, except for a few officer interpreters who were certified, as was also shown in Section 5.1.

[183] The details of the entire analyses of the 96 interpreters' testimonies classified into these three types are presented in Appendix 5 of the present thesis.

While 96 out of 243 interpreters testified, it would seem, therefore, that none of them testified as an "expert witness" as is stipulated by FRE 702. The question, however, remains as to whether their testimonies were able to verify their translation accuracy. Regarding these 96 interpreters who testified, the court rulings contained descriptions on what they testified (or did not testify) to. After collecting the information contained in the text and analyzing the content of the descriptions, the present thesis observed that they belonged to one of the following three categories.[184]

1. *Fact-type testimonies*

Just as an interviewing officer would, the interpreter was able to recall and testify to what the defendant or other witnesses had stated during the interview more as a fact/percipient witness, as these interpreters were actually able to recall and testify to what they had heard the witness state to an interviewing officer, as was explained in Chapter Three, Section 3.6.3.

These *fact-type* testimonies, however, would also present a potential ethical conflict with interpreters' professional code of the confidentiality and impartiality, as was pointed out by the two interpreting professors at the Middlebury Institute of International Studies at Monterey (MIIS), mentioned in Chapter One, Section 1.1.3, who wrote in their amicus brief that such testimony requirements will have an impact on interpreters' confidentiality and impartiality codes (Brief of interpreting and translation professors, 2016, p. 12).

2. *General-type testimonies*

The interpreter, with no qualifications to testify as an expert witness, only stated that she/he had translated accurately, with neither concrete explanations to substantiate

[184] The entire analyses of the 96 interpreters by these three types are presented in Appendix 5 of the present thesis.

the translation accuracy nor any reference to the actual content of what the defendant or other witnesses had said during the interview, often though not always for the reason that she/he no longer remembered.

With some interpreters, particularly with certified interpreters, however, the reason may very possibly have been to abide by the code of confidentiality and impartiality, though such reasons seem to have been denoted only indirectly with a few of such interpreters, as is explained in detail in Section 5.6.2, with Table 5.2.1. If this seemed to be the case, such testimonies were also classified in this category, even if they were made by certified interpreters, for the reason that even with certified interpreters, just stating that they had translated everything accurately did not actually verify accuracy unless the testimonies specifically mentioned how the verification (translation accuracy check) had been conducted and/or how and why a particular translation was accurate.[185]

In addition, a description such as an officer interpreter later checking a written report (in English) prepared by an interviewing officer based on the officer interpreter's translation (into English) and confirming that the content of the report (in English) was accurate was also classified in this second category, for the reason that no actual verification of the translation accuracy took place in this process. It never verified whether or not the interpreter accurately translated the defendant's foreign-language statement into English, or whether the interpreter accurately translated the interviewing officer's English question into the defendant's language.

[185] As was noted in Chapter Three, Section 3.6.3, testimony classification used by the present thesis differed slightly from what was used in Tamura (2019b, pp. 16-17), which used: *Fact-Witness*-type, *Neither-type*, and *Expert-type*, instead of the three categories used in the present thesis. While the *Expert-type* testimonies in Tamura (2019b) included certified/court interpreters' testimonies that they had translated accurately, the present thesis categorized them as *General-type*, not *Accuracy-Specific-type*, unless the testimonies included specific explanations on relevant translation-related issues and/or strategies or procedure used to ensure and/or verify accuracy, instead of simply stating that their translations were accurate.

3. *Accuracy-Specific-type* testimonies

In what the present thesis calls an accuracy-*specific-type* testimony, the interpreter, instead of testifying to the content of what had been stated by the suspect or other witnesses, only explained specific translation points that were relevant to translation accuracy, including translation strategies used to achieve accuracy or reasons for possible inaccuracy. Testimonies of this *accuracy-specific-type* were the only ones that effectively verified translation accuracy, as they sufficiently contained: details on the specific translation issues relevant to accuracy, the translation strategies used to ensure and/or verify accuracy, and possible reasons for any inaccuracy that might have occurred.

Out of all the 243 interpreters who served in 228 criminal cases, a total of 96 interpreters testified in 87 criminal cases (16 in federal and 71 in civil cases) out of all the 228 criminal cases. The present thesis analyzed all of their testimonies and classified them into the above three categories,[186] in order to examine whether the *hearsay* end of the hearsay/conduit polarity which required police interpreters' in-court testimonies effectively verified the interpreters' translation accuracy without creating a potential conflict with interpreters' professional code of ethics.[187] The result of the analyses are presented in the following sections.

5.6.1 *Fact-Type* Testimony and Interpreters' Impartiality

Table 5.16 below shows examples of the first, *fact-type* testimonies presented by

[186] The details of the entire analyses of the 96 interpreters' testimonies classified into these three types are presented in Appendix 5 of the present thesis.

[187] As was demonstrated in Chapter Four, most of the 96 interpreters who testified were of an ad hoc variety, not professional interpreters bound by the code of ethics. Many of them, if they still remembered, seemed to have no problem testifying as eye-witnesses, stating what they had heard or seen, which, if they *had been* professional, would have presented an ethical conflict. For a few of those who were aware of the professional ethical codes, however, the means to present testimonies to verify their translation accuracy seemed to have been rather limited, the details of which are presented in the following sections.

officer interpreters. These two examples were both drug-related cases, in which law enforcement officers had served as interpreters and later testified in court to what the defendants had stated during the interview. Both officers testified to factual details of the defendants' statements. From the traditional common-law hearsay standpoint, testimonies of this type are the only ones that would overcome hearsay exclusion. Apparently these officers, while serving as interpreters, had also acted as fact or percipient witnesses and later testified for the prosecution.

These officer interpreters were employed by the law enforcement, so legally they were working as their agents (*agent 3* in Chapter Two, Section 2.1.4), but arguably they may also have become *agent 2* (empowerer), in Role 2 (advocate for the powerful) defined by Hale (2008), for the police department as well.

Table 5.16

Fact-Type Testimonies by Officer Interpreters

United States v. Herrera-Zuleta 1991 (9th)	Agent Olivieri testified at length as to the conversation (primarily in Spanish) that occurred... Finally, Olivieri testified that "Herrera asked if the cocaine could be delivered to either—somewhere on the West Coast rather than South Florida, ...Mr. Seal told him that, yes, he could do it to the West Coast. And Mr. Herrera said either Los Angeles or Las Vegas would be—it would be okay, and then he agreed...that Las Vegas would be the place where he would deliver it" (pp. 3–4).
United States v. Sanchez-Godinez 2006 (8th)	Jauregui testified that during the interview, Sanchez-Godinez admitted to knowing about the marijuana in the truck. He also testified that Sanchez-Godinez told him where he had picked up the marijuana and where it was going (p. 959).

Testimonies of this first type, however, were also required even for court interpreters, as was evinced by *People v. Jan John* (1902, California) in Chapter Four, Section 4.2.1 and *State v. Letterman* (1980, Oregon) in Section 4.3.3, and as the thesis noted in Section 5.6 above, this was exactly what Holly Mikkelson and Barry Olsen of the MIIS at Monterey asked the U.S. Supreme Court to clarify, because this would implicate interpreters' confidentiality and impartiality codes (Brief of interpreting and

translation professors, 2016, p. 12). Table 5.17 shows two of such *fact-type* testimonies by court/certified interpreters.

Table 5.17

Fact-Type Testimonies by Court/Certified Interpreters

People v. Luis 1910 (CA)	...the Chinese interpreters, who were present throughout the proceedings, were allowed to testify to what questions were asked the defendant and what answers he gave thereto. While the interpreters testified at great length as to the conversation between the district attorney and defendant, which they interpreted, and heard everything that was said in that conversation, ...testifying in effect that defendant said that he killed Gon Ying Luis with a pistol found in the watercloset where he had put it, ...(pp. 191–192).
Alcazar v. Hill 2004 (OR)	In rebuttal, the state called Leone in response to petitioner's cross-examination of Usery and his denials regarding the content of the April 19 interview. During her testimony, Leone recounted portions of petitioner's statements from the interview. To counter defense counsel's cross-examination of Usery, the prosecutor asked Leone, "What was Detective Usery's demeanor like while he was speaking to [petitioner]?" Leone responded,"100 percent kind, total gentleman, very friendly" (p. 506).

The first example is a 1910 case in California, in which Chinese interpreters who had translated in the prior proceedings testified to what the defendant had stated, i.e., that the defendant had confessed to the murder of Gon Ying with a pistol. One century later in a 2004 case in Oregon, a certified court interpreter also testified to what the defendant had stated during the police interview in order to impeach his later denials of these statements. This interpreter's testimony for the prosecution, however, was deemed as arguably having violated the interpreter's code, according to the sworn affidavit by Maria Cristina Castro, a past president of the Court Interpreters Association of Oregon (*Alcazar v. Hill*, 2004, Oregon, p. 506, fn. 1).

For most ad hoc interpreters, such as family members, on the other hand, giving *fact-type* testimonies seemed to have presented no problems, as is shown by Table 5.18. In all of the examples below, family members who had acted as ad hoc interpreters later testified as fact or percipient witnesses, recounting factual details of what they had translated, testifying for the prosecution often to accuse one family member on behalf

of another who had been victimized, but sometimes changing, or recanting what they had translated, also to protect the accused family member, as was in the second example.

Table 5.18

Fact-Type Testimonies by Family Members

Palacios v. State 2010 (IN)	Brenda testified on re-direct examination that Martina stated to her where she was hit, that "it still hurt a little bit," that C.P. was in Martina's lap at the time she was hit, and that Palacios had yelled for "everybody [to] get [out] of the house or [he] was going to kill [them] all" (pp. 1031–1032).
People v. Zavala 2004 (CA)	Rudolfo testified at trial and denied that Andreas told the officer that defendant had threatened to kill Gonzalez; instead, Andreas had said defendant was going to kill himself (p. 6). ...Rudolfo testified at trial and recanted some of the statements he translated for Andreas (p. 18).
People v. Raquel 2005 (CA)	Marcos testified he told Bryan that his mother said, in Spanish, "She did this [to me]" (p. 8). ...Marcos also testified that Cardenas had not told him Raquel cut her with a knife. He maintained only that Cardenas told him, "Tell [the police] that she did this" (p. 14).

5.6.2 *General-Type* Testimony and Absence of Accuracy Verification

This second type of testimonies are what the present thesis regards as problematic, not only from the traditional hearsay standpoint but also, and more importantly, from accuracy verification standpoint. In these testimonies, the interpreters only stated that they had translated accurately, often for the reason that they could not recall the actual details. As was already noted, the court/certified interpreters in *People v. Jan John* (1902, California) noted in Chapter Four, Section 4.2.1 and *State v. Letterman* (1980, Oregon) in Section 4.3.3, were of this type, though from a legal hearsay standpoint, this was insufficient.

Also, although FRE 702 and equivalent state rules allow experts to present such testimonies, it would be impossible even for these interlingual interpreting experts to testify to their accuracy assessment unless they have actually verified the translation accuracy by, e.g., listening to the audio/video-recording of the interpreter-mediated police interview. However, except for the 32 court/certified interpreters and perhaps some of the 9 alternatively qualified interpreters, these 243 interpreters were primarily

ad hoc, and as was presented in Section 5.2, only 14 of them had been audio/video-recorded. Under such circumstances, even officer interpreters, as is shown by Table 5.19 below, often presented testimonies of this type, not being able to recall the actual content.

Table 5.19

General-Type Testimonies by Officer Interpreters

United States v. Felix-Jerez 1982 (9th)	He testified that he acted as an interpreter at the interview..., but that he had no independent recollection of the questions and answers and could not testify what they were. He said that his translations were accurate... (pp. 1298–1299).
People v. Torres 1989 (CA)	At trial, Officer Wagner testified regarding his qualifications as an interpreter and stated that he accurately translated Sergeant Greer's questions and defendant's responses (p. 1257).
People v. Villagomez 2000 (IL)	Montilla testified that he accurately translated the conversation, including additional Miranda warnings (p. 4).
State v. Torres 2004 (CT)	Regarding each Statement, the translator testified that he translated the Defendant's responses accurately, and that the Defendant appeared to understand his questions and gave answers that were responsive to the questions (p. 317).
People v. Uriostegui 2016 (IL)	Detective De La Torre of the Chicago Police Department testified that...defendant's typewritten statement was a true and accurate memorialization of the questions that were asked by Park and the responses provided by defendant (p. 32).

In the first example of a 1982 case in the 9th Circuit, which was also presented in Chapter Three, Section 3.6.3, the prison guard who had interpreted for the defendant could not recall the content and only testified that he had translated accurately, which he may very well have. However, the interview had not been audio-recorded, and there was no way to prove his translation accuracy, and the appellate court denied the admission of his out-of-court translation. The following three were also the same, in all of which these officer interpreters only testified that they had translated accurately, and unlike the first case, all of their translations were found admissible, though none of them had been audio/video-recorded.

The *general-type* testimonies were frequently observed among many of the 96 predominantly ad hoc interpreters who testified, as are shown in Table 5.20 below.

Table 5.20

General-Type Testimonies by Unknown Interpreters and Co-Workers

Common-wealth v. Storti 1902 (MA)	UK	The interpreter was a witness at the trial, and swore that he accurately translated all that was said by the officer to the prisoner and all the answers which the prisoner made (p. 343).
State v. Venegas 2005 (IA)	UK	Ochoa testified at the trial that he honestly and accurately translated from English to Spanish and from Spanish to English (pp. 9–10).
People v. Perez 1985 (NY)	CW	Mr. Rivera testified that although he could not recall the contents of the conversation, his translation at the hospital was accurate (p. 32).
Ramirez v. State 2007 (TX)	CW	Moreno also testified that he had no specific memory of appellant and could not say whether what he told Nurse Cates was accurate (p. 5). ...Moreno testified that...he was able to effectively communicate with appellant regarding the particular information he translated, ...(p. 7).

In the first example on Table 5.20, a 1902 case in Massachusetts, an unidentified interpreter (UK for unknown hereafter) testified only to the accuracy of the translation, which was admitted. In another, a 2005 case in Iowa, an interpreter named Ocha, whose identity or qualifications were unknown (UK), also testified similarly, which was found admissible. The third and fourth were testimonies by co-workers or employees (CW for co-worker hereafter). In the third one, a 1985 case in New York, a bilingual hospital security guard, who served as an ad hoc interpreter for the defendant, could not recall the content and just testified that he had translated accurately. In the fourth example, a 2007 case in Texas, a hospital security guard similarly had acted as an ad hoc interpreter, but could not recall the content, except that he was able to communicate with the defendant effectively. None of these four interviews had been audio-recorded, but all were found admissible.

A few certified (CR hereafter) and alternatively qualified (AL hereafter) interpreters also gave testimonies of this type as are shown in Table 5.21, not because they could not remember the facts but perhaps for more professional, ethical reasons.

Table 5.21

General-Type Testimonies by Certified/Alternatively Qualified Interpreters

State v. Spyvey 1986 (MO)	CR	The interpreter, Mr. Atwood, testified that he was required to be neutral and bound by a code of ethics to communicate only what comes from the sender (p. 297).
Lopez v. Common-wealth 2015 (KY)	AL	Melgar testified at trial that Detective Adams read Lopez his Miranda rights, which Melgar translated for Lopez. Melgar also testified about his experience as an interpreter; that Lopez understood and waived his Miranda rights; that he believed Lopez answered questions voluntarily; and that his translations were true and accurate. Melgar did not testify regarding the contents of Lopez's statement (p. 870).

In the first example of a 1986 case in Missouri, the sign language interpreter, Mr. Atwood, instead of testifying to what the defendant had stated, only stated that as a sign language interpreter he was bound by the code of ethics to be faithful and neutral. Similarly, in a 2015 case in Kentucky, Melgar, the interpreter, who had worked for a local hospital as a Spanish interpreter for two years, also only testified that he had translated truthfully and accurately, and did not testify to the actual content of what the defendant had stated. In this Kentucky case, the whole interview had also been audio-recorded (*Lopez v. Commonwealth*, 2015, Kentucky, p. 870), though the translation accuracy does not seem to have been verified or authenticated. Both of these interpreters' translations were found admissible.

Finally, the thesis presents in Table 5.22 below two examples of officer interpreters (OF in the tables hereafter) who testified that they confirmed that their translations were accurate, although what they actually checked was that the transcription or a report prepared in English accurately reflected what the officer interpreter translated into English from the suspect's (defendant's) foreign language. In the first example below, which was also presented in Chapter Three, Section 3.6.3, Officer Velez testified that he confirmed that Officer Ricci's English transcription of Officer Velez's translation into

English accurately reflected the defendant's original statement in Spanish. What was really confirmed here, however, was only that the transcription was faithful to the officer interpreter's English translation. As to whether the officer interpreter's translation from Spanish to English itself was really accurate was never verified.

Table 5.22

General-Type Testimonies on Accuracy of English Transcription

State v. Colon 2004 (CT)	OF	Velez testified that he read what Ricci was typing on the computer screen and confirmed that it was, in fact, what he just had translated. ...Velez verified that the statement that Ricci was transcribing was an accurate representation of what the defendant had stated in Spanish (p. 105).
State v. Ibarra-Ruiz 2012 (OR)	OF	At trial, Diaz testified that he is a native Spanish speaker who acts as a police interpreter. He testified that he and defendant were able to understand each other, that he interpreted defendant's statements word for word, that Tallan took down specific quotes from defendant's translated responses, that Diaz later read Tallan's written report, and that the report was accurate (p. 657).

Similarly, in the second example, Officer Diaz later checked Officer Tallan's report written in English and confirmed that it accurately reflected Officer Diaz's translation into English. However, as to whether the translation itself was really accurate was never verified, despite that the officer interpreter testified he had translated everything "word for word," used synonymously as accurately (*State v. Ibarra-Ruiz*, 2012, Oregon, p. 657).

Thus, the problem with *general-type* testimonies is that when these interpreters, most of whom having served as ad hoc, testified only that they had translated accurately, they only believed that what they had translated was accurate, while the actual accuracy had never been verified, especially if the interview had not been audio/video-recorded.

5.6.3 *Accuracy-Specific-Type* Testimony and Professional Accountability

Finally, though only a few in number, some interpreters were actually able to present testimonies accounting for why and how their translations had been accurate, as

is shown in Table 5.23 below.

Table 5.23

Accuracy-Specific-Type Testimonies by Officer Interpreters

People v. Huerta 2003 (CA)	OF	Raya testified that Spanish was his first language, that he is fluent in Spanish, and that he accurately translated Huerta's statements during the interview on April 3, 1998. During an in limine hearing, Raya translated portions of a report from English to Spanish, and the trial court concluded, using a court-certified interpreter, that Raya's translation was accurate (pp. 26-27). ...At trial, Raya testified that the report accurately reflected what Huerta said, although he did not use the reported word "broker" in his translation. Bottomley's testimony was based upon his independent recollection, refreshed by the report, and Bottomley testified that Raya did not actually use the word "broker" (p. 27).
State v. Montoya-Franco 2012 (OR)	OF	Byers testified that he was able to communicate effectively with defendant during the interview with Boyce. Byers understood defendant's words but, at times during the interview, he had difficulty understanding what defendant was saying in relation to Boyce's questions. That difficulty, Byers explained, arose because he was unfamiliar with the underlying facts of the case, and defendant's answers sometimes were not responsive to Boyce's questions. Instead, defendant sometimes would add or change facts during his answers to the questions. When that occurred, Byers would clarify defendant's responses before translating them to Boyce (p. 667).
Palomo v. State 2015 (TX)	OF	Alvarado testified that, for the most part, she was able to translate both Ralph's questions and Ellen's answers word for word. She denied adding anything of her own to either the questions or the answers. At least twice, however, she found it necessary to rephrase the question when Ellen did not understand the word-for-word translation. Palomo was able to point to only one instance during the approximately twenty-minute interview in which he claimed Alvarado mistranslated one of Ellen's answers. Even then, Alvarado readily admitted that, if Ellen stated the phrase as Palomo claimed, then her translation would be incorrect (p. 10).

In the first example on Table 5.23, the officer interpreter, in testifying to the accuracy of his translation, was able to concretely refer to what kind of expression he did or did not use. In the second example, the officer interpreter was able to explain how the actual exchanges took place, what kind of measures he used to resolve a confusion when it occurred to achieve accuracy to the best of his ability. The last one above, the officer interpreter's testimony in *Palomo v. State* (Texas, 2015), is probably the best example, which was also presented in Chapter Three, Section 3.6.3, and which was a testimony accompanied by an audio-recording. This interpreter also explained how she tried to resolve a confusion and achieve accurate understanding. In addition, the interpreter was able to objectively assess and accept her potential mistranslation.

The following two examples in Table 5.24 also show that the interpreters stood at the witness stand, not for the purpose of overcoming hearsay but for the purpose of fulfilling their professional responsibility to account for and verify the accuracy of what they had translated, while objectively assessing and accepting an error, if it had occurred.

Table 5.24

Accuracy-Specific-Type Testimonies to Account for Translation Accuracy

United States v. Sharif 1989 (9th Cir.)	OF	During a vigorous cross-examination, Sharif's attorney brought out certain discrepancies in the witness's English translation. The jury heard the witness' concessions of inaccuracies in his translation (p. 5).
State v. Ambriz-Arguello 2017 (OR)	CR	The interpreter testified that she started learning Spanish at the age of seven, and that she studied Spanish throughout grade school, high school, and college. The interpreter also testified that she studied abroad at a university in Mexico and was certified by the City of Beaverton as a Spanish interpreter. The interpreter further testified that, in the nine years since becoming certified with the City of Beaverton Police Department, she has interpreted "hundreds" of times and is 98 percent fluent in Spanish. The interpreter testified that she reviewed the audio-video recording and transcript of the interview with defendant in which she had acted as translator and confirmed the accuracy of her translation (pp. 586–587).

The officer interpreter in the first example was an Urdu interpreter with abundant training and experience, working for the Drug Enforcement Administration (DEA), and had translated an intercepted telephone conversation recording. Even well-qualified interpreters, however, are never free from errors and mistakes, as was noted by Massachusetts Association of Court Interpreters (Brief for the Massachusetts, 2016, p. 2). This interpreter was rigorously cross-examined about accuracy, and admitted to some errors he may have made. The court found his translation admissible.

The last example is what may actually have become very close even to an expert testimony stipulated by ERE 702 and by their equivalent state rules. The interpreter had been well-trained, was certified (CR), and had had abundant experience. She had reviewed her translation by checking the audio-recording of the interview, verifying it

with the transcript, and confirmed the accuracy of the translation.

5.6.4 Testimony Type Breakdown and Cruciality of Audio/Video-Recording

Table 5.25 below presents the result of the testimony-type analyses of the 96 interpreters out of 243 who had testified in the lower courts. As for the acronyms used, A stands for admission of the translation, NA for non-admission of the translation, and R for audio/video-recording.

Table 5.25

Testimony Type Breakdown and Audio/Video-Recording

	Inter-preter Total	Total Testified	Fact-Type	A	NA	R	General-Type	A	NA	R	Accuracy-Specific-Type	A	NA	R
Court/Certified IT	32	14	4	4	0	0	9	7	2	0	1	0	1	1
Alternatively Qualified IT	9	3	1	1	0	0	2	2	0	1	0	0	0	0
Law Enforcement Officer	71	44	23	17	6	3	17	16	1	2	4	4	0	2
Unknown	42	10	7	4	3	0	3	3	0	1	0	0	0	0
Telephone	15	0	0	0	0	0	0	0	0	0	0	0	0	0
Co-Worker/Employee	9	4	0	0	0	0	4	3	1	0	0	0	0	0
Acquaintance	8	3	2	1	1	0	0	0	0	0	1	1	0	0
Family	21	8	5	4	1	0	3	3	0	0	0	0	0	0
Neighbor/By-Stander	23	8	3	3	0	0	5	3	2	0	0	0	0	0
Co-Conspirator	9	1	1	1	0	0	0	0	0	0	0	0	0	0
Informant	3	1	1	0	1	0	0	0	0	0	0	0	0	0
Inmate	1	0	0	0	0	0	0	0	0	0	0	0	0	0
Total	243	96	47	35	12	3	43	37	6	4	6	5	1	3
Ratio to Total Testimonies			49.0%				44.8%				6.3%			
By-Type Admission Ratio				74.5%				86.0%				83.3%		

As is rather evident, only 47 (49.0%), or less than half, were able to present *fact-type* testimonies traditionally required to overcome hearsay. This included 4 out of 14 court/certified interpreters, though 3 out of these 4 appeared in 1882, 1893, and 1910. The last one was the interpreter that was presented in Table 5.17, who was later criticized by a past president of the Court Interpreters Association of Oregon for having violated, if arguably, the interpreter's code of ethics (*Alcazar v. Hill*, 2004, Oregon, p. 506, fn. 1).

As was already noted, this *fact-type* testimony apparently presents a potential conflict with professional code of confidentiality and impartiality. Just as attorney-client privilege, physician-patient privilege, or clergy-penitent privilege, professional

interpreters are also bound by these codes. NAJIT's Code of Ethics and Professional Responsibilities' Canon 3: Confidentiality states "[p]rivileged or confidential information acquired in the course of interpreting or preparing a translation shall not be disclosed by the interpreter without authorization" (NAJIT, 2016b, underlined by the author). What kind of exceptions with what kind of authority would allow interpreters to testify to the factual content of what the defendant stated during the police interviews?

Also, if the factual content of the interpreter's testimony would corroborate the guilt of the defendant, then this interpreter would be testifying for the prosecution, against the defendant, which would then potentially conflict with the code of impartiality. NAJIT's Code of Ethics and Professional Responsibilities' Canon 2: Impartiality and Conflicts of Interest states "[c]ourt interpreters and translators are to remain impartial and neutral...shall abstain from comment on matters in which they serve" (NAJIT, 2016b, underlined by the author). This would very likely present a dilemma for professional interpreters, especially for those who conscientiously maintained impartiality during the police interview.

One professional interpreter actually faced this dilemma, though this happened in Canada. This was a murder case that took place in 2008, in Toronto, Canada (*R v. Khairi*, 2012), and the interpreter served in a police interview of a Dari-speaking suspect, which was video-recorded, or at least for the first 77:38 minutes, until a recording trouble occurred unnoticed by the officers. The officers finally discovered the trouble at the end of the interview which had lasted for 3 hours 20 minutes (*R v. Khairi*, 2012, pp. 59–61), despite the fact they had succeeded in obtaining a murder confession. The officers asked the interpreter to write an "arms-length" account of what he remembered as having been said by the suspect and testify to the suspect's murder confession (*R v. Khairi*, 2012, p. 68). The interpreter, who was not a police employee but had been dispatched by an interpreting service company, felt uncomfortable about complying to this request at first. He believed that giving a testimony for the police would compromise what he believed

to be the interpreter's role, which was to be always impartial. After discussing this with his employer, however, who "reassured" him that doing so would not be "inappropriate," the interpreter finally consented several days later, and prepared a statement and testified in court for the police (*R v. Khairi*, 2012, p. 68).

This example shows that interpreters who abide by the professional code of ethics would face a difficult ethical issue in testifying as a fact witness for the prosecution. As a result, many might actually opt out to only state that they translated everything accurately without mentioning any factual details, as was exemplified by Table 5.21. In addition, the above example also suggests that even when interpreters do agree to testify, they would still need some kind of memory-recall tool such as a detailed written note,[188] unless the entire interview had been audio/video-recorded. Without any practical means of memory retrieval, the only thing interpreters would be able to testify to would be that they translated everything accurately with no factual details.

Such testimonies became the second type, the *general-type* testimonies, which also accounted for about the same ratio at 44.8% (43 out of 96). Even 17 out of 44 (38.6%) officer interpreters gave testimonies in this category, not *fact-type*, often unable to recall the facts. Also, as was shown in Section 5.1.3, many of these officer interpreters were not sufficiently qualified neither to work as interpreters nor to testify to the accuracy of interlingual translation. Even if they had rendered translations of acceptable accuracy, this remained unverified with the *general-type* testimonies.

Finally, 6 out of 96 (6.25%) were able to offer a testimony that specifically explained or accounted for why and how the accuracy was ensured or verified, including

[188] As was already noted in Chapter Four, Section 4.3.4, professionally trained interpreters do not take verbatim notes or short-hand notes in a way a court reporter produces a transcript but instead records ideas, links between ideas, and discourse structures, by using signs and symbols (Gillies, 2017, p.12; Rozan, 1956/2002; Setton & Dawrant, pp. 137–138). Also, unless a clear legal provision is stipulated, an interpreter may be required (by the professional code of ethics) or asked (by the law enforcement) to destroy (or agree to a confiscation of) any notes that she/he produced during an interrogation (Bancroft et al., 2015, p. 11; Tsuda et al., 2016, p. 113).

admissions of potential errors. It would be meaningful to note that out of these 6 interpreters, 3 (50.0%) had been audio/video-recorded, compared to 10 out of 96 (10.4%) for all the interpreters who testified. The audio/video-recording of the actual interviews freed these interpreters from testifying to the facts and enabled them to focus only on explaining how accuracy had been ensured or verified.

To conclude this section as well as this chapter, the quantitative analyses of 243 police interpreters in 228 criminal cases showed that while the *conduit* end of the hearsay/conduit polarity seemed far from effective in ensuring the police interpreters' translation accuracy, the *hearsay* end of the polarity also seemed ineffective in verifying translation accuracy, unless accompanied by an audio/video-recording. Nevertheless, as the thesis noted at the end of Chapter Four, the *agent and/or conduit* theory continues to survive in U.S. courts, while those who criticize this theory only advocate a return to the *hearsay* end of the polarity, with no discussion on the type of testimonies professional interpreters could possibly make, and how this should be assisted.

As was noted in Chapter One, Section 1.4.1, as of 2019, police interview recording was legally required only in 25 out of all the 50 states, including the District of Columbia (Bang et al., 2018; Gross et al., 2020).[189] Also, due to the law enforcement's reluctance and insufficient legal accountability, its enforcement is moving slowly (del Carmen & Hemmens, 2017; Dep't of Justice, 2015) and at varying degrees (Recording of custodial interrogations, 2017).

What, then, could be the possible underlying causes of this continuous impasse? This is what the present thesis explores in Chapter Six through macroscopic application of Ian Mason's (2015b) three types of power relations in interpreter-mediated discourse.

[189] The total number, since then, became 27 states, including the District of Columbia (Bang et al., 2018), and then 29 states (Gross et al., 2020), but with varying levels of conditions.

Chapter Six: Hearsay/Conduit Polarity through the Lens of Power Relations

In Chapter Four and Chapter Five, the present thesis explored how effective the hearsay/conduit polarity was in ensuring and/or verifying police interpreters' translation accuracy and in enabling them to fulfill their professional accountability. The results indicated that neither end of this polarity seemed effective, while the hearsay/conduit polarity based on the Sixth Amendment Confrontation Clause continues in U.S. courts. Chapter Six,[190] therefore, explores possible factors that are making the status quo to continue, by drawing on Ian Mason's argument on three power relations in interpreter-mediated discourse (Mason, 2015b, pp. 314–316; Mason & Ren, 2012) as a macroscopic theoretical framework, and by using the information collected on Database Two noted in Chapter Three, Section 3.4.2.[191]

6.1 Mason's Three Power Relations and Hearsay/Conduit Polarity

As was explained in Chapter Three, Section 3.1.2, drawing on Anderson (1976/2002) on interpreter roles and power (p. 212),[192] Mason (2015b) argued that interpreting is a "socially situated activity" involving "power and control" (p. 314) exercised by multiple parties often with conflicting goals and interests, and classified these power relations that transpire in interpreter-mediated activities into three types: (a) power relations between languages; (b) institutionally pre-determined power disparities; and (c) interpreters' interactional power advantage (pp. 314–316). This section examines the present research's findings to explore whether these three types of power relations seem to be at work causing the hearsay/conduit polarity to continue despite its

[190] Chapter Six incorporated the analyses presented in Tamura (2019a, 2021a) with revisions.

[191] A complete list of all the information used in this chapter is presented in Appendix 6.

[192] Anderson (1976/2002) drew on a 19th-century German sociologist Georg Simmel's notion on the "*tertius gaudens* (the third [party] who enjoys)" (Anderson, 1976/2002, p. 213; Simmel, 1964, p. 154; also see Pöllabauer, 2015, p. 356).

ineffectiveness in ensuring and/or verifying police interpreters' translation accuracy.

6.1.1 Power Relations Between Languages

The first power relations contended by Mason (2015b) were those between languages. Typically, those requiring interpreters in judicial procedures are witnesses who do not speak the language of the social majority, which in the U.S. is English. The inability to use the majority's language (English) may become associated with the socially inferior status, and the languages they use or even the ideas expressed in these languages may not receive due respect (Grbić, 2001, p. 156; Mason, 2015b, p. 314). In addition, such attitude by the social majority may exist not only toward the witnesses but also toward interpreters who come from the same linguistic and cultural background (Mizuno & Naito, 2015, p. 206; Pöchhacker, 2022, p. 170; Rosado, 2014; Wadensjö, 2009, p. 44).

Are such power relations between languages observable as one possible factor behind the continuance of the hearsay/conduit polarity? This section first presents two tables, Table 6.1 and Table 6.2, the former showing a chronological language breakdown of 189 interpreters who appeared in 177 state cases and the latter that of 54 interpreters in 51 federal cases, prepared based on the information collected and recorded on Data Base Two explained in Chapter Three, Section 3.4.2.[193] On both tables, the languages are listed in the order of the first chronological appearances of these interpreters, and on the far right, the total number of interpreters whose translations were admitted as well as the total admission ratio are listed. NVC, the final item on the language list on both tables stands for non-verbal communication.[194]

[193] The language data are the same as those used in Tamura (2019a, p. 29) with 3 corrections: the language in *Commonwealth v. Pava* (Pennsylvania, 1920) was corrected from Spanish to Unknown; the language in *U.S. v. Nazemian* (9th Cir., 1991) was corrected from Spanish to Farsi; and the language in *Indian Fred v. State* (Arizona, 1929) was corrected from Spanish to a Native American language.

[194] NVC (non-verbal communication) was used by a nurse who was tending a gunshot victim

Table 6.1

Chronological Language Breakdown of 177 State Cases (1850-2018)

	1850-1859	1860-1869	1870-1879	1880-1889	1890-1899	1900-1909	1910-1919	1920-1929	1930-1939	1940-1949	1950-1959	1960-1969	1970-1979	1980-1989	1990-1999	2000-2009	2010-2018	Total	Adm	Adm Ratio
Unknown		1			1			1						1				4	2	50.0%
Chinese				5		1	3	1							2	4		16	5	33.3%
Native American				1	1		2	1										5	3	60.0%
Hawaiian					1													1	1	100.0%
French					1													1	1	100.0%
Spanish						2	2	1	1		1	1	3	12	12	55	32	122	93	76.2%
Italian						3	1		1						1			6	4	66.7%
German						1	3											4	4	100.0%
Russian						1												1	0	0.0%
Japanese						1												1	1	100.0%
Yiddish							1											1	1	100.0%
Sign-Lg														3	2	1	4	10	7	70.0%
Vietnamese														1	1	2	1	5	4	80.0%
Hmong																1	1	2	2	100.0%
Arabic																1		1	1	100.0%
Somali																1		1	1	100.0%
Chiu Chow																1		1	1	100.0%
Khmer																3		3	3	100.0%
Punjabi																1		1	1	100.0%
Korean																	1	1	1	100.0%
Moldovan																	1	1	0	0.0%
NVC																	1	1	1	100.0%
Total		1		6	4	9	12	4	2		1	1	3	17	17	63	37	189	137	73.0%

Table 6.2

Chronological Language Breakdown of 51 Federal Cases (1850-2018)

	1850-1859	1860-1869	1870-1879	1880-1889	1890-1899	1900-1909	1910-1919	1920-1929	1930-1939	1940-1949	1950-1959	1960-1969	1970-1979	1980-1989	1990-1999	2000-2009	2010-2018	Total	Adm	Adm Ratio
Chinese							1					1				1	2	5	5	100.0%
Greek								1						1				2	1	50.0%
Spanish												1	3	5	5	5	7	26	24	92.3%
French													1					1	1	100.0%
Urdu														1				1	1	100.0%
German															3			3	3	100.0%
Native American															1			1	1	100.0%
Unknown																1	1	2	2	100.0%
Creole																	3	3	2	66.7%
Serb																1	1	2	2	100.0%
Arabic																1	1	2	2	100.0%
Farsi															1			1	1	100.0%
Turkish																1		1	1	100.0%
Swahili																	1	1	0	0.0%
Nepali																	1	1	1	100.0%
Khmer																	1	1	1	100.0%
NVC																	1	1	1	100.0%
Total							1	1				2	4	7	8	10	18	54	49	90.7%

in hospital who was unable to speak but with whom the officer needed to communicate. The nurse used a hand-squeeze method to help the victim respond to the officer's yes/no questions (*People v. Jackson*, Michigan, 2011; *Jackson v. Hoffner*, 6th Cir., 2017).

Table 6.1 indicates that the appearances of interpreters in state cases who used the listed languages ranged over longer years than those in federal cases, and with several exceptions, also seem to have been divided into the early period up to World War Two and the period staring from the 1970s, while those in federal cases on Table 6.2 seem to have clustered only from around the 1970s up to the present.

While it is beyond the scope of the present thesis to gauge the power relations between the English language and other languages used in the U.S. during those early years ranging from the 1850s till World War Two, the data shown on Table 6.1 (state cases) corroborate what the present thesis presented in Chapter Four and Chapter Five, that U.S. courts already began to apply hearsay exclusion to foreign language interpreters from the second half of the 19th century. This implies that the courts in the U.S. already regarded anything that transpired in a language other than English as invalid, i.e., as not officially recordable unless translated into English, which was the language of the court.[195] Furthermore, the process of this language translation undertaken by these individuals who spoke a language other than English was also deemed as prima facie dubious, and thus hearsay exclusion was applied. This hearsay exclusion, however, became a two-edged sword, as it also obstructed crime convictions. This led to the creation of hearsay circumvention theories, which were also explained in Chapter Four.

What Table 6.1 also seems to indicate is that at least during these early years, the courts in the U.S. applied both hearsay and hearsay circumventions to all languages, whether they were European (and perhaps more familiar or possibly less dubious)

[195] A similar interlingual power execution is observed with the courts in Japan, too. Article 74 of Japan's Courts Act promulgated in April, 1947 stipulates that "Japanese is the language used in court." When a foreign language is involved, Article 175, Article 177, and Article 223, Paragraph 2 of Japan's Code of Criminal Procedure stipulate or permit the use of a language interpreter or translator who translates a foreign language statement or document into Japanese for the court, but nowhere in either code is a provision that requires the use of a language interpreter in order to ensure a foreign-language-speaking defendant's rights to fully understand all the court proceedings (Mizuno & Naito, 2015, pp. 94–97), despite that Japan is a state party to the ICCPR (International Covenant on Civil and Political Rights), Article 14, Paragraph 3 of which clearly spells out these rights.

languages or non-European (and thus less familiar and possibly more dubious) languages. A high admission ratio (100.0%) is observed with French, German, and Yiddish, but also with Hawaiian and Japanese, while a relatively low admission ratio is observed with Spanish (76.2%), Italian (66.7%), and Russian (0.0%), as well as Chinese (33.3%) and Native American languages (60%).[196]

Later on, from around the 1970s, however, the language landscape on Table 6.1 seems to have changed. Spanish, the main language of Latino Americans, became increasingly dominant, and the number of languages used in Asia (Chinese, Vietnamese, Hmong, Chiu Chow, Khmer, Punjabi, and Korean), the Middle East (Arabic and Somali), and Eastern Europe (Moldovan) began to appear, all with a high admission ratio (100.0%), except for Spanish (76.2%), Vietnamese (80.0%), sign language (70.0%), and Moldovan (0.0%).[197]

A similar trend is observed with Table 6.2 (federal cases), with Spanish being dominant, followed by Chinese, and the rest from those used in Asia (Urdu, Nepali, and Khmer), the Middle East (Farsi, Arabic, and Turkish), Africa (Swahili), as well as Europe (French, German, Greek, and Serb), in addition to Creole and a Native American tribal language. Except for a couple of sporadic early appearances, all languages in federal cases began to appear from around the 1970s, and with only a few exceptions, almost all of them had a high admission ratio (100.0%), including Spanish (92.3%).

What these observations seem to denote is that although the hearsay/conduit polarity based on the Sixth Amendment neither ensured nor verified police interpreters' translation accuracy, as was explicated in Chapter Four and Chapter Five, its use

[196] An analysis between high admission language groups and low admission language groups during these early years may possibly reveal racially driven power relations between languages in those days, but it is not explored here.

[197] Moldovan was actually the defendant's native language in *Commonwealth v. Lujan* (Massachusetts, 2018), though the interpreter used Russian to communicate with him, leading to many issues, which the thesis discusses in Chapter Seven, Section 7.2.3.

nonetheless continued in U.S. courts, targeting primarily the main language of Latino Americans, as well as an increasing number of non-European, often minor or rare languages.[198]

Many of them are languages of the socially less privileged within the U.S., including Spanish (Cobas et al., 2022), and often not the type of foreign languages commonly taught in U.S. schools, except for Spanish. With the second largest user population or the largest foreign-language speaker ratio in the U.S. in 2019 (Dietrich & Hernandez, 2022; U.S. Census Bureau, 2021), Spanish was the most commonly taught foreign language both in K-12[199] in 2008 (Foreign language enrollments, 2011) and in higher education in 2016 (Looney & Lusin, 2018). Nonetheless, Spanish speakers in the U.S. seem to remain in a sub-standard social status (Cobas et al., 2022; Kaur, 2018), despite Spanish also being one of the six official languages of the United Nations (U.N.) (Official Languages, n.d.).

Chinese is another language of a social minority in the U.S., though with the 2nd-largest foreign-language speaker ratio (Dietrich & Hernandez, 2022), and being another U.N. official language. Chinese, however, ranked only the 7th as a commonly-taught foreign language in both K-12 and higher education. As to Tagalog with the 3rd-largest and Vietnamese with the 4th-largest in the ratio of foreign-language speakers (Dietrich & Hernandez, 2022), neither made the same list in K-12 or higher education. Arabic, with the 5th largest ratio of foreign speakers (Dietrich & Hernandez, 2022) was not on the K-12 list, either, and only ranked the 8th in higher education, despite the fact that it

[198] As was noted in Chapter Three, Section 3.1.2, a *minor* language here is used synonymously with languages spoken by social minorities and refer to those other than the major language, i.e., English in the case of the U.S. (Dietrich & Hernandez, 2022). A *rare* language was defined by NAJIT (2005) as a language "not previously requested in a particular court" and presents challenges to court administrators, as a Los Angels court once spent three months to find a speaker of a variant of Mixe, spoken only by 7,000 people in a southern Mexican mountain area (Kim, 2009).

[199] K-12 means from kindergarten to the 12th-grade, referring to the years ranging from primary and to secondary education.

is also listed among the six official U.N. languages. These languages were superseded by European languages, such as French and German, on the list of foreign languages taught in U.S. schools (Foreign language enrollments, 2011; Looney & Lusin, 2018).[200]

Thus, while presumably well-trained and well-paid professional interpreters are used in the U.N. for such languages as Spanish, Chinese, and Arabic, most commonly used foreign languages inside many communities in the U.S., such as Spanish, Chinese, Tagalog, Vietnamese, and Arabic are not so commonly taught in schools, except for Spanish, not to speak of other minor languages of smaller speaker populations. This would very possibly mean that when interpreters are needed for these minor languages, the interpreters themselves may also come from the same linguistic and cultural group as the users of the minor languages (Mizuno & Naito, 2015, p. 206; Wadensjö, 2009, p. 44), often not formally trained but have learned the language as native or heritage speakers. This was often the case with the 301 interpreters analyzed in Chapter Five, Section 5.1.3., the largest percentage of whom were, in fact, Spanish speakers. When this is the case, as was noted in Chapter Three, Section 3.1.2, this factor may also influence the social majority's views on the interpreters of these languages (Pöchhacker, 2022, p. 170; Rosado, 2014).

The possible power relations between these social minorities' languages and English (Mason, 2015b), including Spanish, seemed to have been one underlying factor not just targeting the witnesses who may have deserved more qualified interpreters than an untrained ad hoc variety. These power relations also kept endorsing the practice of using untrained bilinguals as interpreters, Spanish-speaking officers being the most representative example. Except for a few who were described as being certified, the court rulings almost never mentioned whether these officers were forced into doing the job against their true wishes just because they spoke the language, but the rulings all

[200] French remains as one of the most commonly taught foreign languages in both K-12 and higher education (Foreign language enrollments, 2011; Looney & Lusin, 2018).

mentioned the languages used by these 71 officer interpreters (18 in federal and 53 in state cases), shown in Table 6.3.

Table 6.3

Officer Interpreters' Languages: Federal and States

Languages	Federal	States	Total
Spanish	12	47	59
Chinese	1	3	4
Arabic	2		2
Russain (Moldovan)		1	1
Swahili	1		1
Greek	1		1
Italian		1	1
Urdu	1		1
Native American		1	1
Total	18	53	71

As was already shown by Table 6.1 and Table 6.2, Spanish accounted for the largest percentage of all the 243 interpreters surveyed, 64.5% in state cases (122/189 interpreters) and 48.2% in federal cases (26/54 interpreters). With officer interpreters, Table 6.3 above shows that the Spanish language ratio became even higher at 88.7% (47/53) in state cases and 66.7% (12/18) in federal cases.

Regarding these officer interpreters' qualifications, the present thesis demonstrated with Table 5.4 in Chapter Five, Section 5.1.3, that out of the total 30 weighted points for formal training, officer interpreters on average scored only 0.78 points, though they scored 6.34 out of 10 points for the ability to speak the language (e.g., Spanish) as a native/first/heritage language, and 8.80 out of 25 weighted points for experience as a regular job. These data imply that these officer interpreters were initially ordered to do an interpreting job because they spoke the language, which eventually led to doing it on a regular basis, but never given a chance to receive formal interpreter training.

The thesis also demonstrated with Table 5.14 in Section 5.3.7, that regarding interpreting issues, officer interpreters came out with the highest issue ratio at 42.3%, which means that on average 42.3% of all the 71 officers had interpreting issues in one

or more of all the following areas: comprehension, factual discrepancy, the use of syntactic tense, other syntactic issues, word choice, and other semantic issues. Furthermore, the thesis also demonstrated that although these officer interpreters had the highest in-court testimony ratio at 62.0%, as was shown by Table 5.15 in Section 5.5, only 52.3% (23/44) of them were able to recall what the defendant had stated, with 38.6% (17/44) only able to say that they had translated everything accurately, as was shown by Table 5.25 in Section 5.6.4.

It is beyond the scope of the present research to explore how these 71 officers really felt about having to (or possibly being forced to) do the interpreting job for which they were never properly trained or qualified, which resulted in numerous interpreting issues, and despite which they had to (or were ordered to) testify in court for the prosecution. A few rulings included descriptions of officer interpreters being ordered to perform an on-the-spot interpreting in court to have their skills checked in which some performed poorly (*U.S. v. Romo-Chavez*, 9th Cir., 2012, pp. 963–964; *State v. Rodriguez-Castillo*, Oregon, 2008, pp. 53–54), while one officer interpreter actually performed well (*People v. Huerta,* California, 2003, p. 27). Still, what these descriptions seem to reveal is that these officer interpreters, except for a very few, were often given an order to do the interpreting job with which they had no other choice but to obey.

Regarding this point, Berk-Seligson (2000) mentioned one example of a New York police officer who disobeyed his superior's order to interpret in a homicide investigation because he felt unqualified for the job (p. 227),[201] which seems to suggest a possible existence of a rather deep-rooted institutional factor combined with a perpetually held notion about an interpreting job as what Mason (2015b) described as "replaceable by any available bilingual" (p. 315). The language data on the surveyed 243 interpreters

[201] The officer, Jose A. Yanis, actually filed a petition to a New York court regarding the penalty he received as a consequence of this disobedience (*Yanis v. McGuire*, New York, 1983). The ruling mentioned Officer Yanis's comment that he only learned Spanish from his parents and that he never had any formal training in Spanish, which made him feel unqualified for such a critical task (*Yanis v. McGuire*, New York, 1983, pp. 670–671).

and 71 officer interpreters presented above seem to denote that at least in the U.S., those who grew up in a Spanish-speaking household seem to have been often regarded and treated this way, with the number of Spanish-speakers being the largest among all the foreign language-speakers in the U.S.

Regardless of such possible issues, however, this particular practice continues to be approved by U.S. courts, constantly ruling that these officer interpreters served merely as language conduits with no accuracy or impartiality issues, as was analyzed and discussed in the preceding chapters. A recent outcome in *Commonwealth v. Lujan* (Massachusetts, 2018) is yet another unfortunate example of this continued practice, which the present thesis discusses in detail in Chapter Seven, Section 7.2.3.

Thus, power relations between languages (Mason, 2015b) seemed to have been at work in the creation and continuation of the hearsay/conduit polarity, at a possible sacrifice of the users of socially less powerful languages being forced into becoming both service users and service providers of substandard, ad hoc interpreting at the most critical upstream stage of judicial procedure, i.e., police investigations.

6.1.2 Interpreter's Power Advantage

Despite these language-related power relations discussed above, interpreters in general are endowed with interactional power advantage, commonly being the only bilingual person (Santaniello, 2018, p. 97) who can steer the discourse as the person "in the middle" as a mediator (Baraldi & Gavioli, 2015, p. 247; Knapp-Potthoff & Knapp, 1987, pp. 181–183), which Mason (2015b) called interpreters' interactional power advantage (pp. 315–316).

In an interpreter-mediated police interviews, the interpreter is usually the only person who understands both the interviewing officer's language and the suspect's language. Both the officer and the suspect, if they have no knowledge of the other language, would have very limited or practically no means to detect the interpreter's

translation issues that may be taking place. Some may try to pay attention to such indirect clues as:

a. a smooth flow (Kuwana et al, 2012, p. 63) and coherent matches (or their lack) of the question and the reply;
b. the differences in the time length between the source language statement and its target language rendition; and
c. the frequency of side conversations with one party, the translation of which to the other party is not rendered, i.e., not being transparent (Bancroft et al, 2015, pp. 81–82).

These, however, are only indirect means, other than which neither party has any direct way to detect or confirm the interpreter's translation issues.

Thus, in most cases, the parties who are relying on the interpreter would have to manage within these limited power parameters with reduced control of the discourse. The frustration of these parties who lost the power of control was often observed in discourse analytical studies such as Hale (2004). For example, while the standard practice in interpreter-mediated discourse is for the parties to address each other directly using the 2nd person pronoun, i.e., *you*, many discourse analytical studies showed that when the communication seemed to be breaking down, the parties often switched to the third person pronoun, i.e., *she/he*, talking not to the other party but to the interpreter, and addressing the interpreter by the 2nd person pronoun, e.g., Could *you* ask *him* if…, in the effort to gain more control over the interpreter-mediated discourse (e.g., Hale, 2004, pp. 201–203).[202]

In general, however, even for an interrogating officer, it usually seems very difficult or nearly impossible to know what kind of issues the interpreter may be having

[202] The same phenomena were also observed and described by Ito (2016, pp. 182–185), in which the interviewing police officer kept addressing the suspect using the third person, i.e., *he*, and talking directly to the interpreter, when the police caution, a Canadian version of Miranda in this case, was not being communicated to the suspect smoothly.

right in front of her/him. A 2017 case that took place in Osaka, Japan, briefly noted in Chapter One, Section 1.4.3, is a good example (Ueda, 2017). The video-recording of the post-arrest interpreter-mediated interview of a Chinese-speaking murder suspect later revealed numerous translation issues, including a critical translation omission of the suspect's statement denying his intent of killing (Ueda, 2017, p.57). The recording also showed that the interviewing officer, who also had to keep writing down a record of the interview, was unaware of the numerous side conversations that went on in Chinese without getting translated. The suspect was also completely unaware of what kind of (mis)translations were being rendered to the officer. Ueda (2017), the case's defense counsel, noted that without the video-recording and the later help of the check translators, such discoveries would have been impossible (pp. 58–59).[203]

Commonwealth v. Lujan (Massachusetts, 2018), which is explained in detail in Chapter Seven, Section 7.2.3, is another example that shows how little control the service users had over the interpreter-mediated discourse during the interview. In this case, too, the numerous interpreting issues were only discovered and identified because the interview had been video-recorded, which was later examined by qualified check interpreters.

Regarding this power advantage presumably held by interpreters, the thesis presents two observations based on the analyses presented in Chapter Four and Chapter Five. First, as was pointed out in Chapter Four, Section 4.4.6, this reconfirms the fraudulence of the *agent theory* applied to police interpreters to circumvent hearsay. The *agent theory* used for police interpreters was based on the law of agency which stipulates the following three conditions for agency relationship to take effect: *fiduciary*, *consent* and *control*. These conditions are so crucial that in ordinary civil litigations whether the

[203] Ueda (2017) also noted that although the introduction of mandatory audio/video-recording is commonly discussed as a measure to prevent coercive interrogations that would lead to miscarriage of justice, the video-recording of this case showed that even with well-meaning, non-coercive officers, coercion and due process violation could take when problematic interpreters are used (p. 59), which would have been impossible to discover without the use of the video-recording.

principal (e.g., employer) had sufficient control of her/his agent (e.g., employee) becomes a key issue to determine "enterprise liability" (Kleinberger, 2012, p. 101).

Thus, Mason's argument on the interpreter's interactional power advantage poses a direct challenge to the fundamental validity of the *agent theory*, which placed the burden of *respondeat superior* (a superior or an employer's responsibility) on the suspect in a police interrogation room by forcing her/him to accept the interpreter's words as her/his own words with the rationale of *vicarious admission*. The suspect who understands only one language would have no way of exercising such *control* over her/his interpreter.

Secondly, it is not unlikely that interpreters' interactional power advantage could raise a non-negligible concern to trial judges, when police interpreters' translation accuracy issues are raised. The 243 interpreters in the 228 criminal cases presented in Chapter Five, Section 5.1.1 were predominantly ad hoc, including even such profiles as co-conspirators or an inmate. Nevertheless, once any interlingual translation issue is raised, especially with some unfamiliar, minor or rare language, the presiding judge would have no direct control over the most important issue being debated: accuracy in interlingual translation.

Having a police interpreter at the witness stand would mean having to relinquish the power to the person who understands both English and the foreign language, even if the issue may actually be a frivolous one in light of a more critical, substantive issue, i.e., the judgement of guilt on the alleged offense, such as murder, rape, or illegal drug trafficking. Such interactional power advantage of language interpreters may possibly be one of the reasons why U.S. courts continue to maintain the hearsay/conduit polarity based on the Sixth Amendment, by exercising what Mason (2015b) called institutionally pre-determined power (p. 315), which the thesis regards as the most crucial power relations among the three and are discussed in the following sections.

6.1.3 Institutional Power on Hearsay/Conduit Polarity

Courts' frequent dictum to language interpreters *not to interpret* but translate word-for-word as a language conduit (Morris, 1995, p. 26, p. 32) or to translate everything verbatim exactly the way it was said in the source language (Tsuda et al., 2016, p. 84, p. 95) is often referred to by judicial interpreters as one of the most typical and problematic examples of what they feel as courts' execution of institutional power.

While such dicta seem to signify that the courts deem accuracy and precision as of paramount importance in judicial interpreting, interpreters also experience rather perplexing or paradoxical incidents such as what Cardenas (2001) described as what court interpreters in the U.S. go through almost regularly. She wrote her own experience as an interpreter in a California court, in which one day the microphone failed while the judge was reading the sentence. Cardenas immediately asked the judge to check the microphone as she was not able to hear anything, to which the judge replied, "You don't have to hear, just interpret" (p. 24). Thus, while on one hand courts constantly demand accuracy and precision from language interpreters, this concept of accuracy often seems to be treated with an unexpected latitude, depending on which party or which issue is implicated by accuracy or its absence, which in conventional terms is usually referred to as a double standard.

Such potential double standard regarding accuracy is what the present thesis observes to have been in existence with the creation and the continued use of the hearsay/conduit polarity in U.S. courts, which is but one outcome of what actually seems to be a much more complex power exercise by the courts over language interpreters exercised through specific manners in order to pursue an agenda of higher priority.

Power is one of the central issues in sociology, and traditionally has been associated with how much one can realize her/his agenda despite probable resistance, and is often distinguished between coercive and authoritative, one of the sources of the latter being the law (Giddens and Sutton, 2021, p. 819). The inevitable power disparity

between those who are authorized to rule based on this source of power, i.e., the law, and language interpreters who are constantly regarded as "replaceable by any available bilingual" (Mason, 2015b, p. 315) is what Mason (2015b) referred to as institutional power disparity (p. 315). This power, when applied to the hearsay/conduit polarity, worked through the creation of the "dominant meanings" (Giddens & Sutton, 2021, p. 821) by the courts in the U.S., resulting in expressions that specifically referred to or attempted to define language interpreters, e.g., *agent*, *conduit*, and *agent and/or conduit*. Furthermore, despite the ostensible flaws with the hearsay/conduit polarity as were explicated by the present thesis, the holder of this institutional power is entitled to maintain the present system if they judge that it enables them to pursue an agenda of much higher priority.

In the following sections, therefore, the thesis presents further observations on how this institutional power of U.S. courts is enabling the hearsay/conduit polarity to continue nonetheless and for what possible reasons. The thesis first analyses how the courts' power: (a) to *define*, and (b) *not to define* seems to have been at work in the making and the continuation of the hearsay/conduit polarity, and next presents what the thesis observes to have been the courts' higher priorities: (a) *substantive justice* over *procedural justice* (accuracy), i.e., crime convictions if otherwise guilty beyond reasonable doubt, while also maintaining room for discretion;[204] and (b) need to approve the use of ad hoc interpreters to administer the above substantive justice.

[204] As was explained in a footnote in Chapter Three, Section 3.2.2, *substantive justice* refers to whether the judgment was factually correct and whether the punishment corresponded to the committed crime, with the relevant law correctly applied, whereas *procedural justice* refers to whether *procedural due process* ensured the criminal defendants' rights for a fair opportunity to challenge the charges against them, including the provision of a qualified language interpreter if necessary (Bergman & Berman, 2013, p. 358; Blackwell & Cunningham, 2004, p. 61, fn. 17).

6.2 Power of Interpreters of Law to Define or Not to Define

6.2.1 Power to Define Interpreters of Foreign Language

As was mentioned above, the power of the interpreters of law is exercised through the creation of the "dominant meanings" (Giddens & Sutton, 2021, p. 821). This is exactly what the present thesis observed with the courts in the U.S., which created the following expressions that specifically referred to or attempted to define language interpreters.

First, interpreters were deemed as *hearsay*, who is fundamentally dubious and unreliable unless cross-examined in court. The thesis also noted that the courts defined language interpreters as *present sense impression*, which is no different from an impulsive or reactionary verbal outcry. The courts also tried to define a language interpreter as an *agent* of the witness, who authorizes the interpreters to represent her/his words but with her or his control, trust, and supervision. While in ordinary, non-confrontational situations such agency relationship may presumably take place between the service user who hires the interpreter to work for her/him, most courts in the U.S. determined that the same agency relationship would automatically take effect as soon as the witness, e.g., a suspect, began talking with the law enforcement through an interpreter who was brought in by the law enforcement.

The thesis then discussed another new term that appeared in 1973, which defined interpreters of a foreign language, and which the interpreters of law in the U.S. began to use exponentially. *Conduit* was the term, which is now used widely, regularly, and almost routinely, but never with clear legal definitions, though it is presumed to denote accuracy, which, however, is only self-authenticated and unverified.

Then not before long, the courts in the U.S. saw it fit to combine *agent* and *conduit* to create a blanket definition to refer to language interpreters: *agent and/or conduit*, a person who can be one of the following:

1. *agent*: a person who was putatively authorized by the witness to represent her/his

words as her/his *agent*, with which the witness relinquished her/his right to later verify translation accuracy through cross-examination, as the *agent* assumes the same identity as the witness, and the witness cannot claim the right to cross-examine herself/himself.

2. *agent and conduit*: A person who was putatively authorized by the witness to represent her/his words as her/his *agent*, through the very act of which, the courts can simply deem this person as *conduit*, a renderer of accurate translation, which does not require verification.
3. *conduit*: A person who, regardless of whether she/he legally became the *agent* of the witness, can be deemed to have rendered accurate translation, which does not require verification, as that is what an interpreter is: a language *conduit*.

These are the expressions which the courts in the U.S. as the interpreters of law created to define the interpreters of a foreign language, who continue to be implicated, in silence, by the courts' use of the hearsay/conduit polarity based on the Sixth Amendment.

6.2.2 Power Not to Define: Elusive & Expansive *Conduit*

While the institutional power of U.S. courts seems to have worked through their authority *to define*, the same power also seems to have been at work with two most crucial terms in the hearsay/conduit polarity, which continue to remain undefined with their power *not to define*: *interpreter* (of a foreign language, including sign language) and *conduit*.

First, no law in the U.S., i.e., case laws or statutory provisions, ever defined the first most important term in the discussion of police interpreters' hearsay issue: *interpreter* (of a foreign language, including sign language). Even when the Court Interpreters Act of 1978 was legislated, the act itself did not define the term *interpreter*, and no other relevant statutory provisions defined the term *interpreter* (*Taniguchi v. Kan*

Pacific, 2012, p. 566).[205] Thus, while federal court interpreters who passed the rigorous federal examination are called *interpreters*, the 243 individuals surveyed by the present thesis, 83.1% (202/243) of whom were neither court/certified interpreters nor even alternatively qualified interpreters but were just putatively bilingual individuals who were asked by the law enforcement to help as language mediators, were also called *interpreters* in all the 228 rulings.

The majority of them were also called *conduits* by the courts, which is the second and the most critical term that continues to remain undefined. As the present thesis demonstrated in Chapter Four, the term *conduit* was rather covertly introduced in *U.S. v. Ushakow* (1973, 9th Cir.), then inserted into the *agent theory* in *U.S. v. Da Silva* (1983, 2nd Circuit), and became a powerful case law with *U.S. v. Nazemian* (9th Cir., 1991). The term *conduit*, however, has never been defined by any of the rulings surveyed, though it generally denoted *accuracy*.

As was reviewed in Chapter Two, *accuracy* is of foremost importance for judicial interpreters. The code of ethics for judicial interpreters in U.S. courts strictly dictates that interpretation should not only contain no additions, omissions, explanations, paraphrasing, alternations, or summaries (e.g., NAJIT, 2016b; Appiah, 2015, p. 141) but also maintain all subtle pragmatic markers such as hedges, false starts, and repetitions, as well as the same register, style, and tone (NAJIT, 2016b). This is the official or publicly proclaimed *accuracy* standards for court interpreters in the U.S., which require them to translate with a highly rigid standard for accuracy (*conduit 2*, in Chapter Two, Section 2.1.1) and to just translate only (*conduit 3*, in Chapter Two, Section 2.1.2).

On the other hand, however, the same U.S. courts keep approving unqualified, ad hoc interpreters, such as the majority of the 243 interpreters surveyed by the present thesis, also calling them as sufficiently *conduits*. From interpreting studies' standpoint,

[205] The only definition that exists regarding the term interpreter is that *interpreters* and *translators* are different (*Taniguchi v. Kan Pacific*, 2012), adjudicated by the U.S. Supreme Court in 2012 (Tamura, 2021a).

this phenomenon is nothing but perplexing. The analyses the present thesis conducted in Chapter Four and Chapter Five, therefore, seem to point to another, possibly a fourth semantic property which these U.S. courts may have been denoting for the term *conduit* (*conduit 4*), which is a "legal fiction" (Del Mar & Twining, 2015; Laster & Taylor, 1994, p. 113; *Taylor v. State*, Maryland, 2016, p. 365; Wacks, 2021, pp. 241–241).

Legal fiction as was defined by a legal scholar Raymond Wacks (2021), citing Maine (1861), refers to "a supposition or postulation that something is true regardless of whether or not it is," noting that English courts used legal fictions to "circumvent unwieldy procedures, and to facilitate the provision of remedies that would otherwise be unavailable" (Wacks, 2021, p. 240). Legal provisions, in and outside the U.S., are in fact full of what Del Mar and Twining (2015) defines as legal fictions, the application of which is usually linked with "difficulties of proof" (p. xvii).[206]

Thus, when the courts in the U.S. first used the *agent theory* for language interpreter in *Camerlin v. Palmer* (Massachusetts, 1865), 12 years before the 1877 invention by Thomas Edison of phonograph, the first recording device in history, the court's resorting to the old common law of agency to resolve the difficulty of two different versions of the story mediated by a foreign language interpreter may have been an understandable legal measure. Regardless of what the interpreter's translation actually had been, the *agent theory* ruled that whichever side brought the interpreter would bear the responsibility of the miscommunication, and thus what the other side insisted was deemed to have been the accurate version as a legal fiction "to facilitate the provision of remedies that would otherwise be unavailable" (Wacks, 2021, p. 240).

Since *Camerlin v. Palmer* (Massachusetts, 1865), however, the technology for

[206] A relatively familiar example of a common-law legal fiction is a presumption of death after seven years of absence; i.e., when a person has been missing and unheard of for seven years, "a presumption of death is said to arise," because it would impose an unfair burden on those legally affected by the indeterminate absence of the missing person when the actual proof of her/his death is practically impossible (Allen, 1981, p. 847).

accuracy verification has undergone a remarkable advancement, in the same way as the DNA science, and in present 21st century, highly sophisticated recording devices are available, accessible, and significantly affordable, which makes the absence of their use only perplexing.[207] Nonetheless, as the thesis demonstrated in Chapter Five, Section 5.2, out of 243 interpreters in 228 cases from 1850 up to the 2018, only 14 interpreters had been audio/video-recorded, at the ratio of only 5.8%. Also, with the existence and availability of duly certified court interpreters working both in federal and state courts, the knowledge and resources to verify translation accuracy of police interpreting, if it was properly audio/video-recorded, should not seem realistically and technologically challenging, which, however, is not the standard practice.

Thus, when the means for accuracy verification seems sufficiently available, the only possible reason the hearsay/conduit polarity is continuously used instead of more straightforward accuracy verification seems to be that it is an intentional choice by U.S. courts to continue to use the *agent and/or conduit theory*. By their institutional power not to define the term *conduit*, the courts in the U.S. seem to maintain their control over the suspected double standard with the term *conduit*, a term that enables them to use discretion with an ample latitude created by the term's elusive and extensive coverage of its supposedly denoted notion of *accuracy*.

With the continued use of the hearsay/conduit polarity, these courts pursue their agenda of higher priority, which the thesis observes to be: (a) *substantive justice* over *procedural justice* (accuracy), i.e., crime convictions if otherwise guilty beyond reasonable doubt, while also maintaining room for discretion; and (b) approval of the use of ad hoc interpreters to pursue the above substantive justice. These are discussed in the following sections.

[207] In 1990, Justice David Doherty in the Supreme Court in Canada even stated, rejecting an unrecorded confession, "In this day and age, where the technology...is readily available, very reliable, relatively inexpensive and usable even by the electronically illiterate such as myself, it is difficult to understand why a permanent video or audio record of the interview process was not made" (Makin, 1990, p. A10).

6.3 Institutional Power to Prioritize Substantive Justice Over Accuracy

Criminal defendants are brought to court so that the judge and the jury can decide on the guilt of the alleged offense. Thus, the primary task of these triers of fact is to examine the evidence, e.g., physical evidence and witness testimonies, including the defendant's prior statement made to the law enforcement, which, as was stated at the beginning of Chapter One, becomes crucial trial evidence (Berk-Seligson, 2009, p. 1; Brief for the Massachusetts, 2016, p. 17; Epstein & Walker, 2013; Fowler et al., 2016, p. 315; González et al., 2012, pp. 446–447; Hale et al., 2019, p. 107; Laster & Taylor, 1994, p. 136; Mason, 2020, p. 2; Mikkelson, 2017, p. 59; Mizuno & Naito, 2015, p. 101).

At the same time, however, when there is irrefutable evidence, e.g., clear evidence of murder or rape having been committed or the defendant caught red-handed during drug trafficking, a potential foreign-language issue may seem nothing but woe that should be best preempted to prevent it from becoming an obstacle. This is what the present thesis observes to have been the most possible crucial factor in the final decisions made by the 228 appellate criminal rulings (51 federal and 177 state cases), rather than: technical qualification details of the ad hoc interpreters; interpreting issues, whether they were actually raised or may have potentially occurred; or whether or not the interpreters testified, including the content of those testimonies, as was demonstrated in Chapter Five.

The thesis presents further observations on: (a) what kind of *substantive justice* was prioritized over *procedural justice* (accuracy), and (b) which profiles of interpreters needed to be approved to pursue such substantive justice, first with 189 state case interpreters and then with 54 federal case interpreters, based on the information collected on Database Two noted in Chapter Three, Section 3.4.2.[208]

[208] A complete list of all the information used for these analyses is presented in Appendix 6.

6.3.1 States: Priority for Murder, Rape, Drug, and DV Convictions over Accuracy

Table 6.4 below shows what kind of offenses a total of 189 police interpreters translated for and whether their translations were admitted in state cases between 1850 and 2018.[209] As is shown, police interpreter issues that went to appellate courts during the period up to World War Two were primarily murder, involving, for example, Chinese-speaking defendants,[210] as well as property offenses such as horse theft allegedly committed by Native American defendants (e.g., *Territory v. Big Knot on Head et al.*, Montana, 1886, explained in Chapter Four, Section 4.4.1), along with sporadic occurrences of other offense types, such as rape and perjury.

Table 6.4

Offenses Translated for State Cases (1850-2018)

		Homecide (e.g. Murder)		Sexual Offense (Rape, Sexual Offense to Minors, etc.)		Property/Financial Offense (Theft, Robbery, Burgulary, Larceny, Fraud, Embezzlement, etc.)		DV		Drug		Assault, Battery, etc.		DUI, Reckless Driving		Perjury		Others		
Admitted/ Not Admitted	Total Number of Inter-preters	Not Admit-ted	Admit-ted	Not Admit-ted	Admit-ted	Not Admit-ted	Admit-ted	Not Admit-ted	Admit-ted	Not Admit-ted	Admit-ted	Not Admit-ted	Admit-ted	Not Admit-ted	Admit-ted	Not Admit-ted	Admit-ted	Not Admit-ted	Admit-ted	Total Number Admit-ted
1850-1859	1			1																
1860-1869																				
1870-1879																				
1880-1889	6	3				1										1	1			1
1890-1899	4	1	2				1													3
1900-1909	9	2	2		1		2									2				5
1910-1919	12	3	4		1	1	1						1				1			8
1920-1929	4	1	2			1														2
1930-1939	2		1	1																1
1940-1949																				
1950-1959	1		1																	1
1960-1969	1		1																	1
1970-1979	3		2			1														2
1980-1989	17	1	9			1	2			1	2							1		13
1990-1999	18	2	5	2	2		1	2	1	1	1		1							11
2000-2009	70		17	4	5	1	12	5	6	2	9	2	4		2			1		55
2010-2019	41	1	6	5	11		4		6		1		2	1	3				1	34
Total	189	14	52	13	20	6	23	7	13	4	13	2	8	1	5	3	2	2	1	137
Ratio to Total	100%	33.9%		17.5%		15.9%		11.6%		9.0%		4.8%		4.2%		2.6%		1.6%		
Admision Ratio		78.8%		60.6%		79.3%		65.0%		76.5%		80.0%		83.3%		40.0%		33.3%		72.5%

Regarding these offenses, however, Table 6.4 also shows the difficulty the state

[209] For simplicity, property offenses including burglary and financial crimes such as embezzlement were put together into the same group, as the focus of the discussion here is more on such crimes as: murder, rape, drug, and DV.

[210] See Table 6.1 in Section 6.1.1.

courts had with evidentiary admission of interpreter-mediated out-of-court statements. During these early times, many states strictly abided by the hearsay exclusion as was explained in Chapter Four, Section 4.4.1, and were also still hesitant to use the *agent theory* in criminal cases, as was explained with Table 4.2, Table 4.3, Table 4.4 in Chapter Four. This is evinced by Table 6.4, which shows that between 1850 and 1939, the out-of-court interpreters' testimonial admission ratio in murder cases was only 52.4% (11/21 interpreters), that for property offenses 57.1% (4/7 interpreters), that for perjury 40.0% (2/5 interpreters), and that for rape 50.0% (2/4 interpreters). The average evidentiary admission ratio during this period (from 1850 to 1939) was as low as 52.6% (20/38 interpreters).

Then after World War Two, starting from round the 1980s, just around the time when the federal courts invented the *conduit theory* (*U.S. v. Ushakow*, 9th Cir., 1973) and combined the term *conduit* with the *agent theory* into the *agent and/or conduit theory* (*U.S. v. Da Silva* , 2nd Cir., 1983; *U.S. v. Nazemian*, 9th Cir., 1991), Table 6.4 above also shows that the offense and evidentiary admission landscape in state courts began to change. New offenses began to appear and increase in such categories as: drug-related offenses, DV (domestic violence), DUI (driving under the influence of alcohol), in addition to an increase in murder and rape, including sexual offenses to minors.

With these changes, the admission ratio of interpreter-mediated out-of-court statements also began to change. The admission ratio for murder during the period between 1950 and 2018 increased to 91.1% (41/45 interpreters) from the previous 52.4%, and that for property offenses also increased to 86.4% (19/22 interpreters) from the previous 57.1%. During this same period (from 1950 to 2018), the admission ratio for DUI marked 83.3% (5/6 interpreters), that for drug 76.5% (13/17 interpreters), and assault/battery 77.7% (7/9 interpreters), while those for rape/sexual offenses and DV were slightly lower at 62.1% (18/29 interpreters) and 65.0% (13/20 interpreters) respectively, possibly due to the interpreter profiles shown below by Table 6.5. What

Table 6.4 reveals are the changes in the police interpreters' evidentiary admission which were enabled by the invention of the *agent and/or conduit theory*, helping the convictions of such offenses as murder, property offenses, as well as new types of offences such as drug, rape, DV, and DUI, that began to increase in state cases.

Table 6.5 below shows which profiles of interpreters translated for the above offenses. A large number of officer interpreters became primarily in charge of murder (19/53 officer interpreters), rape (12/53 officer interpreters), property offenses (8/53 officer interpreters), and drug cases (8/53 officer interpreters) among others, who also translated mainly for the defendants (46 out of 53 officer interpreters). Regarding this, Table 6.4 already showed that in state courts, from the 1950s on, the evidentiary admission ratio of murder rose to 91.1% (41/45 interpreters), of which, as Table 6.5 shows, 19 were officer interpreters, with an admission ratio of 94.7% (18/19).

Table 6.5

State Offenses by Interpreter Profile (1850-2018)

		Winess Interpreters Translated For			Homicide (e.g. Murder)		Sexual Offense (Rape, Sexual Offense to Minors, etc.)		Property/Financial Offense (Theft, Robbery, Burgulary, Larceny, Fraud, Embezzlement, etc.)		DV		Drug		Assault, Battery, etc.		DUI, Reckless Driving		Perjury		Others		
Profiles	Total Number of Interpreters	D	V	O	Not Admitted	Admitted	Not Admitted	Admitted	Not Admitted	Admitted	Not Admitted	Admitted	Not Admitted	Admitted	Not Admitted	Admitted	Not Admitted	Admitted	Not Admitted	Admitted	Not Admitted	Admitted	Total Number Admitted
Law Enforcement/ Government Officer	53	46	7		1	18	5	7	3	5	1	1	1	7		3						1	42
Unknown	33	21	4	8	6	11	4	1	1	4	1		1	2							2		18
Court/Certified Interpreter	28	20	6	2	3	7	3	6	1	2						1			3	2			18
Neighbor/By-Stander	19	4	12	3	1	3				7	2	4						2					16
Family Member	19	5	9	5	2	6				3	2	5			1								14
Telephone Interpreter	10	3	5	2				3				2			1	2		2					9
Acquaintance	8	4	4		1	3			1		1			1		1							5
Alternatively Qualified Interpreter	7	4	2	1		2		2				1					1	1					6
Co-worker/Employee	7	3	4			2	1	1		2						1							6
Informant	3	2	1										2	1									1
Co-conspirator	2	2												2									2
Total	189	114	54	21	14	52	13	20	6	23	7	13	4	13	2	8	1	5	3	2	2	1	137
Ratio to Total		60.3%	28.6%	11.1%	33.9%		17.5%		15.9%		11.6%		9.0%		4.8%		4.2%		2.6%		1.6%		
Admision Ratio					78.8%		60.6%		79.3%		65.0%		76.5%		80.0%		83.3%		40.0%		33.3%		72.5%

The thesis noted in Chapter Four, Section 4.7, that one of the six possible reasons

why U.S. courts began to use the *conduit theory* with no legal ground was the need to use officer interpreters, whether for exigency or for cost-savings purposes. The thesis also noted, based on all the 228 criminal cases surveyed, 22 out of 50 states and 7 out of 11 federal circuits approved the use of officer interpreters. The thesis also showed in Chapter Five that most of them nonetheless did not meet minimum qualification criteria and had substantially more interpreting issues than other profiles, and that the only qualification-related attribute the court rulings frequently mentioned was that they spoke the language (e.g., Spanish) as a native, first-language, or heritage speaker, which was also corroborated by Table 6.3 presented in Section 6.1.3. As was also stated in Section 6.1.3, while it is beyond the scope of the present thesis to explore how these officer interpreters felt about performing these interpreting tasks, what the present thesis observes is a possible exercise of power on these putatively bilingual officers by the courts and the law enforcement working together.

The predominant Spanish language ratio among officer interpreters both in federal and state cases shown by Table 6.3 in Section 6.1.3 conversely demonstrated that all the other languages shown on Table 6.1 and Table 6.2 in Section 6.1.1 were translated by other, primarily ad hoc interpreters, and Table 6.5 seems to reveal that the law enforcement in state cases relied on certain profiles with specific types of offenses.

Table 6.5 shows that investigating officers often relied on neighbors/by-standers to translate in such offenses as theft (robberies and burglaries), DV, and DUI, on family members for murder and DV, and on telephone interpreters for rape (including sexual offenses to minors) as well as assaults/batteries and DUI. All of them translated more for victims than for defendants or other witnesses, and their testimony ratios were low. Since many of them translated for victims, the courts legally could not apply the *agent theory*,[211] but with the birth of *conduit*, the more loosely phrased *agent and/or conduit*

[211] See Chapter Four, Section 4.4.5 and Section 4.7.5.

theory enabled them to argue that these telephone interpreters, neighbors/by-standers, as well as family members who had translated for victims had translated as language conduits, helping the courts with the substantive justice.

One visible point with Table 6.5 is that the evidentiary admission ratios for rape and DV were not as high as those for other offenses. Family members marked 71.4% admission ratio with DV, as some courts saw impartiality issues with family members translating in DV cases, even though their translations may actually have been accurate (e.g., *Diaz v. State*, Delaware, 1999; *Telesforo Olea Valero v. Superior Court of Orange County,* California, 2002), while the courts almost never had impartiality concerns with officer interpreters, though their translations may possibly have been inaccurate.

Similarly, even court/certified interpreters marked only 66.6%, translating for sexual offenses. Two sign language interpreters in *Taylor v. State* (Maryland, 2016) were described as allegedly having made translation errors, which nonetheless was never given a chance for verification. Also, the translation by a certified interpreter in *State v. Ambriz-Arguello* (Oregon, 2017) did not become admitted, not for inaccuracy, but for what the court decided was a procedural flaw on the part of the prosecution (*State v. Ambriz-Arguello,* Oregon, 2017. PP. 587–588).

What these seem to indicate is a possible use of discretion by the courts which is enabled by the hearsay/conduit polarity, which they would lose if it was replaced by a more straightforward accuracy verification method.

6.3.2 Federal: Priority for Drug and Immigration Fraud Convictions over Accuracy

The thesis next presents Table 6.6 which shows what kind of offenses a total of 54 interpreters translated for and whether their translations were admitted in 51 federal cases between 1850 and 2018.[212] Unlike the state cases, federal criminal cases that

[212] There are two figure discrepancies between those in Table 6.6 and those in Chart 13 in Tamura (2019a, p. 33) as a result of re-classification of the offense in *U.S. v. Kramer* (11th Cir., 1990), as well as from the change in the number of interpreters from 1 to 2 in *U.S. v. Desire* (11th Cir., 2012),

involved interpreters' out-of-court translations did not begin to appear until the 1960s, except for two sporadic cases,[213] and when they began to appear in the 1960s, they were primarily drug trafficking (44.4 % with 24 interpreters) and immigration-related cases (24.1% with 13 interpreters), with a high admission ratio at 91.7% and 92.3% respectively.

Table 6.6

Offenses Translated for Federal Cases (1850-2018)

		Drug & Other Illegal Import		Immigration		Terrorism, Piracy, Murder, & Kidnapping		Property/Financial Offense (Tax Evasion, Theft, etc.)		Rape & Other Sexual Offense		Others		
	Total Number of Inter-preters	Not Admit-ted	Admitted	Not Admit-ted	Admitted	Not Admit-ted	Admitted	Not Admit-ted	Admitted	Not Admit-ted	Admitted	Not Admit-ted	Admitted	Total Number Adimitted
1910-1919	1				1									1
1920-1929	1	1												
1930-1939														
1940-1949														
1950-1959														
1960-1969	2		1										1	2
1970-1979	4		4											4
1980-1989	4		1						2			1		3
1990-1999	13		8		1						1		3	13
2000-2009	10	1	3		3		2		1					9
2010-2018	19		5	1	7	1	4				1			17
Total	54	2	22	1	12	1	6		3		2	1	4	49
Ratio to Total	100%	44.4%		24.1%		13.0%		5.6%		3.7%		9.3%		
Admission Ratio		91.7%		92.3%		85.7%		100.0%		100.0%		80.0%		90.7%

The *conduit theory* first appeared in *U.S. v. Ushakow* (9th Cir., 1973), which was expanded into the *agent and/or conduit theory* in *U.S. v. Da Silva* (2nd Cir., 1983) and became a full-fledged case law in *U.S. v. Nazemian* (9th Cir., 1991), all of which were federal drug offenses. The strong effect of the *agent and/or conduit theory* is also evident

as two airline employees took turn in this job (p. 820).

[213] One was *Lee v. U.S.* (7th Cir., 1912), in which the court used the *agent theory* to admit, in the defendant's favor, his prior statement made to an inspecting officer through an interpreter, citing such cases as *Camerlin v. Palmer* (Massachusetts, 1865) and *Commonwealth v. Vose* (Massachusetts, 1898), which were explained in Chapter Four, Sections 4.4.2 and 4.4.4. The other one was *Kalos v. U.S.* (8th Cir., 1925), in which the court excluded the defendant's exchange with the postmaster, which was translated by his friend, regarding a package containing an illegal drug, ruling that it was hearsay, citing, among others, *Territory v. Big Knot on Head et al.* (Montana, 1886), explained in Chapter Four, Section 4.1.1.

from Table 6.6. Between 1960 and 2018, the evidentiary admission ratio for drug cases became 95.7% (22/23 interpreters), and that for immigration-related offenses was 92.3% (11/12 interpreters).

Table 6.7 below shows which profiles translated for these offenses. Nearly half of the interpreting tasks in drug cases were conducted by law enforcement officers (11/24 at 45.8%), who also primarily translated for defendants. While drug trafficking is also committed by English-speaking U.S. citizens, those on Table 6.7 were non-English-speaking individuals caught red-handed at airports or on the inter-state or national borders with undeniable evidence but began to raise an interpreter hearsay issue. The *agent and/or conduit theory* enabled the courts to circumvent their claims and prioritize substantive justice by ruling that these officer interpreters were sufficiently conduit, with the admission ratio of 90.9% (10/11 interpreters).

Table 6.7

Federal Offenses by Interpreter Profile (1850-2018)

		Witness Interpreters Translated For			Drug & Other Illegal Import		Immigration		Terrorism, Piracy, Murder, & Kidnapping		Property/Financial Offense (Tax Evasion, Theft, etc.)		Rape & Other Sexual Offense		Others		
Profiles	Total Number of Interpreters	Defendants	Victims	Others	Not Admitted	Admitted	Not Admitted	Admitted	Not Admitted	Admitted	Not Admitted	Admitted	Not Admitted	Admitted	Not Admitted	Admitted	Total Number Admitted
Law Enforcement/ Government Officer	18	15		3	1	10			1	3		2			1		15
Unknown	9	5	1	3		3		4		1				1			9
Court/Certified Interpreter	4	1		3		1										3	4
Neighbor/By-Stander	4	3	1			1		1		1						1	4
Family Member	2	1	1			1								1			2
Telephone Interpreter	5	5					1	3		1							4
Alternatively Qualified Interpreter	2	2						2									2
Co-conspirator	7	7			1	5						1					6
Co-worker/ Employee	2	2						2									2
Inmate	1	1				1											1
Total	54	42	3	9	2	22	1	12	1	6	0	3	0	2	1	4	49
Ratio to Total		77.8%	5.6%	1.7%	44.4%		24.1%		13.0%		5.6%		3.7%		9.3%		
Admision Ratio					91.7%		92.3%		85.7%		100.0%		100.0%		80.0%		90.7%

Also, what seems rather intriguing is that the only drug case which did not admit the officer interpreter's translation was *U.S. v. Martinez-Gaytan* (5th Cir., 2000). The main reason was that the officer did not testify in court, though the Fifth Circuit, just as many other federal circuits, extensively admitted statements without the interpreters' in-court testimonies, as was corroborated in Chapters Four and Five. The only possible factor seems to have been the type of drug in this case, which was marijuana found in the car trunk, though the amount was 75 pounds,[214] which may have influenced the court's use of discretion, which, again, is enabled by the use of the hearsay/conduit polarity, not by straightforward accuracy verification with audio/video-recording. For interpreters, however, such discretion would become a potential risk factor, as the courts might suddenly use an interpreter as a kind of scapegoat by labeling her/his translation as unreliable hearsay, in order to disguise the real motive which is to use their discretion on the substantive justice, a point the thesis discusses further in Section 6.3.3.

Table 6.7 also shows that immigration-related offenses were often translated by telephone interpreters (4/13 or 30.8%) and unknown (4/13 or 30.8%) interpreters, both of whom did not or could not testify. In addition, 6 out of 27 interpreters who translated for drug cases were co-conspirators, who also had a high admission ratio (5/6 co-conspirators at 83.3%), though also with a low testimony ratio (1/7 co-conspirators at 14.3%) in all federal cases. Thus, the hearsay/conduit polarity enabled the courts to argue that telephone interpreters, unknown interpreters, or even co-conspirators all successfully served as *agent and/or conduit*, creating no hearsay even without in-court testimonies, which convicted drug smugglers and immigration-related offenders.

6.3.3 Hearsay/Conduit Polarity: Power for Latitude and Discretion

What the above observations seem to reveal is that the hearsay/conduit polarity

[214] In Texas, 75 pounds of marijuana, if possession only, would be 2nd degree felony if it were November, 1, 2019, and with the intent to distribute, it would be 1st degree felony (Texas Marijuana Laws, 2023).

enables the courts to maintain power to exercise discretion with ample latitude to rule on the substantive justice, by giving them an option to use interpreting issues to exert influence. As was already noted, *U.S. v. Martinez-Gaytan* (5th Cir., 2000) mentioned in Section 6.3.2 may have been one of such examples, as well as the telephone interpreter in *U.S. v. Charles* (11th Cir, 2013) introduced in Chapter One, Section 1.1.1. Though the defendant may very possibly have entered the U.S. illegally, the judge[215] nonetheless may have decided that this Creole-speaking woman even with an invalid passport was still entitled to cross-examine the telephone interpreter (*U.S. v. Charles*, 11th Cir., 2013, pp. 1321–1322). As was also noted in Section 6.3.2, the two sign language interpreters in *Taylor v. State* (Maryland, 2016), which was also explained in Chapter Five, Section 5.3.3, may have been another example. The defendant argued that the two sign language interpreters had mistranslated his statements to the police, the truth of which, however, never became verified as the lower court refused to play the video-recording. In all of these examples, though the presiding judges ruled that the interpreter-mediated translation was unreliable and thus was hearsay, they were all still operating within the hearsay/conduit polarity based on the Sixth Amendment. The hearsay/conduit polarity still allowed them to choose between hearsay and conduit, using their discretion to rule either way, even if it meant labeling the interpreter as unreliable hearsay.

With untrained ad hoc interpreters, i.e., putatively bilingual individuals who happened to translate for the law enforcement then and there, the hearsay/conduit polarity that allowed the judges a wide latitude to exercise their discretion may not have seemed so problematic. For professional interpreters, however, such unpredictability would seem alarming, as they might become implicated unexpectedly and be labeled as hearsay even if they had translated faithfully, or asked to testify in court to the accuracy of their translations without the means to show and explain why and how their

[215] Judge Barkett, who was the chief appellate judge in this 2013 case in the 11th circuit, is a human rights defender with extensively multicultural and multilingual backgrounds, who later became a judge in the International Court of Justice in the Hague (Rosemary Barkett, n.d.).

translations were accurate, i.e., no means or inadequate protection to fulfill their professional accountability. This is what the present thesis argues is the fundamental problem with the current hearsay/conduit polarity based on the Sixth Amendment.

Thus, the present thesis calls for a system which will provide interpreters with a minimum protection through mandatory audio/video-recording. The implementation of this system is also crucial for judicial interpreters' fulfillment of their professional *accountability* as an *agent* who strives for *accuracy*, as these terms were defined and discussed in Chapter Two, Section 2.1. The thesis presents its final arguments and a proposal in Chapter Seven.[216]

[216] Chapter Seven incorporated the analyses and discussions presented in Ito (2016) and Tamura (2018, 2019b) with revisions.

Chapter Seven: Interpreters' Accountability and Audio/Video-Recording

7.1 Police Interpreters for Sixth Amendment or Fifth Amendment?

7.1.1 Hearsay/Conduit Based on Sixth Amendment No Longer Justified

Due process in the common-law tradition fundamentally means "fairness" (del Carmen & Hemmens, 2017, p. 388), which in criminal justice specifically refers to fairness and justice in two categories: *procedural due process*, and *substantive due process* (Bergman & Berman, 2013, p. 358). Police interpreting is a job specifically related to the former, *procedural due process*. By providing adequate language interpreting service during a police interview, interpreters partake in the ensuring of *procedural justice*. They play a crucial role in making sure that the suspect and other witnesses' language rights were safeguarded during this most upstream stage of criminal justice process. In the U.S. Constitution, both the Fifth Amendment and the Sixth Amendment guarantee criminal defendants' due process rights.[217]

Of these two, the Fifth Amendment primarily protects the defendants' right against self-incrimination through what is commonly known as Miranda, which notifies the suspects before an interview begins that they have the right to remain silent, or the right not to state anything that might incriminate themselves. The Sixth Amendment, on the other hand, primarily concerns the defendants' rights during a criminal trial. It ensures the defendant's right to cross-examine a witness who testifies against her/him, e.g. a police interpreter who may testify to the defendant's prior incriminating statement.

The rigidity of this hearsay exclusion eventually led to the creation of hearsay circumvention theories and the hearsay/conduit polarity based on the Sixth Amendment, which U.S. courts continue to rely on *under the pretense of ensuring and/or verifying translation accuracy*. The thesis demonstrated in Chapter Four and Chapter Five,

[217] Technically, the due process rights guaranteed by the Fifth and the Six Amendments are extended also to the states through the Fourteenth Amendment (Epstein & Walker, 2013, p.79).

however, that this polarity was ineffective if the real purpose was to ensure and/or verify police interpreters' translation accuracy. Furthermore, in the present day of advanced technology combined with abundant knowledge and resources, continued reliance on *conduit* as a "legal fiction" (Laster & Taylor, 1994; Del Mar & Twining, 2015; Wacks, 2021), can no longer be warranted, as its use is only justified if there is absolutely no measure for proof (Del Mar & Twining, 2015, p. xvii), i.e., to verify translation accuracy.

7.1.2 Fifth Amendment and Interpreters' Professional Accountability

As was stated above, the Fifth Amendment explicitly guarantees criminal defendants' right against self-incrimination. This is the single most critical provision that protects, if not yet perfectly, criminal defendants from law enforcement authority's coercion leading to forced confessions (Epstein & Walker, 2013, p. 517-518). This often happens as a result of interrogators using their power to "challenge, warn, accuse, deny, and complain" directly and dominantly (Shuy, 1998, p. 13). Similar "coerced confessions" were observed by Berk-Seligson (2000; 2002b; 2009) in her case studies of police officers acting as interpreters or as bilingual interrogators, which would be the most serious violations of the Fifth Amendment rights committed by interpreters.

The Fifth Amendment's due process, however, actually has more important implications for language interpreters. A police interpreter may, even unintentionally or inadvertently, end up taking part in potential forced self-incrimination, mostly by providing inaccurate or erroneous translations, but also by actively or aggressively suggesting a particular expression in the process of clarification or confirmation (*Commonwealth v. Lujan*, 2018, p. 100, fn. 5). In either case, the interpreter is giving a translated statement to the interviewing police officer which is not identical to what the suspect or witness stated, which could be deemed as an act of "verballing" (Gibbons, 1990, p. 230; Marszalenko, 2014, p. 175). Verballing, according to the *Oxford English dictionary*, means "[o]f a police officer, detective, etc.: to allege, esp. dishonestly, that

(a person accused or suspected of criminal activity) made a verbal confession or said something incriminating; to fabricate (a verbal confession or incriminating statement by a suspected criminal)" (Oxford University Press, n.d.-d), which, if proven to have occurred, would be a violation of the Fifth Amendment.

Thus, inaccurate translation, inappropriately conducted confirmation/clarification of the meaning, or an aggressive suggestion of a particular expression as a possible translation may result in verballing. It is impossible, of course, for any interpreter to never make any errors or mistakes, even if they make no intentional distortions during a police interview. In the old days as was described above, verification of such errors and mistakes, not to speak of intentional distortions, was practically impossible. This, however, is no longer the case.

7.2 Audio/Video-Recording: Minimum Condition

In making a transition from the hearsay/conduit polarity based on the Sixth Amendment to accuracy verification based on the Fifth Amendment, the thesis argues that audio/video-recording, regardless of the types of offenses, is an absolute, minimum condition, regarding which, the U.S. is lagging behind compared to the U.K., Canada, and Australia (Bang et al., 2018; Dep't of Justice, 2015; Gross, et al., 2020; Ibusuki, 2016; Recording of custodial interrogations, 2017). As was mentioned in Chapter Four, Sections 4.1.2 and 4.1.3, the U.K. enacted the Police and Criminal Evidence Act (PACE) in 1984, which led to the introduction of mandatory audio/video-recording of police interviews, and Australia also made audio/video-recording mandatory during the 1990's (Ibusuki, 2016).

In contrast in the U.S., as was mentioned in Chapter One, Section 1.4.1, as of 2019, police interview recording was required only in 25 out of all the 50 states, including the District of Columbia (Bang et al., 2018; Gross et al., 2020),[218] and its enforcement is

[218] As was also noted in Chapter One, Section 1.4.1, the total number became 27 states,

slow and lenient (del Carmen and Hemmens, 2017; Dep't of Justice, 2015; Recording of custodial interrogations, 2017). The thesis also mentioned in Chapter Five, Section 5.2, that out of all the 243 interpreters, only 14 had their interpreting recorded. Of these 14 interpreters, 9 were found to have had interpreting issues. Thus, the interpreting issue detection ratio became 64.3% (9/14) when recorded, while without a recording the detection ratio dropped only to 24.9% (57/229).

7.2.1 Recording to Assist Interpreters' Professional Accountability

The introduction of audio/video-recording would also assist interpreters to present *accuracy-specific-type* testimonies, explained in Chapter Five, Section 5.6, to verify their translation accuracy without violating the professional code of ethics. The thesis presented analyses of three types of interpreter testimonies presented by 96 out of 243 interpreters: *fact-type, general-type*, and *accuracy-specific-type*. The thesis argued that the only testimony type that effectively verified translation accuracy without creating ethical issues for interpreters was the *accuracy-specific-type* testimonies, which explained how and why which translation was accurate. With Table 5.23 in Section 5.6.3, the thesis presented as one of the three examples the testimony of Claudia Alvarado in *Palomo v. State* (Texas, 2015), who was able to present a detailed testimony on: (a) the fundamental nature of interlingual translation and the difficulty imposed on it by the rigid word-for-word requirement; (b) the fact that she nevertheless had tried to translate as verbatim as possible without any additions; (c) specific occasions in which she had judged paraphrase was necessary to ensure Ellen's understanding. When a possible error was pointed out by the defense counsel, Alvarado was also able to explain how and why her interpretation of the meaning might have differed, and was ready to correct her translation if it had been a misinterpretation on her part.

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including the District of Columbia (Bang et al., 2018), and then 29 states (Gross et al., 2020), though with varying levels of conditions.

Since the whole interview had been video-recorded, Alvarado did not have to make any testimony on the factual content of who had stated what during the interview, which would have violated the code of confidentiality and impartiality. Instead, she was able to concentrate only on the explanation of her translation philosophy, strategies used, and in what way which translation had been accurate or possibly inaccurate. Such testimonies, the thesis views, are the kind of testimonies which only professionally trained interpreters who are aware of their code of ethics and professional accountability would be capable of presenting. In addition, such testimonies are only enabled through the introduction of mandatory audio/video-recording of police interviews.

7.2.2 Qualification: Legislation or Pandora's Box?

Needless to say, the introduction of mandatory audio/video-recording would inevitably open the "Pandora's Box,"[219] and will pose a challenge to the law enforcement, prosecutors, and many of the police interpreters who have been protected by the *agent and/or conduit theory*. It may very possibly become in many ways a rigorous process to separate sufficiently qualified interpreters and those who are not. The thesis argues, however, that this is perhaps the only viable and effective way to promote professionalization of police interpreting, especially when law-makers seem to be continuously reluctant about introducing qualification or certification system for police interpreters, as was mentioned in Chapter Four, Section 4.7.4, citing from *Commonwealth v. Carrillo* (Pennsylvania, 1983, pp. 127–128) and *Baltazar-Monterrosa v. State* (Nevada, 2006, pp. 612–613). If the law-makers continue to be reluctant about instituting a qualification system for police interpreters, unlike what they did for court interpreters with the Court Interpreters Act of 1978, and also remain unenthusiastic about

[219] This was a metaphor used by Osamu Watanabe, a co-author of Watanabe and Nagao (1998) and Watanabe and Yamada (2005) cited in the present thesis and a law professor of Kōnan University Law School, in Kobe, Japan, during a conversation with the present author at the 2016 Annual Conference of the Japan Association for Language and Law.

legislating mandatory audio/video-recording, and if law enforcement organizations do not take any initiative to use it, either, then it would be the responsibility of the courts to take the necessary steps to ensure that the Fifth Amendment due process is upheld.

7.2.3 *Commonwealth v. Lujan* (2018): Pandora's Box Forced Open

While the court in *Commonwealth v. Carrillo* (Pennsylvania, 1983, pp. 127–128) relinquished such independent power of the judiciary, which should have been separate and independent of the legislative branch, the courts in two recent appellate cases in Massachusetts exercised their independent power bestowed on them by the U.S. Constitution and began to open the Pandora's box.

The first was *Commonwealth v. AdonSoto* (Massachusetts, 2016), which was a DUI case of a Spanish-speaking defendant, who had failed a breathalyzer test given to her by an officer who used a telephone interpreter. Because the telephone-interpreter-mediated exchange had not been recorded, combined with the absence of the interpreter's in-court testimony, it became difficult for the court to determine the cause of the breathalyzer test failure. The court in the end concluded its ruling by making audio/video-recording of all interpreter-mediated police interviews mandatory from thereafter (*Commonwealth v. AdonSoto*, Massachusetts, 2016, pp. 449–507).

The second one, *Commonwealth v. Lujan* (Massachusetts, 2018) came two years later. The defendant was a Moldovan-speaking[220] immigrant, a housekeeper in a nursing home, who had been accused of inappropriately touching a patient. Despite that the defendant had only a limited knowledge of Russian, the police used a Russian-speaking college student who himself was also an immigrant and had been doing ad hoc interpreting for the police as an intern (*Commonwealth v. Lujan*, Massachusetts, 2018,

[220] In the ruling, Judge Wolohojian made it clear that Moldovan and Russian were "unrelated languages," that Moldovan was a Romance language spoken by people in Moldova, which was part of the Soviet Union until 1991, during which Russian (a Slavic language unrelated to Moldovan) was the official language (*Commonwealth v. Lujan*, Massachusetts, 2018, p. 97).

pp. 95–98). The interview was video-recorded, which the defendant's counsel later reviewed with certified Russian interpreters and found a multitude of interpreting issues. The intern had:

1. mistranslated what the detectives asked or said;
2. asked an entirely different question from that posed by the detectives;
3. asked his own questions;
4. mistranslated the defendant's answers;
5. did not translate the defendant's answer at all;
6. added something the defendant did not say;
7. suggested words or answers to the defendant when the defendant apparently could not understand or find the words to express himself; and
8. himself answered the detectives' questions (without any statement having been made by the defendant). (*Commonwealth v. Lujan*, Massachusetts, 2018, p. 99, underlined by the present author)

Even considering the difficulty deriving from a Russian-speaking interpreter translating for a Moldovan-speaking suspect, the above list of problems seems to present a textbook case pointing to the critical importance of using professionally qualified interpreters. While 1, 2, and 4 of the above may have been primarily due to the language mismatch, the intern, if he had been professionally trained, would have reported the language mismatch and declined the assignment. The rest all concern similar ethical and protocol issues, which were exactly what Hale et al. (2019) identified in their large-scale experimental research mentioned in Chapter Two, Section 2.3.7, which made a quantitative comparison between "trained interpreters" and "untrained interpreters" (p. 111).

From the standpoint of the Fifth Amendment due process against verballing, noted in Section 7.1.2 above, 3, 5, 6, 7, and 8 on the list are also textbook examples of how an interpreter can put her/his words into the suspect's mouth, resulting in an act of

verballing. The ruling mentioned "the intern suggested words to the defendant that the defendant adopted to his detriment" or made "an attempt to explain Russian words to the defendant…to help understand what the defendant was trying to say" (*Commonwealth v. Lujan*, Massachusetts, 2018, p. 96). In forensic linguistics, these are classic examples of "scaffolding," which Cooke (1996, p. 281) described as what the police could be doing with a vulnerable suspect who comes from a very different cultural background and has limited English proficiency, by helping the suspect to create a statement incorporating words and expressions suggested by the interrogating officer.

The problem seems to be that this intern, though he had been working for the police, had perhaps never had a chance to be properly trained or to learn about professional code of ethics in police interpreting. The following was his in-court testimony, which seems to reveal that he probably had no idea that what he thought was a sincere helping hand for the Moldovan-speaking defendant to express himself was actually an act of verballing:

Defense Counsel:	So he had difficulty finding the vocabulary to tell you what he wanted to convey to you. Is that correct?
The Intern:	Yes.
Defense Counsel:	And his fluency in Russian, was it restricted by some of the words?
The Intern:	He seemed <pause> somewhat fluent in Russian, I mean maybe there was [*sic*] some hiccups in some of the vocab that he was looking to use.
Defense Counsel:	And during the point you were interpreting, did you help him find the words?
The Intern:	Yes.
Defense Counsel:	Did you suggest words to him?
The Intern:	Yes.

(*Commonwealth v. Lujan*, Massachusetts, 2018, p. 100, fn. 5, underlined by the present author)

The judge concluded that the defendant was not effectively advised of his Miranda rights and that the defendant's statement was not voluntary because much of the statement was not his (*Commonwealth v. Lujan*, Massachusetts, 2018, p. 96, underlined by the present author). Thus, *Commonwealth v. Lujan* (Massachusetts, 2018), by opening the Pandora's box, demonstrated the crucial importance of using professionally trained interpreters, which was enabled specifically by the introduction of audio/video-recording in interpreter-mediated police interviews.

7.3 Interpreter's Professional Accountability as Agent for Accuracy

7.3.1 Hearsay/Conduit Polarity Erodes Accuracy and Interpreting Profession

Regardless of what the courts in the U.S. keep maintaining about the *agent and/or conduit theory* as a measure that sufficiently ensures and/or verifies translation accuracy, and regardless of criminal defense lawyers' frequent argument that the only way to protect criminal defendants' due process right is to cross-examine police interpreters at the witness stand, the present thesis contends, based on the results of its investigations, that the hearsay/conduit polarity based on the Sixth Amendment neither ensures nor verifies translation accuracy. On the contrary, with the courts' covert double standard applied to the term *conduit*, the polarity erodes the concept of accuracy and consequently harms interpreting profession by downgrading the very core or raison d'être of this profession: to render faithful, accurate translations (Pöchhacker, 2022, p. 141; Seleskovitch, 1968/1998, p. 89).

The thesis reviewed in Chapter Two how the term conduit was used by both legal and interpreting professionals and deduced three possible semantic properties: *conduit 1* (verbatim translator), *conduit 2* (accurate translator), and *conduit 3* (one who only translates). Even if most judicial interpreters would probably disregard courts' common

denotation of *conduit 1* (verbatim translator), they would still strive regularly to be *conduit 2* (accurate translator), even within the highly limited boundaries allowed to them with such codes as the NAJIT's, (NAJIT, 2016b), trying also to carefully stay within the rigid boundaries of *conduit 3* (one who only translates).

The same courts, however, also continue to use the term *conduit* to refer to the majority of 243 putatively bilingual individuals, with its definition made elusive and extensive, undermining the notion of *accuracy* by deprioritizing it over what the courts deem as a much higher agenda. Furthermore, within the hearsay/conduit polarity, the courts and defense lawyers seem to have no concern as to whether professional interpreters may have an ethical conflict if summoned to testify to the defendants' original statements, despite that the interpreters' professional accountability is only to translation accuracy, not to become an eyewitness in the police interview room for the prosecution or for the court.

7.3.2 Protection for Interpreters as a Third Stakeholder: Proposal

Thus, if interpreters' only accountability is to the accuracy of translation, they must also be protected by the means to fulfill this accountability, the immediate one of which would be mandatory audio/video-recording, and without which police interpreters should not, in principle, agree to do the job in the first place, for which they would be accountable (*accountability 3*, for agreeing to do the job), as was discussed in Chapter Two, Section 2.1.5.

The following is a proposal to amend the current system in order to provide sufficient legal protection to police interpreters in fulfilling their professional accountability as a third stake-holder in interpreter-mediated police interviews. First and foremost, audio/video-recording of all interpreter-mediated police interviews should be made mandatory, regardless of the alleged offense type. Second, an unedited copy of the audio/video-recording of the entire interview should be promptly made available not

only to the defendant, as is practiced regularly in Australia (Watanabe & Yamada, 2005, p.101),[221] but also to the interpreter, so that the interpreter, too, can conduct a prompt accuracy verification of one's own interpreting and inform both parties and the court if there should be any important accuracy issues noticed. Third, the prosecution should be required to authenticate the translation accuracy through a different, certified, check interpreter, who can simply submit an affidavit testifying to its accuracy. If any issues are noticed, this check interpreter should be required to mention them in the affidavit with a comment on how they might have changed the meaning.

In the meantime, the defendant and/or defense counsel should do the same. If they bypass this accuracy check, and if the prosecution submits an affidavit authenticating the interpreting accuracy, then the court can determine that the defendant has forfeited the right to invoke the Confrontation Clause to call in the interpreter for cross-examination by using hearsay as a reason, because a police interpreter who presumably had no translation accuracy issues should have nothing to do with hearsay.

On the other hand, if the defendant and/or the defense counsel does raise a specific translation accuracy issue, then the prosecution could do one of the following:

1. If the police interpreter who did the interpreting is qualified (e.g., certified) to testify to the specific, technical translation accuracy issue or question, they can subpoena this interpreter to testify only to these accuracy issues, with the aid of audio/video-recording. This way, the interpreter will not have to testify to the defendant's prior statement but can only testify to the accuracy issues with the aid of the recorded statement, and answer the defendant's (defense counsel's) questions about translation accuracy issues only. This, the present thesis contends, is the extent and the scope of interpreters' professional accountability.
2. If the police interpreter is not sufficiently qualified to testify to the technical details

[221] According to Watanabe and Yamada (2005), as of 2005 the federal law in Australia stipulates that a copy of the police interview recording as well as its translation (if made) be handed to the suspect or her/his counsel within 7 days after the police interview (p. 101).

of the translation accuracy of her/his interpreting, then the prosecution can call in the check interpreter to testify to the accuracy or inaccuracy of the translation in question. In the end, the triers of fact (the judge and the jury) can determine how the accuracy or inaccuracy may have affected the procedural justice or procedural due process to the extent that it could have influenced the decision on the substantive justice (judgment of guilt beyond reasonable doubt).

These procedures would require a few extra steps during the pre-trial phase and may invite a few extra exchanges on the translation accuracy issues in court, which, the thesis contends, would be outweighed by the following advantages:

1. Police interpreters, whether qualified (e.g. certified) or not yet sufficiently qualified, who translated accurately, will no longer become implicated by the hearsay issue, with which interpreters have nothing to do.
2. The procedure is straightforward, focusing only on the accuracy of the rendered translation, and the authentication can for the most part be conducted through the submission of affidavits.[222]
3. This will eventually eradicate the two-century-long hearsay/conduit polarity, which has implicated language interpreters who have nothing to do with hearsay but have been confined within two equally unacceptable choices: hearsay or conduit.
4. This will also eventually help enhance professionalization of police interpreting, as only those who are so qualified (e.g., certified) will be able to testify in court about the technical translation accuracy issues.

This, the thesis concludes, is also the only possible first step to protect interpreters as a third stakeholder in the judicial process and to help foster this profession to attain a position in society it deserves, just as any other respected professions such as legal or

[222] The thesis argues that since the issue is only translation accuracy, which (or a lack of which) can only be verified by any qualified check interpreter, the process does not implicate the Sixth Amendment Confrontation Clause issues coming from *Crawford v. Washington* and its progeny (see Chapter Four, Section 4.8.1).

medical professions.

The thesis concludes this chapter by re-emphasizing that in the age of available technology, knowledge, and resources, the continued use of the hearsay/conduit polarity is no longer justifiable. The introduction of mandatory audio/video-recording based *not on* the Sixth Amendment but *on* the Fifth Amendment to ensure and verify translation accuracy is, in the end, would be the only first step to help interpreters to fulfill their professional accountability, which is *accountability 2* (for accuracy) as *agent 1* (independent decision maker) who strives to be *conduit 2* (accurate translator) by also carefully remaining as *conduit 3* (one who only translates). This also is the only viable way to help professionalization of police interpreters by encouraging them to become qualified and competent, even as a result of the Pandora's Box being opened.

Chapter Eight: Conclusion

8.1 Research Summary

8.1.1 Research Objectives

The present thesis was an inquiry into the validity of the hearsay/conduit polarity based on the Sixth Amendment Confrontation Clause continuously used by U.S. courts to resolve police interpreters' hearsay issue. The polarity was created by the common law's traditional hearsay exclusion and various legal theories devised by U.S. courts to circumvent this hearsay, which, however, presents an impasse. First, interpreters are given only two equally unacceptable choices: *hearsay* or *conduit*, in addition to a potential ethical conflict with confidentiality and impartiality when asked to testify in court. Second, neither end of the polarity seemed effective for ensuring and/or verifying interpreters' translation accuracy.

So far, however, this issue had only been discussed primarily by criminal defense lawyers calling for a rigid hearsay exclusion which requires police interpreters' in-court testimony and cross-examination. They deemed language translation as fundamentally unreliable, subjective, unscientific, and replete with inaccuracy. Meanwhile, interpreting professionals remained silent, except for the two amicus briefs submitted in 2016 when *U.S. v. Aifang Ye* (9th Cir., 2015) was appealed to the U.S. Supreme Court. Even then, the two briefs' different tones reflected interpreters' ambivalence about the forced choice between hearsay and conduit. Despite the issue's impact on language interpreters, no substantial research had yet been conducted from interpreting studies' perspective. This is what the present thesis undertook.

The thesis explored two main questions: (a) what kind of hearsay circumvention theories, based on what kind of views or notions about language interpreters, the courts in the U.S. developed; and (b) how effective the current hearsay/conduit polarity was in ensuring and/or verifying police interpreters' translation accuracy and in enabling the

interpreters to fulfill their professional accountability.

8.1.2 Literature Review on Conduit, Agent, Accuracy, and Accountability

The thesis first presented an analytical review of the literature to explore how legal professionals and interpreting professionals seemed to be perceiving the thesis's three key concepts: conduit, agent, and interpreter accountability. Three semantic properties for each were deduced and analyzed in relation to Hale's (2008) five judicial interpreter roles. They were: *conduit 1* (verbatim translator), *conduit 2* (accurate translator), *conduit 3* (one who only translates); *agent 1* (independent decision-maker), *agent 2* (empowerer), *agent 3* (legal representative); and *accountability 1* (for content), *accountability 2* (for accuracy), *accountability 3* (for doing the job).

Based on the concept of a judicial interpreter as a faithful renderer contended by Hale (2008), the thesis observed that the only viable option for judicial interpreters acting as *agent 1* (independent decision-maker) seemed to be to remain only as *conduit 2* (accurate translator) and *conduit 3* (one who only translates), so their accountability would be only *accountability 2* (for accuracy), without invoking *accountability 1* (for content). Also, interpreters acting as *agent 1* (independent decision-maker) seemed to be held with *accountability 3* (for doing the job) as their conscious choice.

Consequently, existing studies on judicial interpreting, whether for court or for police, were primarily focused on two things: how interpreter's translation accuracy is compromised and how it can be improved, the former commonly conducted as forensic-linguistics-style, micro-level discourse analyses such as Berk-Seligson (1990; 2009) and Hale (2004). The present thesis, on the other hand, chose to conduct a macro-level analysis to delineate possible sociological issues underneath the hearsay/conduit polarity.

8.1.3 Approach and Methods

The research questions were explored through the theoretical framework of Ian

Mason's (2015b) argument on three kinds of power relations that take place in interpreter-mediated activities: (a) power relations between languages; (b) institutionally pre-determined power disparities; and (c) interpreters' interactional power advantage (pp. 314–316). This theoretical lens postulated by Mason (2015b) was applied macroscopically, within the Dialogic Interactionist/Discourse-in-Interaction (DI) Paradigm in interpreting studies (Pöchhacker, 2022, p. 74).

The thesis conducted exploratory research, based on court rulings collected from LexisNexis Academic (now called Nexis Uni), a court case search engine. Mixed methods were used: chronological analyses of legal theories with empirical data, and quantitative analyses with three different data operationalizations on: (a) interpreter qualifications, (b) interpreting issues, and (c) interpreters' in-court testimonies.

8.1.4 Findings

The thesis identified hearsay circumvention theories in six main categories: *present sense impression theory*, *catch-all/residual,* other *hearsay exceptions*, *agent theory*, *conduit theory*, and *agent and/or conduit theory*. All of them, however, were not only uninformed of the real nature of language interpreting but they also deprioritized accuracy over a more important agenda. This was particularly prominent with the latter three which were invented specifically for the purpose of hearsay circumvention.

The *agent theory* placed the entire burden of ensuring and/or verifying translation accuracy on the service user, i.e., the suspect, during the on-going interpreter-mediated interview, which would be impossible as the interpreter is usually the only bilingual participant in the discourse (Mason, 2015b; pp. 315–316; Santaniello, 2018, p. 97). The *conduit theory*, was hardly a legal theory, based solely on a self-authenticating circular logic. The *agent and/or conduit theory*, a fusion of these two, was created as an all-purpose hearsay circumvention tool to enable an even more expansive application.

Six possible reasons why *agent* and *conduit* became so dominant were deduced as:

(a) need to supplement accuracy with c*onduit* , (b) judges' proximity to court interpreters' image, (c) exigency, (d) need to use officer interpreters, (e) to enable evidentiary admission of interpreter-mediated statements made by victims and other witnesses, and (f) generous judicial climate during the 1980s. Accuracy seemed deprioritized over presumably more important needs, such as exigency and/or *substantive justice* (Bergman & Berman, 2013, p. 358; Blackwell & Cunningham, 2004, p. 61, fn. 17). An expansive application of the theories also followed once the floodgate opened, deprioritizing *procedural justice* (e.g., Binder, 2013, p.1129). Nevertheless, requiring police interpreters' testimonies also seemed problematic and ineffective for accuracy verification. These observations were corroborated by the thesis's three quantitative analyses the results of which were: (a) largely insufficient qualifications of the 243 police interpreters surveyed, which also was not a significant factor in the courts' evidentiary admission decisions,[223] (b) the limitations of accuracy detection and the courts' interpreting issue assessment without the use of audio/video recording, and (c) ineffectiveness of interpreters' in-court testimonies to verify accuracy unless their translation had been audio/video-recorded.

Nevertheless, a majority of the courts in the U.S. continue to use the *agent and/or conduit theory*, while the number of jurisdictions that require audio/video recording is only 29 out of all the 50 states. Possible underlying causes of this continuous impasse were explored through a macroscopic application of Ian Mason's (2015b) three types of power relations in interpreter-mediated discourse (pp. 314–316).

8.1.5 Analyses and Discussion

The thesis applied each of the three power relations contended by Mason (2015b): (a) power relations between languages; (b) institutionally pre-determined power

[223] The *t*-test presented by Table 5.5 in Chapter Five showed no significant qualification difference between those whose translations were found admissible and those who were not.

disparities; and (c) interpreters' interactional power advantage (pp. 314–316).

The analyses showed possible power relations between languages, which sacrificed the users of socially less powerful languages being forced into becoming both service users and service providers of ad hoc interpreting of substandard quality during the most upstream, critical stage of criminal investigations. In addition, the interpreter's interactional power advantage was in direct conflict with the *agent theory*, which stipulates that the service user bears responsibility for interpreter's translation, including errors. Finally, the courts' institutional power seemed to be exerted on language interpreters through their power to *define* interpreters with such terms as *hearsay*, *present sense impression*, *agent*, *conduit*, and *agent and/or conduit*, as well as the power *not to define*, particularly the most crucial term in the discussion: *conduit*.

The purpose of the elusive and expansive definition of the term *conduit* seemed to be to maintain an ample latitude for the courts to use their discretion to prioritize their agenda: *substantive justice* over *procedural justice* (accuracy) and approval of the use of ad hoc interpreters to pursue substantive justice, particularly of officer interpreters. This tendency was observed in the examination of the types of offenses and the interpreter profiles in charge of those offenses. The examination also indicated that even when a qualified interpreter may have rendered an accurate translation, it may have been ruled as hearsay, i.e., not conduit (accurate), if the court's discretion tilted in favor of procedural justice, sacrificing a qualified interpreter who is without a means of self-protection, i.e., audio/video-recording.

Thus, by contending that in the age of available technology, knowledge, and resources, the continued use of the hearsay/conduit polarity is no longer justifiable, the thesis proposed the introduction of mandatory audio/video-recording based not on the Sixth Amendment but on the Fifth Amendment to ensure and verify police interpreters' translation accuracy. This would be the only first step to help interpreters to fulfill their professional accountability, which is *accountability 2* (for accuracy) as *agent 1*

(independent decision maker) who strives to be *conduit 2* (accurate translator) by also carefully remaining as *conduit 3* (one who only translates). Introduction of audio/video-recording would also help professionalization of police interpreters by encouraging them to become better qualified and more competent with the Pandora's box being opened.

8.2 Thesis's Contributions

The present thesis was most probably the first comprehensive empirical research conducted on the hearsay issue of police interpreters in the U.S., not from criminal defense lawyers' perspective, but from interpreting studies' standpoint. This issue had previously been discussed primarily by lawyers (e.g., Bolitho, 2019; Klubok, 2016; Kracum, 2014; Ross, 2014; Xu, 2014) who focused on the need to require interpreters' in-court testimony and cross-examination to scrutinize unreliable foreign language translation. The present thesis, on the other hand, attempted to uncover and delineate what seemed to be lying underneath this two-century-long issue and made a proposal to end the current impasse while also protecting language interpreters as a third stakeholder.

Despite the issue's cruciality that constantly implicates foreign language interpreters in the hearsay/conduit dichotomic dilemma, interpreting professionals (both practitioners and researchers) seem to have been largely uninformed about this issue, whether uninterested or resigned. While professional interpreters would never identify themselves with putative bilinguals such as the majority of the 243 individuals who appeared in the present thesis, the reality remains that such individuals are and will continue to be called by the courts in the U.S. as *interpreters* who are also deemed as sufficiently and legitimately *conduit*, whom the courts, and perhaps society in general, also regard as "replaceable by any available bilingual" (Mason, 2015b, p. 315), constantly eroding the parameters of interpreting profession.

Professional interpreters strive to achieve accuracy as *conduit 2* (accurate translator) within the highly limited boundaries allowed to them with such accuracy

codes as the NAJIT's (NAJIT, 2016b), trying also to stay within the rigid boundaries as *conduit 3* (one who only translates), the norm supposedly expected also by the courts. The same courts, however, also continuously used the same term *conduit* to refer to the majority of the 243 putatively bilingual individuals the present thesis surveyed, with its definition made elusive and expansive, making it into a legal fiction (Del Mar & Twining, 2015; Laster & Taylor, 1994; Wacks, 2021), covertly created as a fourth semantic property of conduit (*conduit 4*). This double-standard continues to erode the notion of *accuracy*, which is the very core of interpreting profession (Pöchhacker, 2022, p. 141; Seleskovitch, 1968/1998, p. 89), deprioritized over the courts' much higher agenda.

The present thesis was an attempt to empirically delineate the actual facts and reality concealed by the hearsay/conduit polarity, examining its findings through Mason's (2015b) argument on three power relations in interpreter-mediated discourse. The thesis empirically demonstrated that the current impasse could not be resolved if lawyers continued to treat the status quo only as a hearsay/conduit polarity between expansive conduit application or requiring police interpreters' in-court testimony and cross-examination, because neither could ensure nor verify translation accuracy. The thesis contended that this issue could be resolved only if a shift was made from the Sixth Amendment Confrontation Clause due process to the Fifth Amendment due process. The Fifth Amendment protects criminal defendants from self-incrimination, including protection from verballing that could also happen through interpreters' inaccurate translations or careless, if not aggressive, clarifications and/or confirmations.

The thesis empirically showed that the only way to verify their occurrences was the introduction of mandatory audio/video-recording, and that doing so was also crucial for protecting interpreters. The very core of interpreters' professional accountability rests upon faithful, accurate translation, and the thesis demonstrated that the only way to verify their translation accuracy was also through mandatory audio/video-recording, which, the thesis argued, would also protect them from a potential hearsay allegation or

from testifying as an eyewitness for the prosecution, because the recording would assist them to testify only on accuracy issues without creating a possible ethical conflict.

8.3 Implications for Future Research

In this final section, the thesis mentions several important areas of possible future research, which are:

1. Forensic discourse analytic research to create a base for police interpreter training following Pandora's box being opened,
2. Collaborative research with the courts and other stake-holding parties on practical implementation issues, and
3. Further sociological inquiries into possible power execution on putatively bilingual officers who work as interpreters.

8.3.1 Forensic Discourse Analytic Research for Police Interpreter Training

The first one, forensic discourse analytic research for interpreter training, is what the thesis deems is the most urgent, as was evinced by what the thesis observed in *Commonwealth v. Lujan* (Massachusetts, 2018), discussed in Chapter Seven, Section 7.2.3, which showed an unfortunate consequence of the use of an untrained interpreter.

As was reviewed in Chapter Two, relatively a large volume of literature already exists on contrastive discourse analyses of court interpreting (e.g. Berk-Seligson, 1990; Hale, 2004). In police interpreting, however, primarily due to its non-public nature, the amount of similar literature is still insufficient except for some isolated case studies on accuracy distortions caused by the interpreters' incompetence (e.g., Filipović & Vergara, 2018). Nakane (2014) was an extensive discourse analysis but focused more on interactional features of interpreters' linguistic behavior rather than on how the interpreters' verbal behavior affected the evidential value of the obtained statements (p. 28, p. 219). Hale et al. (2019) was the first large-scale comprehensive research on trained

and untrained police interpreters through an experiment, though its primary purpose was to statistically demonstrate their differences, while Hale et al. (2020) described more detailed concrete contrastive examples of the participants' verbal behavior.

The next step, therefore, would be to systematically describe such differences in the verbal behavior between trained and untrained interpreters, and demonstrate in what way the trained interpreters abide by the code of ethics, which the untrained interpreters fail to do, and why and how their behaviors influence the evidential value of the translated statements. Such discourse analytic research would require collaboration between interpreting researchers and forensic linguists, perhaps further paving forensic-linguistic-style interpreting studies, which seems to be urgently needed.

Whatever each jurisdiction's view is on the validity of the continued use of law enforcement officers as interpreters, the reality is that they are currently interpreting for such offenses as murder, rape, and drug trafficking, as was shown in Chapter Six, Section 6.3. While a few of those surveyed by the present thesis were actually certified, and perhaps some of the surveyed officer interpreters may have rendered accurate translations, what the thesis also demonstrated with *Commonwealth v. Lujan* (Massachusetts, 2018) was insufficient training and even the awareness of the need for training on the part of the employer, i.e., the police department.

Training is crucial, particularly on various ethical and protocol related issues, even in such matters as turn-taking, clarification, and confirmation strategies, as were specifically pointed out by Hale et al. (2019; 2020). Thus, what seems urgently needed is systematic discourse analytic research which can be used as an empirical base for future police interpreter training.

8.3.2 Collaboration with Courts and Other Stake-Holding Parties

The second area, collaborative research with the courts and other stake-holding parties on practical implementation issues, would be more like a collaborative project

that would require surveys, interviews, as well as tests and experiments, for which participation of interpreting researchers would also be indispensable. The thesis made a suggestion on an alternative method in Chapter Seven, Section 7.3.2, but an actual implementation of such new methods would require collaboration among stakeholders, e.g., courts, law enforcement, defense lawyers, interpreters, interpreting service providers, particularly telephone/online interpreting service providers, and researchers.

For example, while telephone interpreting seems to be becoming indispensable, Table 5.15 in Chapter Five, Section 5.5 also showed that none of the surveyed telephone interpreters testified in court. With the thesis's proposed method, a check interpreter will listen to the recording, and if the translation is accurate, will submit an affidavit authenticating its accuracy. On the other hand, if an accuracy issue is raised by the defendant, and if the telephone interpreter is sufficiently qualified (e.g., certified) to testify about the accuracy issue but lives afar, could she/he testify online? Would there be any legal, technological, and other practical issues that need to be resolved?

Also, the proposed method would require recording of all the participants' voices with clear acoustics. Not only the interpreter's English translations, which often seem to be given more weight for the production of an official transcription in English (e.g., Watanabe & Yamada, 2005, p. 106), but also the interpreter's translations and the witness's responses in the foreign language must be clearly recorded. This may sound not so difficult to implement, but in practice, many issues arise such as voice overlaps (Hale et al., 2022, p. 266; Ito, 2016, p. 223, p.225), sudden changes in the interpreting mode from consecutive to simultaneous to manage interaction issues (Hale et al., 2020, p. 221; Hale et al., 2022, p. 266). Furthermore, recording failures do happen (*R v. Khairi*, 2012, pp. 62–63), as was mentioned in Chapter Five, Section 5.6.4. In this case, the police asked the interpreter to testify in court, against his ethical principles, as a prosecutorial witness to the suspect's murder confession (*R v. Khairi*, 2012, p. 68). What should be the agreed-upon rules among all the stakeholders regarding similar situations?

Thus, just on the issue of recording, collaborative research would seem crucial .

In other jurisdictions in the world, such collaborative research already exists, e.g., Kredens (2016) and Monteoliva-Garcia (2020) in the U.K, mentioned in Chapter Two, Section 2.3.8. Also, publications such as *Recommended national standards for working with interpreters and courts and tribunals* (Judicial Council, 2022) in Australia is a product of a long-term collaboration between interpreting professionals (researchers and practitioners) and the judiciary.[224]

8.3.3 Sociological Inquiries into Power in the Use of Officer Interpreters

The thesis briefly touched upon the issue of law enforcement officers possibly forced into having to translate for the interpreter-requiring interrogations simply because they spoke the language. In Chapter Six, Section 6.1.1, the thesis also noted one example of a New York police officer who was punished for not obeying the order to serve as an interpreter in a homicide interrogation for which he felt unqualified, which was mentioned in Berk-Seligson (2000). As to whether this was a rare case or a relatively representative of many similar situations which, however, do not seem to surface for attention is yet unknown.

In the field of interpreting studies, a bulk of research already exists on non-professional interpreting (e.g., Antonini et al., 2017; also see Antonini, 2015; Martínez-Gómez, 2020), including language brokering by children (e.g., Bauer, 2017). Martínez-Gómez (2020) pointed out that while there are studies which highlighted the advantages

[224] As the present thesis noted in Chapter One, Section 1.4.1 and Chapter Four, Sections 4.1.2 and 4.1.3, the U.K. and Australia are two major common-law countries which adopted mandatory audio/video-recording of police interviews already in the 1980s and 1990s. It may not be a coincidence that such collaborative studies as mentioned above are found in the U.K. and Australia, but not in the U.S., not to speak of Japan, which both lag behind with mandatory audio/video-recording. It would seem, though not verified, that jurisdictions which require complete mandatory audio/video-recording also seem to provide a more open climate that helps facilitate empirical research in the area of police interpreting, perhaps also possibly enabling easier access to information, including a possible access to authentic data (e.g., Meruborun jiken, 2012; Nakane, 2014, Watanabe & Yamada, 2005).

of non-professional interpreters such as their cultural competence as well as frequent closeness to privileged information, many of the studies also tended to focus on the competence and neutrality issues of untrained interpreters (pp. 371–373). Also, while Antonini (2015) noted that the use of untrained interpreters in healthcare and legal settings is strictly disallowed in California (p. 278), perhaps this referred more to court interpreting, as what the present thesis revealed was that even in California, the use of bilingual officers as interpreters was an approved (or condoned) practice, while their qualifications were often rather unclear or questionable.

More importantly perhaps, what the present thesis observed was a possible power execution, possibly in the form of tacit coercion, exercised by those in a stronger position, such as an employer or a superior, on those in a subordinate position, to do ad hoc interpreting just because they spoke the language or spoke the language better than others. Even in ordinary, non-confrontational situations, e.g., in regular workplaces, such requests or orders may not always be welcomed by those who are being asked frequently or regularly. As Dolmaya (2020) pointed out, many of the non-professional interpreters are, in fact, do not always volunteer but are "volunteered" by others (p. 154), including their employers or superiors. Thus, how such interpreting assignments are handled within police organizations, including whether any clear systems, policies, and rules exist on such matters as qualifications and renumerations would seem to deserve an inquiry. In addition, how these officer interpreters really feel about their assignments would merit a possible research attention to further explore power-related factors in this widespread practice.

To conclude, police interpreting, particularly the practice in the U.S., not to speak of the practice in Japan, is an area that awaits further empirical exploration, for which purpose, the present thesis hopefully made meaningful contributions.

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Appendix 1: List of 228 Criminal Cases (Chronological by Jurisdictions)

State Courts (177 Cases): by Circuits

First Circuit States:

Massachusetts (5 Cases)

1. *Commonwealth v. Vose,* 157 Mass. 393, 32 N.E. 355, 1892 Mass. LEXIS 83 (Supreme Judicial Court of Massachusetts November 23, 1892, Decided)
2. *Commonwealth v. Storti,* 177 Mass. 339, 58 N.E. 1021, 1901 Mass. LEXIS 642 (Supreme Judicial Court of Massachusetts, Suffolk January 2, 1901)
3. *Commonwealth v. Santiago,* 87 Mass. App. Ct. 1129, 32 N.E.3d 368, 2015 Mass. App. Unpub. LEXIS 618 (Appeals Court of Massachusetts June 11, 2015, Entered)
4. *Commonwealth v. AdonSoto,* 475 Mass. 497, 58 N.E.3d 305, 2016 Mass. LEXIS 625 (Supreme Judicial Court of Massachusetts September 16, 2016, Decided)
5. *Commonwealth v. Lujan,* 93 Mass. App. Ct. 95, 99 N.E.3d 806, 2018 Mass. App. LEXIS 38, 2018 WL 1597916 (Appeals Court of Massachusetts April 3, 2018, Decided)

Rhode Island (4 Cases)

1. *State v. Terline,* 23 R.I. 530, 51 A. 204, 1902 R.I. LEXIS 147 (Supreme Court of Rhode Island, Providence January 28, 1902, Decided)
2. *State v. Epstein,* 25 R.I. 131, 55 A. 204, 1903 R.I. LEXIS 36 (Supreme Court of Rhode Island, Providence April 22, 1903, Decided)
3. *State v. Jaiman,* 850 A.2d 984, 2004 R.I. LEXIS 132 (Supreme Court of Rhode Island June 22, 2004, Opinion Filed)
4. *State v. Feliciano,* 901 A.2d 631, 2006 R.I. LEXIS 140 (Supreme Court of Rhode

Island July 14, 2006, Filed)

Second Circuit States:

New York (11 Cases)

1. *People v. Randazzio,* 194 N.Y. 147, 87 N.E. 112, 1909 N.Y. LEXIS 1267, 1 N.Y. Civ. Proc. Rep. (n.s.) 227 (Court of Appeals of New York January 26, 1909, Decided)
2. *People v. Fisher,* 182 A.D. 301, 169 N.Y.S. 729, 1918 N.Y. App. Div. LEXIS 7870 (Supreme Court of New York, Appellate Division, First Department March 8, 1918)
3. *People v. Chin Sing,* 242 N.Y. 419, 152 N.E. 248, 1926 N.Y. LEXIS 1000 (Court of Appeals of New York May 4, 1926, Decided)
4. *People v. Sanchez,* 125 Misc. 2d 394, 479 N.Y.S.2d 602, 1984 N.Y. Misc. LEXIS 3420 (Supreme Court of New York, Kings County June 6, 1984)
5. *People v. Perez,* 128 Misc. 2d 31, 488 N.Y.S.2d 367, 1985 N.Y. Misc. LEXIS 2871 (Supreme Court of New York, Criminal Term, Kings County April 16, 1985)
6. *People v. Wing Choi Lo,* 150 Misc. 2d 980, 570 N.Y.S.2d 776, 1991 N.Y. Misc. LEXIS 292 (Supreme Court of New York, New York County April 16, 1991)
7. *People v. Romero,* 78 N.Y.2d 355, 581 N.E.2d 1048, 575 N.Y.S.2d 802, 1991 N.Y. LEXIS 4214 (Court of Appeals of New York October 22, 1991, Decided)
8. *People v. Generoso,* 219 A.D.2d 670, 631 N.Y.S.2d 722, 1995 N.Y. App. Div. LEXIS 9849 (Supreme Court of New York, Appellate Division, Second Department September 18, 1995, Decided)
9. *People v. Xiaojun Wang*, 190 Misc. 2d 815, 741 N.Y.S.2d 646, 2002 N.Y. Misc. LEXIS 198 (City Court of New York, Poughkeepsie March 15, 2002, Decided)
10. *People v. Morel,* 8 Misc. 3d 67, 798 N.Y.S.2d 315, 2005 N.Y. Misc. LEXIS 1041, 2005 NY Slip Op 25211 (Supreme Court of New York, Appellate Term, Second

Department May 24, 2005, Decided)

11. *People v Quan Hong Ye,* 67 A.D.3d 473, 889 N.Y.S.2d 556, 2009 N.Y. App. Div. LEXIS 7911, 2009 NY Slip Op 8064 (Supreme Court of New York, Appellate Division, First Department November 10, 2009, Entered)

Connecticut (7 Cases)

1. *State v. Noyes,* 36 Conn. 80, 1869 Conn. LEXIS 11 (Supreme Court of Errors of Connecticut, New London and Windham March Term, 1869, Decided)

3. *State v. Rosa,* 170 Conn. 417, 365 A.2d 1135, 1976 Conn. LEXIS 1035 (Supreme Court of Connecticut March 23, 1976, Decided)

3. *State v. Morales,* 78 Conn. App. 25, 826 A.2d 217, 2003 Conn. App. LEXIS 309 (Appellate Court of Connecticut July 15, 2003, Decided)

4. *State v. Torres,* 85 Conn. App. 303, 858 A.2d 776, 2004 Conn. App. LEXIS 409 (Appellate Court of Connecticut September 28, 2004, Officially Released)

5. *State v. Colon,* 272 Conn. 106, 864 A.2d 666, 2004 Conn. LEXIS 527 (Supreme Court of Connecticut December 28, 2004, Officially Released)

6. *State v. Cooke,* 89 Conn. App. 530, 874 A.2d 805, 2005 Conn. App. LEXIS 234 (Appellate Court of Connecticut June 14, 2005, Officially Released)

7. *State v. Garcia,* 299 Conn. 39, 7 A.3d 355, 2010 Conn. LEXIS 411 (Supreme Court of Connecticut November 16, 2010, Officially Released)

Third Circuit States:

Pennsylvania (3 Cases)

1. *Commonwealth v. Brown,* 66 Pa. Super. 519, 1917 Pa. Super. LEXIS 309 (Superior Court of Pennsylvania April 16, 1917, Decided)

2. *Commonwealth v. Pava,* 268 Pa. 520, 112 A. 103, 1920 Pa. LEXIS 729 (Supreme Court of Pennsylvania December 31, 1920)

3. *Commonwealth v. Carrillo,* 2013 Pa. Super. Unpub. LEXIS 3710 (Superior Court of Pennsylvania September 9, 2013, Filed)

New Jersey (1 Case)

1. *State v. Mangino,* 108 N.J.L. 475, 156 A. 430, 1931 N.J. LEXIS 279 (Court of Errors and Appeals of New Jersey October 19, 1931, Decided)

Delaware (1 Case)

1. *Diaz v. State,* 743 A.2d 1166, 1999 Del. LEXIS 446 (Supreme Court of Delaware December 16, 1999, Decided)

Fourth Circuit States:

Maryland (1 Case)

1. *Taylor v. State,* 226 Md. App. 317, 130 A.3d 509, 2016 Md. App. LEXIS 1 (Court of Special Appeals of Maryland January 27, 2016, Filed)

North Carolina (3 Cases)

1. *State v. Felton,* 330 N.C. 619, 412 S.E.2d 344, 1992 N.C. LEXIS 60 (Supreme Court of North Carolina January 27, 1992, Filed)
2. *State v. Ysut Mlo,* 335 N.C. 353, 440 S.E.2d 98, 1994 N.C. LEXIS 8 (Supreme Court of North Carolina January 28, 1994, Decided)
3. *State v. Umanzor,* 2009 N.C. App. LEXIS 1308 (Court of Appeals of North Carolina August 18, 2009, Filed)

Fifth Circuit States:

Texas (18 Cases)

1. *Cervantes v. State,* 52 Tex. Crim. 82, 105 S.W. 499, 1907 Tex. Crim. App. LEXIS

267 (Court of Criminal Appeals of Texas November 13, 1907, Decided)

2. *Mares v. State,* 71 Tex. Crim. 303, 158 S.W. 1130, 1913 Tex. Crim. App. LEXIS 437 (Court of Criminal Appeals of Texas June 25, 1913, Decided)

3. *Boyd v. State,* 78 Tex. Crim. 28, 180 S.W. 230, 1915 Tex. Crim. App. LEXIS 169 (Court of Criminal Appeals of Texas November 3, 1915, Decided)

4. *Turner v. State,* 89 Tex. Crim. 615, 232 S.W. 801, 1921 Tex. Crim. App. LEXIS 581 (Court of Criminal Appeals of Texas June 22, 1921, Decided)

5. *Savedra v. State,* 1997 Tex. App. LEXIS 4127, 1997 WL 445800 (Court of Appeals of Texas, Seventh District, Amarillo August 6, 1997, Decided)

6. *Gomez v. State,* 49 S.W.3d 456, 2001 Tex. App. LEXIS 3240 (Court of Appeals of Texas, First District, Houston May 17, 2001, Opinion Issued)

7. *Cassidy v. State,* 149 S.W.3d 712, 2004 Tex. App. LEXIS 4519 (Court of Appeals of Texas, Third District, Austin May 20, 2004, Filed)

8. *Ramirez v. State,* 2007 Tex. App. LEXIS 8349, 2007 WL 3072005 (Court of Appeals of Texas, Fourteenth District, Houston October 23, 2007, Memorandum Opinion Filed)

9. *Saavedra v. State,* 2008 Tex. App. LEXIS 25 (Court of Appeals of Texas, Fifth District, Dallas January 3, 2008, Opinion Filed)

10. *Pitts v. State,* 2008 Tex. App. LEXIS 2796, 2008 WL 1747664 (Court of Appeals of Texas, First District, Houston April 17, 2008, Opinion Issued)

11. *Driver v. State,* 2009 Tex. App. LEXIS 778, 2009 WL 276539 (Court of Appeals of Texas, First District, Houston February 5, 2009, Opinion Issued)

12. *Saavedra v. State,* 297 S.W.3d 342, 2009 Tex. Crim. App. LEXIS 1560 (Court of Criminal Appeals of Texas November 4, 2009, Delivered)

13. *Diaz v. State,* 2010 Tex. App. LEXIS 194, 2010 WL 109703 (Court of Appeals of Texas, Eighth District, El Paso January 13, 2010, Decided)

14. *Saavedra v. State,* 2010 Tex. App. LEXIS 3878 (Court of Appeals of Texas, Fifth

District, Dallas May 24, 2010, Opinion Filed)

15. *Moland v. State,* 2012 Tex. App. LEXIS 1062, 2012 WL 403885 (Court of Appeals of Texas, First District, Houston February 9, 2012, Opinion Issued)

16. *Trevizo v. State,* 2014 Tex. App. LEXIS 652, 2014 WL 260591 (Court of Appeals of Texas, Eighth District, El Paso January 22, 2014, Decided)

17. *Song v. State,* 2015 Tex. App. LEXIS 1493, 2015 WL 631163 (Court of Appeals of Texas, Eighth District, El Paso February 13, 2015, Decided)

18. *Palomo v. State,* 2015 Tex. App. LEXIS 3131 (Court of Appeals of Texas, Sixth District, Texarkana April 1, 2015, Decided)

Louisiana (1 Case)

1. *State v. Hamilton,* 42 La. Ann. 1204, 8 So. 304, 1890 La. LEXIS 625 (Supreme Court of Louisiana December, 1890)

Sixth Circuit States:

Michigan (1 Case)

1. *People v. Jackson,* 292 Mich. App. 583, 808 N.W.2d 541, 2011 Mich. App. LEXIS 891 (Court of Appeals of Michigan May 17, 2011, Decided)

Ohio (3 Cases)

1. *State v. Jian Yan Wu,* 1997 Ohio App. LEXIS 2228 (Court of Appeals of Ohio, Twelfth Appellate District, Butler County May 27, 1997, Decided)

2. *State v. Rivera-Carrillo,* 2002-Ohio-1013, 2002 Ohio App. LEXIS 1038 (Court of Appeals of Ohio, Twelfth Appellate District, Butler County March 11, 2002, Decided)

3. *State v. Ingram,* 2007-Ohio-7136, 2007 Ohio App. LEXIS 6278 (Court of Appeals of Ohio, Tenth Appellate District, Franklin County December 31, 2007, Rendered)

Kentucky (2 Cases)

1. *Fletcher v. Commonwealth,* 123 Ky. 571, 96 S.W. 855, 1906 Ky. LEXIS 278 (Court of Appeals of Kentucky October 16, 1906, Decided)
2. *Lopez v. Commonwealth,* 459 S.W.3d 867, 2015 Ky. LEXIS 1616 (Supreme Court of Kentucky May 14, 2015, Rendered)

Seventh Circuit States:

Illinois (5 Cases)

People v. Torres, 18 Ill. App. 3d 921, 310 N.E.2d 780, 1974 Ill. App. LEXIS 2915 (Appellate Court of Illinois, First District, Fifth Division March 29, 1974, Filed)

People v. Gomez, 141 Ill. App. 3d 935, 491 N.E.2d 68, 1986 Ill. App. LEXIS 2000, 96 Ill. Dec. 254 (Appellate Court of Illinois, First District, Fifth Division March 14, 1986, Filed)

People v. Villagomez, 2000 Ill. App. LEXIS 220 (Appellate Court of Illinois, First District, Fifth Division March 31, 2000, Decided)

People v. Villagomez, 313 Ill. App. 3d 799, 730 N.E.2d 1173, 2000 Ill. App. LEXIS 415, 246 Ill. Dec. 708 (Appellate Court of Illinois, First District, Fifth Division May 26, 2000, Decided)

People v. Uriostegui, 2016 IL App (1st) 140835-U, 2016 Ill. App. Unpub. LEXIS 2456 (Appellate Court of Illinois, First District, Fifth Division November 18, 2016, Decided)

Indiana (1 Case)

1. *Palacios v. State,* 926 N.E.2d 1026, 2010 Ind. App. LEXIS 56 (Court of Appeals of IndianaJanuary 26, 2010, Filed)

Wisconsin (4 Cases)

1. *State v. Robles,* 157 Wis. 2d 55, 458 N.W.2d 818, 1990 Wisc. App. LEXIS 553 (Court of Appeals of Wisconsin June 13, 1990, Decided)
2. *State v. Arroyo,* 166 Wis. 2d 74, 479 N.W.2d 549, 1991 Wisc. App. LEXIS 1604 (Court of Appeals of Wisconsin December 3, 1991, Decided)
3. *State v. Fuentes,* 218 Wis. 2d 165, 578 N.W.2d 209, 1998 Wisc. App. LEXIS 336 (Court of Appeals of Wisconsin, District Four March 12, 1998, Released)
4. *State v. Castillo-Dominguez,* 2017 WI App 30, 375 Wis. 2d 326, 897 N.W.2d 67, 2017 Wisc. App. LEXIS 213 (Court of Appeals of Wisconsin, District Four March 30, 2017, Filed)

Eighth Circuit States:

North Dakota (1 Case)

1. *State v. Mueller,* 40 N.D. 35, 168 N.W. 66, 1918 N.D. LEXIS 64 (Supreme Court of North Dakota May 9, 1918, Opinion Filed)

Nebraska (3 Cases)

1. *Garcia v. State,* 159 Neb. 571, 68 N.W.2d 151, 1955 Neb. LEXIS 156 (Supreme Court of Nebraska January 14, 1955, Filed)
2. *State v. Arevalo-Martinez,* 2006 Neb. App. LEXIS 72, 2006 WL 1163961 (Nebraska Court of Appeals May 2, 2006, Filed)
3. *State v. Bedolla,* 2018 Neb. App. LEXIS 48, 2018 WL 1304919 (Nebraska Court of AppealsMarch 13, 2018, Filed)

Minnesota (3 Cases)

1. *State v. Mitjans,* 408 N.W.2d 824, 1987 Minn. LEXIS 781 (Supreme Court of Minnesota June 26, 1987, Filed)

2. *In re Welfare of A.X.T.*, 2008 Minn. App. Unpub. LEXIS 649, 2008 WL 2246120 (Court of Appeals of Minnesota June 3, 2008, Filed)

3. *State v. Lopez-Ramos,* 913 N.W.2d 695, 2018 Minn. App. LEXIS 199, 2018 WL 1788057 (Court of Appeals of Minnesota April 16, 2018, Filed

Iowa (2 Cases)

1. *State v. Powers,* 181 Iowa 452, 164 N.W. 856, 1917 Iowa Sup. LEXIS 267 (Supreme Court of Iowa, Des Moines October, 1917, Decided)

2. *State v. Venegas,* 2005 Iowa App. LEXIS 481 (Court of Appeals of Iowa June 15, 2005, Filed)

Missouri (3 Cases)

1. *State v. Chyo Chiagk,* 92 Mo. 395, 4 S.W. 704, 1887 Mo. LEXIS 233 (Supreme Court of Missouri April, 1887, Decided)

2. *State v. Randolph,* 698 S.W.2d 535, 1985 Mo. App. LEXIS 4234 (Court of Appeals of Missouri, Eastern District, Division Four April 30, 1985)

3. *State v. Spivey,* 710 S.W.2d 295, 1986 Mo. App. LEXIS 3873 (Court of Appeals of Missouri, Eastern District, Division Four March 25, 1986)

Arkansas (1 Case)

1. *Barron-Gonzalez v. State,* 2013 Ark. App. 120, 426 S.W.3d 508, 2013 Ark. App. LEXIS 121, 2013 WL 623041 (Court of Appeals of Arkansas, Division Three February 20, 2013, Opinion Delivered)

Ninth Circuit States:

Hawaii (2 Cases)

1. *Provisional Gov't of Hawaiian Islands v. Hering,* 9 Haw. 181, 1893 Haw. LEXIS 65

(Supreme Court of Hawaii July 24, 1893, Decision)

2. *State v. Huynh,* 2011 Haw. App. LEXIS 682 (Intermediate Court of Appeals of Hawai'i June 29, 2011, Filed

Alaska (1 Case)

1. *Cruz-Reyes v. State,* 74 P.3d 219, 2003 Alas. App. LEXIS 146 (Court of Appeals of Alaska July 25, 2003, Decided)

Idaho (1 Case)

1. *State v. Fong Loon,* 29 Idaho 248, 158 P. 233, 1916 Ida. LEXIS 70 (Supreme Court of Idaho June 15, 1916, Decided)

Montana (1 Case)

1. *Territory v. Big Knot on Head,* 6 Mont. 242, 11 P. 670, 1886 Mont. LEXIS 46 (Supreme Court of Montana August, 1886, Decided)

Nevada (3 Cases)

1. *State v. Buster,* 23 Nev. 346, 47 P. 194, 1896 Nev. LEXIS 30 (Supreme Court of Nevada October, 1896, Decided)

2. *Baltazar-Monterrosa v. State,* 122 Nev. 606, 137 P.3d 1137, 2006 Nev. LEXIS 76, 122 Nev. Adv. Rep. 56 (Supreme Court of Nevada July 13, 2006, Decided)

3. *Newberg v. State,* 2013 Nev. Unpub. LEXIS 881, 2013 WL 3307777 (Supreme Court of Nevada April 25, 2013, Filed)

Arizona (6 Cases)

1. *Indian Fred v. State,* 36 Ariz. 48, 282 P. 930, 1929 Ariz. LEXIS 99 (Supreme Court of Arizona December 16, 1929, Filed.)

2. *State v. Rivera,* 94 Ariz. 45, 381 P.2d 584, 1963 Ariz. LEXIS 268 (Supreme Court of Arizona May 15, 1963)
3. *State v. Terrazas,* 162 Ariz. 357, 783 P.2d 803, 1989 Ariz. App. LEXIS 211, 40 Ariz. Adv. Rep. 34 (Court of Appeals of Arizona, Division One, Department B August 8, 1989)
4. *State v. Tinajero,* 188 Ariz. 350, 935 P.2d 928, 1997 Ariz. App. LEXIS 3, 233 Ariz. Adv. Rep. 36 (Court of Appeals of Arizona, Division One, Department B January 9, 1997, Filed)
5. *State v. Munoz,* 2010 Ariz. App. Unpub. LEXIS 597, 2010 WL 1729483 (Court of Appeals of Arizona, Division One, Department A April 29, 2010, Filed)
6. *State v. Zamora,* 2018 Ariz. App. Unpub. LEXIS 310, 2018 WL 1078464 (Court of Appeals of Arizona, Division One February 27, 2018, Filed)

Washington (8 Cases)

1. *State v. Lopez,* 29 Wn. App. 836, 631 P.2d 420, 1981 Wash. App. LEXIS 2486 (Court of Appeals of Washington, Division One July 13, 1981)
2. *State v. Huynh,* 49 Wn. App. 192, 742 P.2d 160, 1987 Wash. App. LEXIS 4125 (Court of Appeals of Washington, Division One August 31, 1987, Filed)
3. *State v. Garcia-Trujillo,* 89 Wn. App. 203, 948 P.2d 390, 1997 Wash. App. LEXIS 2088 (Court of Appeals of Washington, Division One December 18, 1997, Filed)
4. *State v. Bernal,* 1999 Wash. App. LEXIS 37 (Court of Appeals of Washington, Division One January 11, 1999, Filed)
5. *State v. Castro,* 2003 Wash. App. LEXIS 1235 (Court of Appeals of Washington, Division Two June 24, 2003, Filed)
6. *State v. Gonzalez-Hernandez,* 122 Wn. App. 53, 92 P.3d 789, 2004 Wash. App. LEXIS 1265 (Court of Appeals of Washington, Division Two June 22, 2004, Filed)

7. *State v. Gonzalez-Hernandez,* 122 Wn. App. 53, 92 P.3d 789, 2004 Wash. App. LEXIS 1265 (Court of Appeals of Washington, Division Two June 22, 2004, Filed)
8. *State v. Morales,* 173 Wn.2d 560, 269 P.3d 263, 2012 Wash. LEXIS 82, 2012 WL 243576 (Supreme Court of WashingtonJanuary 26, 2012, Filed)

Oregon (8 Cases)

1. *State v. Letterman,* 47 Ore. App. 1145, 616 P.2d 505, 1980 Ore. App. LEXIS 3270, 12 A.L.R.4th 1009 (Court of Appeals of Oregon August 25, 1980)
2. *Alcazar v. Hill,* 195 Ore. App. 502, 98 P.3d 1121, 2004 Ore. App. LEXIS 1258 (Court of Appeals of Oregon October 6, 2004, Filed)
3. *State v. Rodriguez-Castillo,* 210 Ore. App. 479, 151 P.3d 931, 2007 Ore. App. LEXIS 119 (Court of Appeals of Oregon January 24, 2007, Filed)
4. *State v. Gonzales-Gutierrez,* 216 Ore. App. 97, 171 P.3d 384, 2007 Ore. App. LEXIS 1616 (Court of Appeals of Oregon November 7, 2007, Filed)
5. *State v. Rodriguez-Castillo,* 345 Ore. 39, 188 P.3d 268, 2008 Ore. LEXIS 436 (Supreme Court of Oregon July 3, 2008, Filed)
6. *State v. Montoya-Franco,* 250 Ore. App. 665, 282 P.3d 939, 2012 Ore. App. LEXIS 782, 97 A.L.R.6th 817, 2012 WL 2405192 (Court of Appeals of Oregon June 27, 2012, Filed)
7. *State v. Ibarra-Ruiz,* 250 Ore. App. 656, 282 P.3d 934, 2012 Ore. App. LEXIS 783, 2012 WL 2404956 (Court of Appeals of Oregon June 27, 2012, Filed)
8. *State v. Ambriz-Arguello,* 285 Ore. App. 583, 397 P.3d 547, 2017 Ore. App. LEXIS 628, 2017 WL 2152911 (Court of Appeals of Oregon May 17, 2017, Decided)

California (44 Cases)

1. *People v. Ah Yute,* 54 Cal. 89, 1880 Cal. LEXIS 2 (Supreme Court of California

January 1880)

2. *People v. Lee Fat,* 54 Cal. 527, 1880 Cal. LEXIS 127 (Supreme Court of California January 1880)

3. *People v. Ah Yute,* 56 Cal. 119, 1880 Cal. LEXIS 361 (Supreme Court of California, Department One July, 1880)

4. *People v. Lee Ah Yute,* 60 Cal. 95, 1882 Cal. LEXIS 406 (Supreme Court of California February 24, 1882)

5. *People v. John,* 137 Cal. 220, 69 P. 1063, 1902 Cal. LEXIS 531 (Supreme Court of California, Department Two September 2, 1902)

6. *People v. Lewandowski,* 143 Cal. 574, 77 P. 467, 1904 Cal. LEXIS 861 (Supreme Court of California, Department One June 15, 1904)

7. *People v. Petruzo,* 13 Cal. App. 569, 110 P. 324, 1910 Cal. App. LEXIS 144 (Court of Appeal of California, Third Appellate District June 13, 1910, Decided)

8. *People v. Luis,* 158 Cal. 185, 110 P. 580, 1910 Cal. LEXIS 355 (Supreme Court of California August 11, 1910)

9. *People v. Ong Git,* 23 Cal. App. 148, 137 P. 283, 1913 Cal. App. LEXIS 171 (Court of Appeal of California, First Appellate District November 3, 1913, Decided)

10. *People v. Jaramillo,* 137 Cal. App. 232, 30 P.2d 427, 1934 Cal. App. LEXIS 842 (Court of Appeal of California, First Appellate District, Division Two March 7, 1934, Decided)

11. *People v. Johnson,* 46 Cal. App. 3d 701, 120 Cal. Rptr. 372, 1975 Cal. App. LEXIS 1802 (Court of Appeal of California, Second Appellate District, Division One March 31, 1975)

12. *People v. Torres,* 213 Cal. App. 3d 1248, 262 Cal. Rptr. 323, 1989 Cal. App. LEXIS 927 (Court of Appeal of California, Third Appellate District September 11, 1989)

13. *Correa v. Superior Court,* 84 Cal. App. 4th 631, 101 Cal. Rptr. 2d 242, 2000 Cal.

App. LEXIS 832, 2000 Cal. Daily Op. Service 8760, 2000 Daily Journal DAR 11582 (Court of Appeal of California, Fourth Appellate District, Division Three October 30, 2000, Filed)

14. *People v. Wang,* 89 Cal. App. 4th 122, 106 Cal. Rptr. 2d 829, 2001 Cal. App. LEXIS 363, 2001 Cal. Daily Op. Service 4008, 2001 Daily Journal DAR 4913 (Court of Appeal of California, Second Appellate District, Division Three May 17, 2001, Filed)
15. *People v. Lau,* 2001 Cal. App. Unpub. LEXIS 1390, 2001 WL 1486785 (Court of Appeal of California, Second Appellate District, Division One November 26, 2001, Filed)
16. *People v. Taylor,* 2001 Cal. App. Unpub. LEXIS 388, 2001 WL 1657234 (Court of Appeal of California, Second Appellate District, Division Two December 27, 2001, Filed)
17. *Correa v. Superior Court,* 27 Cal. 4th 444, 40 P.3d 739, 117 Cal. Rptr. 2d 27, 2002 Cal. LEXIS 618, 2002 Daily Journal DAR 2100, 2002 Cal. Daily Op. Service 1718 (Supreme Court of California February 25, 2002, Decided)
18. *Telesforo Olea Valero v. Superior Court of Orange County,* 2002 Cal. App. Unpub. LEXIS 10488, 2002 WL 31529094 (Court of Appeal of California, Fourth Appellate District, Division Three November 15, 2002, Filed),
19. *People v. Huerta,* 2003 Cal. App. Unpub. LEXIS 11249, 2003 WL 22839284 (Court of Appeal of California, First Appellate District, Division Five November 26, 2003, Filed)
20. *People v. Sanchez,* 2004 Cal. App. Unpub. LEXIS 242, 2004 WL 51828 (Court of Appeal of California, Fifth Appellate District January 12, 2004, Filed)
21. *People v. Lopez,* 2004 Cal. App. Unpub. LEXIS 296 (Court of Appeal of California, Fifth Appellate District January 14, 2004, Filed)
22. *People v. Zavala,* 2004 Cal. App. Unpub. LEXIS 4992, 2004 WL 1157772 (Court

of Appeal of California, Third Appellate District May 20, 2004, Filed)

23. *People v. Pantoja,* 122 Cal. App. 4th 1, 18 Cal. Rptr. 3d 492, 2004 Cal. App. LEXIS 1480, 2004 Cal. Daily Op. Service 8283 (Court of Appeal of California, First Appellate District, Division Three September 7, 2004, Filed)
24. *People v. Peralez,* 2005 Cal. App. Unpub. LEXIS 1251, 2005 WL 348356 (Court of Appeal of California, Second Appellate District, Division Seven February 14, 2005, Filed)
25. *People v. Raquel S.,* 2005 Cal. App. Unpub. LEXIS 3133, 2005 WL 793102 (Court of Appeal of California, Fourth Appellate District, Division One April 6, 2005, Filed)
26. *People v. Rosales,* 2005 Cal. App. Unpub. LEXIS 4338, 2005 WL 1155995 (Court of Appeal of California, Fourth Appellate District, Division Three May 17, 2005, Filed)
27. *People v. Arroyo* 2005 Cal. App. Unpub. LEXIS 4907, 2005 WL 1315726 (Court of Appeal of California, Fifth Appellate District June 3, 2005, Filed)
28. *People v. Lee,* 2005 Cal. App. Unpub. LEXIS 8458, 2005 WL 2271913 (Court of Appeal of California, Sixth Appellate District September 19, 2005, Filed)
29. *In re Joseph D., Coming Under the Juvenile Court Law,* 2006 Cal. App. Unpub. LEXIS 9170, 2006 WL 2942806 (Court of Appeal of California, Fourth Appellate District, Division One October 16, 2006, Filed)
30. *People v. Saetern,* 2007 Cal. App. Unpub. LEXIS 76, 2007 WL 30322 (Court of Appeal of California, First Appellate District, Division Two January 5, 2007, Filed)
31. *People v. Vasquez,* 2007 Cal. App. Unpub. LEXIS 3375 (Court of Appeal of California, Sixth Appellate District April 25, 2007, Filed)
32. *People v. Antonio Lopez Lopez,* 2007 Cal. App. Unpub. LEXIS 5282, 2007 WL 1830828 (Court of Appeal of California, Sixth Appellate District June 27, 2007,

Filed)

33. *People v. Lopez,* 2007 Cal. App. Unpub. LEXIS 8515, 2007 WL 3044331 (Court of Appeal of California, Sixth Appellate District October 19, 2007, Filed)
34. *In re Gilberto T.,* 2007 Cal. App. Unpub. LEXIS 9273, 2007 WL 4099523 (Court of Appeal of California, Fourth Appellate District, Division One November 19, 2007, Filed)
35. *People v. Farias,* 2007 Cal. App. Unpub. LEXIS 9419, 2007 WL 4157762 (Court of Appeal of California, Third Appellate District November 26, 2007, Filed)
36. *People v. Ma,* 2008 Cal. App. Unpub. LEXIS 1214, 2008 WL 375984 (Court of Appeal of California, Second Appellate District, Division Five February 13, 2008, Filed)
37. *In re Gabriel M.*, 2008 Cal. App. Unpub. LEXIS 3969, 2008 WL 2058170 (Court of Appeal of California, Fourth Appellate District, Division Three May 14, 2008, Filed)
38. *People v. Kasie,* 2008 Cal. App. Unpub. LEXIS 9068, 2008 WL 4927642 (Court of Appeal of California, Fourth Appellate District, Division Three November 18, 2008, Filed)
39. *People v. Reyes,* 2011 Cal. App. Unpub. LEXIS 317, 2011 WL 135788 (Court of Appeal of California, Second Appellate District, Division Six January 18, 2011, Filed)
40. *In re J.P.*, 2011 Cal. App. Unpub. LEXIS 430, 2011 WL 193443 (Court of Appeal of California, Sixth Appellate District January 21, 2011, Filed)
41. *People v. Malanche,* 2012 Cal. App. Unpub. LEXIS 1669, 2012 WL 688069 (Court of Appeal of California, Fifth Appellate District March 2, 2012, Filed)
42. *In re Christopher J.*, 2014 Cal. App. Unpub. LEXIS 1635, 2014 WL 883266 (Court of Appeal of California, Fifth Appellate District March 6, 2014, Opinion Filed)
43. *People v. Diaz,* 2017 Cal. App. Unpub. LEXIS 3215, 2017 WL 1953135 (Court of

Appeal of California, Fifth Appellate District May 11, 2017, Opinion Filed)

44. *People v. Santay,* 2018 Cal. App. Unpub. LEXIS 3960, 2018 WL 2927661 (Court of Appeal of California, Third Appellate District June 12, 2018, Opinion Filed)

Tenth Circuit States:

Colorado (1 Case)

People v. Gutierrez, 916 P.2d 598, 1995 Colo. App. LEXIS 264, 19 BTR 1396 (Court of Appeals of Colorado, Division One September 14, 1995, Decided)

Kansas (1 Case)

State v. Martinez-Lumbreras, 1999 Kan. App. Unpub. LEXIS 9 (Court of Appeals of Kansas July 2, 1999, Opinion Filed)

Oklahoma (2 Cases)

Blanck v. State, 1918 OK CR 28, 14 Okla. Crim. 339, 169 P. 1130, 1918 Okla. Crim. App. LEXIS 104 (Court of Criminal Appeals of Oklahoma January 26, 1918, Opinion Filed)

Carnes v. State, 1918 OK CR 77, 14 Okla. Crim. 585, 179 P. 475, 1918 Okla. Crim. App. LEXIS 211 (Court of Criminal Appeals of Oklahoma September 7, 1918, Opinion Filed)

Eleventh Circuit States:

Florida (7 Cases)

1. *Meacham v. State,* 45 Fla. 71, 33 So. 983, 1903 Fla. LEXIS 335 (Supreme Court of Florida, Division B January 1903)

2. *Rosell v. State,* 433 So. 2d 1260, 1983 Fla. App. LEXIS 19725 (District Court of Appeal of Florida, First District June 27, 1983; Rehearing Denied July 26, 1983)

3. *Henao v. State,* 454 So. 2d 19, 1984 Fla. App. LEXIS 14401 (Court of Appeal of Florida, Third District July 24, 1984)

4. *Chao v. State,* 453 So. 2d 878, 1984 Fla. App. LEXIS 14583, 9 Fla. L. Weekly 1749 (Court of Appeal of Florida, Third District August 7, 1984)

5. *Chao v. State,* 478 So. 2d 30, 1985 Fla. LEXIS 3934, 10 Fla. L. Weekly 570 (Supreme Court of Florida October 24, 1985)

6. *Herrera v. State,* 532 So. 2d 54, 1988 Fla. App. LEXIS 4482, 13 Fla. L. Weekly 2305 (Court of Appeal of Florida, Third DistrictOctober 11, 1988, Filed)

7. *Alarcon v. State,* 814 So. 2d 1180, 2002 Fla. App. LEXIS 4996, 27 Fla. L. Weekly D 878 (Court of Appeal of Florida, Fourth DistrictApril 17, 2002, Opinion Filed)

Georgia (8 Cases)

1. *Davis v. State,* 214 Ga. App. 360, 448 S.E.2d 26, 1994 Ga. App. LEXIS 901, 94 Fulton County D. Rep. 2761 (Court of Appeals of Georgia August 2, 1994, Decided)

2. *Lopez v. State,* 281 Ga. App. 623, 636 S.E.2d 770, 2006 Ga. App. LEXIS 1179, 2006 Fulton County D. Rep. 2986 (Court of Appeals of Georgia September 20, 2006, Decided)

3. *Cuyuch v. State,* 286 Ga. App. 629, 649 S.E.2d 856, 2007 Ga. App. LEXIS 841, 2007 Fulton County D. Rep. 2523 (Court of Appeals of Georgia July 16, 2007, Decided)

4. *Hernandez v. State,* 291 Ga. App. 562, 662 S.E.2d 325, 2008 Ga. App. LEXIS 573, 2008 Fulton County D. Rep. 1809 (Court of Appeals of Georgia, Fourth Division May 19, 2008, Decided)

5. *Cuyuch v. State,* 284 Ga. 290, 667 S.E.2d 85, 2008 Ga. LEXIS 732, 2008 Fulton County D. Rep. 2984 (Supreme Court of Georgia September 22, 2008, Decided)

6. *Ursulita v. State,* 307 Ga. App. 735, 706 S.E.2d 123, 2011 Ga. App. LEXIS 64, 2011

Fulton County D. Rep. 290 (Court of Appeals of Georgia February 8, 2011, Decided)

7. *Palencia-Barron v. State,* 318 Ga. App. 301, 733 S.E.2d 824, 2012 Ga. App. LEXIS 901, 2012 Fulton County D. Rep. 3515 (Court of Appeals of Georgia October 31, 2012, Decided)
8. *Orengo v. State,* 339 Ga. App. 117, 793 S.E.2d 466, 2016 Ga. App. LEXIS 627 (Court of Appeals of Georgia October 27, 2016, Decided)

Federal Courts (51 Cases)

First Circuit (1 Case)

1. *United States v. Beltran,* 761 F.2d 1, 1985 U.S. App. LEXIS 31001, 18 Fed. R. Evid. Serv. (Callaghan) 40 (United States Court of Appeals for the First Circuit April 24, 1985)

Second Circuit (8 Cases)

1. *United States v. Santana,* 503 F.2d 710, 1974 U.S. App. LEXIS 7151 (United States Court of Appeals for the Second Circuit August 19, 1974, Decided)
2. *United States v. Da Silva,* 725 F.2d 828, 1983 U.S. App. LEXIS 14337, 14 Fed. R. Evid. Serv. (Callaghan) 1217 (United States Court of Appeals for the Second Circuit December 19, 1983, Decided)
3. *United States v. Koskerides,* 877 F.2d 1129, 1989 U.S. App. LEXIS 8794, 89-1 U.S. Tax Cas. (CCH) P9381, 64 A.F.T.R.2d (RIA) 89-5072, 28 Fed. R. Evid. Serv. (Callaghan) 393 (United States Court of Appeals for the Second Circuit June 14, 1989, Decided)
4. *United States v. Lopez,* 937 F.2d 716, 1991 U.S. App. LEXIS 12836 (United States Court of Appeals for the Second Circuit June 17, 1991, Decided)

5. *United States v. Bin Laden,* 2001 U.S. Dist. LEXIS 15484, 2001 WL 1160604 (United States District Court for the Southern District of New York October 2, 2001, Filed)
6. *United States v. Ermichine*, 2002 U.S. Dist. LEXIS 8038, 2002 WL 869825 (United States District Court for the Southern District of New York May 3, 2002, Filed)
7. *United States v. Nouira,* 2006 U.S. Dist. LEXIS 58590, 71 Fed. R. Evid. Serv. (Callaghan) 13 (United States District Court for the Eastern District of New YorkAugust 21, 2006, Filed)
8. *United States v. Ghailani,* 761 F. Supp. 2d 114, 2010 U.S. Dist. LEXIS 134739, 84 Fed. R. Evid. Serv. (Callaghan) 646, 2010 WL 5185039 (United States District Court for the Southern District of New York January 14, 2011, Filed)

Third Circuit (3 Cases)

1. *United States v. Chang Ping Lin,* 131 Fed. Appx. 884, 2005 U.S. App. LEXIS 9622 (United States Court of Appeals for the Third Circuit May 24, 2005, Filed)
2. *United States v. Dimas,* 418 F. Supp. 2d 737, 2005 U.S. Dist. LEXIS 32324 (United States District Court for the Western District of Pennsylvania August 11, 2005, Filed)
3. *United States v. Vega-Arizmendi,* 2018 U.S. Dist. LEXIS 36023, 2018 WL 1178409 (United States District Court for the District of the Virgin Islands, St. Croix Division March 6, 2018, Filed)

Fourth Circuit (7 Cases)

1. *United States v. Campos,* 1987 U.S. App. LEXIS 18793 (United States Court of Appeals for the Fourth Circuit April 2, 1987, Decided)
2. *United States v. Stafford,* 143 Fed. Appx. 531, 2005 U.S. App. LEXIS 15701 (United States Court of Appeals for the Fourth Circuit July 29, 2005, Decided)

3. *United States v. Vidacak,* 553 F.3d 344, 2009 U.S. App. LEXIS 1279, 78 Fed. R. Evid. Serv. (Callaghan) 565 (United States Court of Appeals for the Fourth Circuit January 23, 2009, Decided)
4. *United States v. Teran,* 496 Fed. Appx. 287, 2012 U.S. App. LEXIS 22630 (United States Court of Appeals for the Fourth Circuit November 1, 2012, Decided)
5. *United States v. Shibin,* 722 F.3d 233, 2013 U.S. App. LEXIS 14131, 2013 AMC 1817, 2013 WL 3482000 (United States Court of Appeals for the Fourth Circuit July 12, 2013, Decided)
6. *United States v. Ceja-Rangel,* 2015 U.S. Dist. LEXIS 46409 (United States District Court for the District of South Carolina, Orangeburg Division April 9, 2015, Filed)
7. *United States v. Kaixiang Zhu,* 854 F.3d 247, 2017 U.S. App. LEXIS 6266, 103 Fed. R. Evid. Serv. (Callaghan) 126, 2017 WL 1363881 (United States Court of Appeals for the Fourth Circuit April 12, 2017, Decided)

Fifth Circuit (6 Cases)

1. *United States v. Batencort,* 592 F.2d 916, 1979 U.S. App. LEXIS 15555 (United States Court of Appeals for the Fifth Circuit April 9, 1979)
2. *United States v. Cordero,* 18 F.3d 1248, 1994 U.S. App. LEXIS 6431 (United States Court of Appeals for the Fifth Circuit April 4, 1994, Decided)
3. *United States v. Bell,* 1999 U.S. App. LEXIS 40263 (United States Court of Appeals for the Fifth Circuit June 21, 1999, Decided)
4. *United States v. Martinez-Gaytan,* 213 F.3d 890, 2000 U.S. App. LEXIS 12184 (United States Court of Appeals for the Fifth Circuit June 5, 2000, Decided)
5. *United States v. Mena-Valerino,* 117 Fed. Appx. 335, 2004 U.S. App. LEXIS 24597 (United States Court of Appeals for the Fifth Circuit November 29, 2004, Filed)
6. *United States v. Budha,* 495 Fed. Appx. 452, 2012 U.S. App. LEXIS 22123, 2012

WL 5246519 (United States Court of Appeals for the Fifth Circuit October 24, 2012, Filed)

Sixth Circuit (1 Case)

1. *Jackson v. Hoffner,* 2017 U.S. Dist. LEXIS 52824, 2017 WL 1279232 (United States District Court for the Eastern District of Michigan, Southern Division April 6, 2017, Filed)

Seventh Circuit (2 Cases)

1. *Guan Lee v. United States,* 198 F. 596, 1912 U.S. App. LEXIS 1663 (Circuit Court of Appeals, Seventh Circuit April 23, 1912)
2. *United States v. Cvijan Skiljevic,* 2013 U.S. Dist. LEXIS 94015, 2013 WL 3353960 (United States District Court for the Eastern District of Wisconsin July 3, 2013, Filed)

Eighth Circuit (2 Cases)

1. *Kalos v. United States,* 9 F.2d 268, 1925 U.S. App. LEXIS 2345 (Circuit Court of Appeals, Eighth Circuit November 17, 1925)
2. *United States v. Sanchez-Godinez,* 444 F.3d 957, 2006 U.S. App. LEXIS 9303, 69 Fed. R. Evid. Serv. (Callaghan) 1105 (United States Court of Appeals for the Eighth Circuit April 14, 2006, Filed)

Ninth Circuit (14 Cases)

1. *Chin Kay v. United States,* 311 F.2d 317, 1962 U.S. App. LEXIS 3521 (United States Court of Appeals for the Ninth Circuit November 26, 1962)
2. *United States v. Ushakow,* 474 F.2d 1244, 1973 U.S. App. LEXIS 11665 (United States Court of Appeals for the Ninth Circuit February 13, 1973)

3. *United States v. Martin,* 489 F.2d 674, 1973 U.S. App. LEXIS 6451 (United States Court of Appeals for the Ninth Circuit December 17, 1973)

4. *United States v. Felix-Jerez,* 667 F.2d 1297, 1982 U.S. App. LEXIS 21812 (United States Court of Appeals for the Ninth Circuit February 16, 1982, Decided)

5. *United States v. Sharif,* 1989 U.S. App. LEXIS 23196 (United States Court of Appeals for the Ninth Circuit June 26, 1989, Filed)

6. *United States v. Dunham,* 1991 U.S. App. LEXIS 10945 (United States Court of Appeals for the Ninth Circuit May 20, 1991, Filed)

7. *United States v. Herrera-Zuleta,* 1991 U.S. App. LEXIS 16090 (United States Court of Appeals for the Ninth Circuit July 16, 1991, Filed)

8. *United States v. Nazemian,* 948 F.2d 522, 1991 U.S. App. LEXIS 24743, 34 Fed. R. Evid. Serv. (Callaghan) 188, 121 A.L.R. Fed. 809, 91 Cal. Daily Op. Service 8383, 91 Daily Journal DAR 12903 (United States Court of Appeals for the Ninth Circuit October 21, 1991, Filed)

9. *United States v. Garcia,* 16 F.3d 341, 1994 U.S. App. LEXIS 1957, 94 Cal. Daily Op. Service 956, 94 Daily Journal DAR 1621 (United States Court of Appeals for the Ninth Circuit February 8, 1994, Filed)

10. *United States v. Boskovic,* 472 Fed. Appx. 607, 2012 U.S. App. LEXIS 6296, 2012 WL 1026111 (United States Court of Appeals for the Ninth Circuit March 28, 2012, Filed)

11. *United States v. Santacruz,* 480 Fed. Appx. 441, 2012 U.S. App. LEXIS 9369, 2012 WL 1596708 (United States Court of Appeals for the Ninth Circuit May 8, 2012, Filed)

12. *United States v. Orm Hieng,* 679 F.3d 1131, 2012 U.S. App. LEXIS 9596, 93 A.L.R. Fed. 2d 621, 88 Fed. R. Evid. Serv. (Callaghan) 488, 2012 WL 1655934 (United States Court of Appeals for the Ninth Circuit May 11, 2012, Filed)

13. *United States v. Romo-Chavez,* 681 F.3d 955, 2012 U.S. App. LEXIS 10366, 91

A.L.R. Fed. 2d 647, 88 Fed. R. Evid. Serv. (Callaghan) 625, 2012 WL 1861613 (United States Court of Appeals for the Ninth Circuit May 23, 2012, Filed)

14. *United States v. Ye,* 808 F.3d 395, 2015 U.S. App. LEXIS 21464 (United States Court of Appeals for the Ninth Circuit December 10, 2015, Amended)

Tenth Circuit (1 Case)

1. *United States v. Tijerina,* 412 F.2d 661, 1969 U.S. App. LEXIS 11819, 5 A.L.R. Fed. 935 (United States Court of Appeals for the Tenth Circuit June 23, 1969)

Eleventh Circuit (6 Cases)

1. *United States v. Alvarez,* 755 F.2d 830, 1985 U.S. App. LEXIS 28469, 17 Fed. R. Evid. Serv. (Callaghan) 1181, 77 A.L.R. Fed. 613 (United States Court of Appeals for the Eleventh Circuit March 20, 1985)
2. *United States v. Kramer,* 741 F. Supp. 893, 1990 U.S. Dist. LEXIS 16383 (United States District Court for the Southern District of Florida April 16, 1990, Filed)
3. *United States v. Desire,* 502 Fed. Appx. 818, 2012 U.S. App. LEXIS 25865, 2012 WL 6621439 (United States Court of Appeals for the Eleventh Circuit December 19, 2012, Decided)
4. *United States v. Charles,* 722 F.3d 1319, 2013 U.S. App. LEXIS 15139, 24 Fla. L. Weekly Fed. C 475, 2013 WL 3827664 (United States Court of Appeals for the Eleventh Circuit July 25, 2013, Decided)
5. *United States v. Curbelo,* 726 F.3d 1260, 2013 U.S. App. LEXIS 16541, 24 Fla. L. Weekly Fed. C 544, 2013 WL 4038746 (United States Court of Appeals for the Eleventh Circuit August 9, 2013, Decided)
6. *Puente v. Fla. AG,* 2017 U.S. Dist. LEXIS 111909, 2017 WL 3065172 (United States District Court for the Middle District of Florida, Fort Myers Division July 19, 2017, Filed)

Appendix 2: List of 73 Civil Cases (Chronological by Jurisdictions)

State Courts (54 Cases): by Circuits

First Circuit States:

New Hampshire (1 Case)

1. *Oullette v. Ledoux*, No. 3370, 92 N.H. 302; 30 A.2d 13; 1943 N.H. LEXIS 79 (Supreme Court of New Hampshire January 5, 1943, Decided)

Massachusetts (2 Cases)

1. *Camerlin v. Palmer*, 92 Mass. 539; 1865 Mass. LEXIS 172; 10 Allen 539 (Supreme Court of Massachusetts, Hampden September, 1865, Decided)
2. *O'Brien v. Bernoi*, 297 Mass. 271; 8 N.E.2d 780; 1937 Mass. LEXIS 776 (Supreme Judicial Court of Massachusetts May 24, 1937, Decided)

Second Circuit States:

New York (5 Cases)

1. *Wright v. Maseras*, 56 Barb. 521; 1869 N.Y. App. Div. LEXIS 123 (Supreme Court of New York, General Term, Schenectady County April 6, 1869, Decided)
2. *Grocz v. The Delaware and Hudson Company*, 174 A.D. 505; 161 N.Y.S. 117; 1916 N.Y. App. Div. LEXIS 8186 (Supreme Court of New York, Appellate Division, Second Department October 20, 1916)
3. *Scotto and Scotto v. Dilbert Bros.*, 263 A.D. 1016; 33 N.Y.S.2d 835; 1942 N.Y. App. Div. LEXIS 7901 (Supreme Court of New York, Appellate Division Second Department March 23, 1942)
4. *Gaudino et al. v. New York City Housing Authority*, 23 A.D.2d 838; 259 N.Y.S.2d 478; 1965 N.Y. App. Div. LEXIS 4164 (Supreme Court of New York, Appellate

Division, First Department May 18, 1965)

5. *Quispe v. Lemle & Wolff, Inc., et al.*, 266 A.D.2d 95; 698 N.Y.S.2d 652; 1999 N.Y. App. Div. LEXIS 11676 (Supreme Court of New York, Appellate Division, First Department November 18, 1999, Decided).

Third Circuit States:

New Jersey (1 Case)

1. *New Jersey Div. of Child Prot. & Permanency v. M.B.*, Docket No. A-2427-13T3 (Superior Court of New Jersey, Appellate Division April 22, 2015, Decided)

Delaware (2 Cases)

1. *Geylin v. De Villeroi*, 7 Del. 311; 1860 Del. LEXIS 7; 2 Houst. 311 (Superior Court of Delaware Fall Sessions, 1860)
2. *Division of Family Services v. A.L. and J.M., Sr.*, 11-08-09TN, Petition No.: 11-24929; Del. Fam. Ct. LEXIS 55 (Family Court of Delaware, New Castle May 23, 2012, Decided)

Fourth Circuit States:

South Carolina (1 Case)

1. *Wright v. Hiester Construction Co.*, Opinion No. 4712; 389 S.C. 504; 698 S.E.2d 822; 2010 S.C. App. LEXIS 135 (Court of Appeals of South Carolina July 21, 2010, Filed)

Fifth Circuit States:

Texas (7 Cases)

1. *Waltee v. Weaver et al.*, Case No. 1312; 57 Tex. 569; 1882 Tex. LEXIS 181 (Supreme Court of Texas November 10, 1882, Opinion Delivered)

2. *Schunior et al v. Russell*, No. 2926; 83 Tex. 83; 18 S.W. 484; 1892 Tex. LEXIS 697 (Supreme Court of Texas January 22, 1892, Delivered)

3. *Giun et al. v. Gulf C. & S.F.RY. Co.*, 89 S.W.2d 465; 1935 Tex. App. LEXIS 1096 (Court of Civil Appeals of Texas, Austin Nov. 20, 1935, Decided)

4. *Gulf, Colorado & Santa Fe Railway Company v. Giun et al.*, 131 Tex. 548; 116 S.W.2d 693; 1938 Tex. LEXIS 349; 116 A.L.R. 795 (Supreme Court of Texas May 11, 1938, Decided)

5. *Stroud v. Pechacek et al.*, 120 S.W.2d 626; 1938 Tex. App. LEXIS 280 (Court of Civil Appeals of Texas, Austin Oct. 12, 1938, Decided)

6. *Durbin v. Hardin*, 775 S.W.2d 798; 1989 Tex. App. LEXIS 2389 (Court of Appeals of Texas, Fifth District, Dallas August 3, 1989)

7. *Martinez v. Tuesday Morning, Inc.*, 1997 Tex. App. LEXIS 5465 (Court of Appeals of Texas, Fifth District, Dallas October 21, 1997, Opinion Issued)

Sixth Circuit States:

Michigan (7 Cases)

1. *Dewey et al. v. Campau*, 4 Mich. 565; 1857 Mich. LEXIS 22 (Supreme Court of Michigan January Term, 1857, Decided)

2. *Campau and another v. Dewey and another*, 9 Mich. 381; 1861 Mich. LEXIS 45 (Supreme Court of Michigan November 20, 1861, Decided)

3. *Highstone v. Burdette*, 61 Mich. 54; 27 N.W. 852; 1886 Mich. LEXIS 861 (Supreme Court of Michigan April 22, 1886, Decided)

4. *Rajnowski v. The Detroit, Bay City & Alpena Railroad Company*, 74 Mich. 15; 41 N.W. 849; 1889 Mich. LEXIS 600 (Supreme Court of Michigan February 8, 1889, Decided)

5. *In re Coburn and Glocheski*, 207 Mich. 350; 174 N.W. 134; 1919 Mich. LEXIS 416 (Supreme Court of Michigan October 6, 1919, Decided)

6. *In re Wickman*, Mich. App. LEXIS 106 (Court of Appeals of Michigan January 23, 2007, Decided)
7. *Al-Janabi v. State Farm Mutual Automobile Insurance Co.*, 2007 Mich. App. LEXIS 1821 (Court of Appeals of Michigan January 26, 2007, Decided)

Kentucky (1 Case)

1. *Sullivan v. Kuykendall*, 82 Ky. 483; 1885 Ky. LEXIS 6 (Court of Appeals of Kentucky January 22, 1885, Decided)

Seventh Circuit States:

Illinois (1 Case)

1. *Pellico v. E. L. Ramm Company*, 68 Ill. App. 2d 322; 216 N.E.2d 258; 1966 Ill. App. LEXIS 1360 (Appellate Court of Illinois, First District, First Division January 31, 1966)

Indiana (1 Case)

1. *Schearer v. Harber*, 36 Ind. 536; 1871 Ind. LEXIS 197 (Supreme Court of Indiana November Term, 1871, Decided)

Wisconsin (3 Cases)

1. *Diener v. Schley*, 5 Wis. 483; 1856 Wisc. LEXIS 83 (Supreme Court of Wisconsin December, 1856, Decided)
2. *Nadau v. White River Lumber Company*, 76 Wis. 120; 43 N.W. 1135; 1890 Wisc. LEXIS 60 (Supreme Court of Wisconsin March 18, 1890, Decided)
3. *Blazinski v. Perkings* 77 Wis. 9; 45 N.W. 947; 1890 Wisc. LEXIS 174 (Supreme Court of Wisconsin May 20, 1890, Decided)

Eighth Circuit States:

North Dakota (1 Case)

1. *State v. Mueller,* 40 N.D. 35, 168 N.W. 66, 1918 N.D. LEXIS 64 (Supreme Court of North Dakota May 9, 1918, Opinion Filed)

Nebraska (3 Cases)

1. *Wise v. Newatney*, 26 Neb. 88; 42 N.W. 339; 1889 Neb. LEXIS 142 (Supreme Court of Nebraska May 2, 1889, Filed)
2. *Oskamp v. Gadsden*, 35 Neb. 7; 52 N.W. 718; 1892 Neb. LEXIS 243 (Supreme Court of Nebraska June 11, 1892, Filed)
3. *In re Wendi L.*, 2010 Neb. App. LEXIS 118 (Nebraska Court of Appeals July 27, 2010, Filed)

Minnesota (1 Case)

1. *Miller v. Lathrop*, 50 Minn. 91; 52 N.W. 274; 1892 Minn. LEXIS 251 (Supreme Court of Minnesota May 24, 1892, Decided)

Iowa (1 Case1)

1. *McCormicks v. Fuller & William et al.*, 56 Iowa 43; 8 N.W. 800; 1881 Iowa Sup. LEXIS 181 (Supreme Court of Iowa, Des Moines June, 1881, Decided)

Missouri (3 Cases)

1. *Avaro v. Avaro*, 235 Mo. 424; 138 S.W. 500; 1911 Mo. LEXIS 101 (Supreme Court of Missouri, Division Two June 20, 1911, Decided)
2. *Dickey v. Supreme Tribe of Ben Hur*, 218 Mo. App. 281; 269 S.W. 633; 1925 Mo. App. LEXIS 73 (Court of Appeals of Missouri, Springfield March 6, 1925, Opinion Filed)

3. *Moscicki v. Am. Foundry Mfg. Co.*, 103 S.W.2d 491; 1937 Mo. App. LEXIS 264 (Court of Appeals of Missouri , Eastern District April 6, 1937, Decided)

Ninth Circuit States:

Hawaii (1 Case)

1. *Ching Lum v. Lam Man Beu*, 19 Haw. 363; 1909 Haw. LEXIS 43 (Supreme Court of Hawaii March 15, 1909, Decided)

Arizona (1 Case)

1. *Gomez v. Industrial Commission et al.*, 72 Ariz. 265; 233 P.2d 827; 1951 Ariz. LEXIS 225 (Supreme Court of Arizona July 12, 1951, Decided)

Washington (1 Case)

1. *Vanguard International . Inc. et al. v. Guangdong Fully, Ltd.*, 2008 Wash. App. LEXIS 58 (Court of Appeals of Washington, Division One January 14, 2008, Filed)

Montana (1 Case)

1. *Vukmanovich v. State Assurance Co.*, 82 Mont. 52; 264 P. 933; 1928 Mont. LEXIS 57 (Supreme Court of Montana March 8, 1928, Decided)

Oregon (1 Case)

1. *Bonelli v. Burton*, 61 Ore. 429; 123 P. 37; 1912 Ore. LEXIS 77 (Supreme Court of Oregon April 16, 1912, Decided)

California (4 Cases)

1. *Kelly v. Ning Yung Benevolent Association*, 2 Cal. App. 460; 84 P. 321; 1905 Cal.

App. LEXIS 229 (Court of Appeal of California, First Appellate District December 14, 1905, Decided)

2. *Boicelli v. Giannini*, 65 Cal. App. 601; 224 P. 777; 1924 Cal. App. LEXIS 571 (Court of Appeal of California, First Appellate District, Division One February 18, 1924, Decided)

3. *Sun Min Young v. Puritel, etc., et al.*, 2003 Cal. App. Unpub. LEXIS 3608 (Court of Appeal of California, Sixth Appellate District April 8, 2003, Filed)

4. *Stroughter, et al. v. State Farm Fire and Casualty Company, et al.*, 2004 Cal. App. Unpub. LEXIS 10188 (Court of Appeal of California, First Appellate District, Division Two November 10, 2004, Filed)

Tenth Circuit States:

Colorado (1 Case)

1. *Sharp v. McIntire*, 23 Colo. 99; 46 P. 115; 1896 Colo. LEXIS 159 (Supreme Court of Colorado April, 1896 [April Term])

Oklahoma (2 Cases)

1. *Davis v. First Nat'l Bank,* 6 Indian Terr. 124; 89 S.W. 1015; 1905 Indian Terr. LEXIS 10 (Court of Appeals of Indian Territory October 27, 1905, Decided)

2. *Terrapin v. Barker*, 1910 OK 102; 26 Okla. 93; 109 P. 931; 1910 Okla. LEXIS 14, (Supreme Court of Oklahoma April 12, 1910, Opinion Filed)

Eleventh Circuit States:

Florida (1 Case)

1. *State Farm Mut. Auto. Ins. Co. v. Ganz*, 119 So. 2d 319; 1960 Fla. App. LEXIS 2453 (District Court of Appeal of Florida, Third District March 23, 1960)

Federal Courts (19 Cases): Circuits with No Case Unlisted

First Circuit (1 Case)

1. *Salminen v. Ross*, No. 742; 185 F. 997; 1911 U.S. App. LEXIS 5126 (Circuit Court, D. Massachusetts April 4, 1911)

Second Circuit (4 Cases)

1. *Camps v. New York City Transit Authority*, No. 69, Docket 25116; 261 F.2d 320; 1958 U.S. App. LEXIS 3259; 1 Fed. R. Serv. 2d (Callaghan) 702 (United States Court of Appeals for the Second Circuit December 3, 1958, Decided)
2. *Mangual v. Wright*, 05-CV-6356 CJS; 2007 U.S. Dist. LEXIS 35213 (United States District Court for the Western District of New York May 9, 2007, Decided)
3. *Mendez and Marquez v. Int'l Food House, Inc.*, 13-CV-2651 (JPO); 2014 U.S. Dist. LEXIS 121158 (United States District Court for the Southern District of New York August 28, 2014)

4. *Gonzales v. Eagle Leasing Company*, Civil Case No. 3:13-CV-1565 (JCH); 2015 U.S. Dist. LEXIS 107614 (United States District Court for the District of Connecticut August 14, 2015, Decided)

Third Circuit (2Cases)

1. *Green v. Philadelphia Gas Works*, Civ. A. Nos. 43975, 43732; 333 F. Supp. 1398; 1971 U.S. Dist. LEXIS 11089 (United States District Court for the Eastern District of Pennsylvania October 26, 1971)
2. *Cmty. Ass'n Underwriters of Am. v. Queensboro Flooring Corp.*, Civil Action No. 3:10-CV-01559; 2016 U.S. Dist. LEXIS 57233 (United States District Court for the Middle District of Pennsylvania April 29, 2016, Filed)

Fourth Circuit (1 Case)

1. *Hickerson, Plaintiff, v. Yamaha Motor Co.*, Civil Action No. 8:13-cv-02311-JMC; 2016 U.S. Dist. LEXIS 95029 (United States District Court for the District of South Carolina, Anderson/Greenwood Division July 21, 2016)

Fifth Circuit (7 Cases)

1. *Cruz v. Aramark Servs.*, No. 06-50035 Summary Calendar; Fed. Appx. 329; 2007 U.S. App. LEXIS 601; 100 Fair Empl. Prac. Cas. (BNA) 1106; 19 Am. Disabilities Cas. (BNA) 496, January 11, 2007 (United States Court of Appeals for the Fifth Circuit January 11, 2007, Filed)
2. *Barraza v. United States*, EP-05-CA-0352-KC; 526 F. Supp. 2d 637; 2007 U.S. Dist. LEXIS 92464 (United States District Court for the Western District of Texas, El Paso Division July 24, 2007, Decided)
3. *Diaz v. Carballo*, Civil Action No. 3:05-CV-2084-G ECF; 2007 U.S. Dist. LEXIS 76039 (N.D. Tex., Oct. 29, 2007) (United states District Court for the Northern District of Texas, Dallas Division October 12, 2007, Decided)
4. *Gonzalez v. Lopez*, Civil Action No. 3:07-CV-593-M (BH); 2008 U.S. Dist. LEXIS 109653 (N.D. Tex., Feb. 6, 2008) (United States District Court for the Northern District of Texas, Dallas Division January 23, 2008, Decided)
5. *Xavier v. Belfor USA Group, Inc.*, Civil Action No. 06-491c/w06-7084 SECTION "A" (3); 2008 U.S. Dist. LEXIS 108743 (United States District Court for the Eastern District of Louisiana September 22, 2008, Decided)
6. *Hill v. New Alenco Windows, Ltd.*, Civil Action No. H-07-3857; 716 F. Supp. 2d 582; 2009 U.S. Dist. LEXIS 126607 (United States District Court for the Southern District of Texas, Houston Division July 17, 2009, Decided)
7. *United States EEOC v. Taqueria Rodeo de Jalisco*, Civil Action No. 4:11-cv-03444;

2012 U.S. Dist. LEXIS 179552; 116 Fair Empl. Prac. Cas. (BNA) 1499 (United States District Court for the Southern District of Texas, Houston Division December 19, 2012, Decided)

Seventh Circuit (1 Case)

1. *Germano v. Int'l Profit Ass'n*, No. 07-3914; 544 F.3d 798; 2008 U.S. App. LEXIS 19990; 21 Am. Disabilities Cas. (BNA) 3; 13 Accom. Disabilities Dec. (CCH) P13-151 (United States Court of Appeals for the Seventh Circuit September 12, 2008, Decided)

Eighth Circuit (1 Case)

1. DCS Sanitation Mgmt. v. OSHRC, No. 95-2779; 82 F.3d 812; 1996 U.S. App. LEXIS 10248; 17 OSHC (BNA) 1601; 1996 OSHD (CCH) P31,046; 44 Fed. R. Evid. Serv. (Callaghan) 758 (United States Court of Appeals for the Eighth Circuit February 14, 1996, Submitted , May 6, 1996, Filed)

Tenth Circuit (2 Cases)

1. *Redhouse v. Quality Ford Sales*, No. 74-1190; 511 F.2d 230; 1975 U.S. App. LEXIS 16287; 19 Fed. R. Serv. 2d (Callaghan) 1309 (United States Court of Appeals for the Tenth Circuit, February 3, 1975, Decided)
2. *Garcia v. Watkins*, No. 77-1671; 604 F.2d 1297; 1979 U.S. App. LEXIS 12489 (United States Court of Appeals for the Tenth Circuit January 23, 1979, Argued , August 15, 1979, Decided)

Appendix 3: Interpreter Qualifications and Evidentiary Admission (by Profiles)

Abbreviations	
JD	Jurisdictions
YR	Year
CT	Case Title
T & NA	Interpreter Testified & Interpreter-Mediated Statement Not Admitted
NT & NA	Interpreter Did Not Testify & Interpreter-Mediated Statement Not Admitted
T & A	Interpreter Testified & Interpreter-Mediated Statement Admitted
NT & A	Interpreter Did Not Testify & Interpreter-Mediated Statement Admitted
1st/N/H Lg/FL	First/Native/Heritage Language and/or Fluent
Reg Jb/LT Exp	Regular Job and/or Long-Time Experience
Fml Ed/Tr	Formal Education and/or Training
Cfd/Court	Certified and/or Court Interpreter
Own Test on Q	Interpreter's Own Testimony on One's Qualifications

1. Court and/or Certified Interpreter

Federal

JD	YR	CT	T & NA	NT & NA	T & A	NT & A	Interpreter's Own Testimony	(a) 1st/N/H Lg/FL (10)	(b) Reg Jb/LT Exp (5/25)	(c) Fml Ed/Tr (5/30)	(d) Cfd/Crt (30)	(e) Own Test on Q (5)	Total (100)	Court-Ruling Descriptions
9	2012	*United States v. Orm Hieng*				1					30		30	The government did not call the interpreter, Rithy Lim, to testify. On the first day of trial, immediately prior to the selection of the jury, ...Lim was serving as an interpreter during the proceedings... The government clarified that it...did not have a problem with Lim remaining in the courtroom during the trial (p. 1137).
11	1990	*United States v. Kramers, et al.*			1		...the fact that the record does not reflect that the translators were sworn at the deposition in Liechtenstein (d)...all three translators testified at the hearing (e). ...All three have a college education with majors in translation of German and English (c-30)...Ms. Harland...was a translator for the State Department... All three translators are freelancing in the business of translation (b) (p. 894).		25	30	30	5	90	
					1		...the fact that the record does not reflect that the translators were sworn at the deposition in Liechtenstein (d)...all three translators testified at the hearing (e). ...All three have a college education with majors in translation of German and English (c-30)...Ms. Wimmer was a translator for three years at the Austrian Trade Commission... All three translators are freelancing in the business of translation (b) (p. 894).		25	30	30	5	90	
					1		...the fact that the record does not reflect that the translators were sworn at the deposition in Liechtenstein (d)...all three translators testified at the hearing (e). ...All three have a college education with majors in translation of German and English (c-30)... All three translators are freelancing in the business of translation (b) (p. 894).		25	30	30	5	90	
Total			0	0	3	1		0	75	90	120	15	300	
Ave./Interpreter								0.00	18.75	22.50	30.00	3.75	75.00	

States

RI1	1902	*State v. Terline*		1								30		30	In the case at bar it appears that Raia was the official interpreter in the District Court (d), and that he was not the defendant's agent (p. 540).
PA1	1917	*Commonwealth v. Brown*			1		That officer testified (e) that he acted as interpreter in a great many cases yearly (d), and could not remember the particular testimony given in the former trial. (p. 525)					30	5	35	
NJ1	1931	*State v. Mangino*				1						30		30	The court interpreter was brought in (d); the questions were put to the pliantiff in error in English and were written down when so put; they were then translated to him in Italian and were answered by him in that language; his answers were then translated into and were written down in English. The interpreter died before the trial was had...(p. 479).
MD1	2016	*Taylor v State*		1								30		30	Because Detective Camp is unable to use or understand sign language, she arranged for a team of two interpreters to facilitate the questioning: Mr. Joe L. Smith, an ASL interpreter who could hear the detective's questions (d); and Ms. Charm Smith, a Certified Deaf Interpreter (CDI) (d) who could not hear the questions (p. 324).
				1								30		30	
NC1	1992	*State v Felton*				1						30		30	Special Agent Ransome interviewed defendant, a deaf mute, with the aid of Kathy Beetham, an interpreter procured for defendant pursuant to N.C.G.S. § 8B-2(d) (d) (p. 633).
TX1	1907	*Cervantes v. State*		1								30		30	...as a member of the grand jury he was present and heard the witness Trevino give his testimony before that body through an interpreter, Jose Garcia (d); … (p. 83).
TX2	1913	*Mares v. State*			1							30		30	He testified in the County Court case through an interpreter, who is expressly provided for by our law (Art. 816, C. C. P.) (d) (p. 306).
KY1	1906	*Fletcher v. Commonwealth*				1						30		30	...the court did right in swearing an interpreter, and allowing him to remain in the grand jury room while they were testifying. There would be no other possible way of getting their testimony to the grand jury. The interpreter was a mere conduit... (p. 577).
ND1	1918	*State v. Mueller*				1						30		30	The witness Christ Mueller had been a witness at the preliminary examination. His testimony was given through an interpreter (d) and taken down in shorthand by H. E. Rutgers and was transcribed by him (p. 47).
IA1	1917	*State v. Powers*				1						30		30	It is neither claimed nor shown that anything was incorrectly interpreted. On the contrary, as the interpreter is an officer of the court (d), it is presumed he translated correctly (p. 457).
MO1	1887	*State v. Chyo Chiagk*		1				10				30		40	The court did not err in permitting Wong Chin Foo to act as interpreter (d) in the cause, in translating the indictment to the accused and the testimony of the Chinese witnesses. His examination in the voir dire showed conclusively his good understanding of the English language, and of the Chinese (a), ... (p. 7).
MO2	1985	*State v. Randolph*				1						30		30	...appellant said through a sign language interpreter that appellant understood all of his constitutional rights. ...Under Missouri law then, there is no question about the competency of the appellant to testify through a qualified interpreter (d) (p. 537).
MO3	1986	*State v. Spyvey*			1		The interpreter, Mr. Atwood, testified (e) that he was required to be neutral and bound by a code of ethics to communicate only what comes from the sender (d) (p. 297).					30	5	35	
HI1	1893	*Prov. Gov't of Hawaiian Is v. Hering*			1							30		30	The objection is made that the magistrate read from notes of Kuoha's evidence made by him at the time it was delivered, the evidence being given by Kuoha in Hawaiian and interpreted into English by Thompson, the court interpreter (d) (pp. 187–188).
NV3	2013	*Newberg v. State*				1						30		30	Newberg argues that the district court should have excluded Polischuk's preliminary hearing testimony because the interpreters' method (d) rendered the testimony unreliable and inaccurate (p. 7)

OR1	1980	*State v. Letterman*			1		Ms. Shisler testified (e) that... Defendant does not question Ms. Shisler's qualifications as an interpreter. Ms. Shisler is the daughter of deaf parents (a) and has interpreted professionally since 1968 (b-25). She has been coordinator of interpreter trainees at Oregon College of Education since 1976, instructing students training to be interpreters for the deaf (c-30). Ms. Shisler has the Comprehensive Skill Certification awarded by the National Registry of Interpreters for the Deaf and is the only person in Oregon to hold Legal Skill Certification, awarded by the same organization (d) (p. 1147–1148).	10	25	30	30	5	100	
OR2	2004	*Alcazar v. Hill*			1		In both proceedings, Leone testified about her qualifications (e) and verified the accuracy of her interpretation as summarized in Usery's reports from the April 19 interview (p. 505).				30	5	35	Nancy Leone, a certified court interpreter (d), interpreted the April 19 interview (p. 504).
OR8	2017	*State v. Ambriz-Arguello*	1				The interpreter testified (e) that she started learning Spanish at the age of seven, and that she studied Spanish throughout grade school, high school, and college. The interpreter also testified that she studied abroad at a university in Mexico (c-10) and was certified by the City of Beaverton as a Spanish interpreter (d). The interpreter further testified that, in the nine years since becoming certified with the City of Beaverton Police Department, she has interpreted "hundreds" of times (b-25) and is 98 percent fluent in Spanish (a) (p. 586–587).	10	25	5	30	5	75	
CA2	1880	*People v. Lee Fat*		1							30		30	the evidence given by Lee Fat on the preliminary examination was taken through an interpreter (d) (p. 529).
CA3	1880	*People v. Ah Yute* (56 Cal. 119)		1							30		30	at that trial the testimony of the defendant had been taken through an interpreter (d) (p. 120).
CA4	1882	*People v. Lee Ah Yute* (60 Cal. 95)			1						30		30	The defendant denied that he had ever so testified, and for the purpose of contradicting him, the Chinese interpreter, Louis Locke, was called for the prosecution, and he was asked if the defendant did not testify in the manner stated (d) (p. 95).
CA5	1902	*People v. John*	1								30		30	...the exact words of the defendant were conveyed through the double medium of the interpreter and the stenographer to the jury; (d)... (p. 221).
CA6	1904	*People v. Lewandowski*				1					30		30	Against defendant's objection, Saito's deposition taken at the preliminary examination was read, ... It appears that a portion of the testimony of the witness on cross-examination was given through an interpreter (d) (pp. 567–577).
CA8	1910	*People v. Luis*			1						30		30	...the Chinese interpreters, who were present throughout the proceedings (d), were allowed to testify to what questions were asked the defendant and what answers he gave thereto (pp. 191–192).
CA11	1975	*People v. Johnson*	1								30		30	...an interpreter at the preliminary hearing (d) (p. 703).
GA1	1994	*Davis v. State*				1					30		30	The 11-year-old victim is deaf. Although the witnesses asked the victim questions, the victim's answers were given through an interpreter (d). The interpreter did not testify at trial (p. 360).
GA8	2016	*Orengo v. State*				1					30		30	In the absence of any evidence of any inaccuracy or motive to mislead or distort by the interpreter, we reject Orengo's contention that because the police officers communicated with D. H. through a sign language interpreter (d), their testimony about her statements to them constituted inadmissible hearsay. (p.130)
Total			3	7	8	10		30	50	35	840	25	980	
Ave./Interpreter								1.07	1.79	1.25	30.00	0.89	35.00	

2. Alternatively Qualified Interpreter

Federal

JD	YR	CT	T & NA	NT & NA	T & A	NT & A	Interpreter's Own Testimony	(a) 1st/N/H Lg/FL (10)	(b) Reg Jb/LT Exp (5/25)	(c) Fml Ed/Tr (5/30)	(d) Cfd/Crt (30)	(e) Own Test on Q (5)	Total (100)	Court-Ruling Descriptions
4	2009	*United States v. Vidacak*				1		10	25				35	The interview was conducted with the assistance of a Serbian translator named Dusanka Bucou, or "Duchka," who was employed by the IOM (b-25) (p. 346). ...Officer Tierney identified her interpreter, Duchka, and attested to her honesty and ability (a) (p. 348).
7	2013	*United States v Skiljevic*				1			25				25	...it appears that the interpreters who assisted defendant were employed by an independent, United Nations funded entity (b-25), and defendant presents no evidence that the interpreters had any reason to be biased against him or that they lacked necessary skills (p. 17).
Total			0	0	0	2		10	50	0	0	0	60	
Ave./Interpreter								5.00	25.00	0.00	0.00	0.00	30.00	

States

TX11	2009	*Driver v. State*				1			25				25	...a Cambodian interpreter employed by the Houston Police Department (b-25) translated in the second interview, ... (p. 3).
OH2	2002	*State v. Carrillo*			1		Allen has a Bachelor's degree in Spanish (c-10) and is a tenured senior Spanish instructor at Miami University (a). Allen testified that she lived in Columbia for one year in 1978, has lived in Spain, and has spent three summers in Mexico. Although she admitted not being formally trained in translation (c-10), she also testified (e) she has been offering her services as a translator to businesses and the Hamilton Police Department since 1985 (b) (p. 25).	10	25	5		5	45	
KY2	2015	*Lopez v. Commonwealth*			1		Melgar testified (e) that he is from El Salvador, that Spanish is his native language (a), and that he had acted as a Spanish language interpreter at T.J. Sampson Hospital for two years (b-25) (p. 871).	10	25			5	40	
WA4	1999	*State v. Bernal*			1				25				25	The social worker, the examining nurse, the on-duty physician, and the hospital's interpreter (b-25) testified at trial (p.3).
WA7	2010	*State v. Morales*				1			25				25	When Brunstad arrived at the hospital, he contacted a Spanish/English interpreter who worked in the emergency room (b-25) to provide Spanish translation for Morales (pp. 33–34).
WA8	2012	*State v. Morales*		1					25				25	Trooper Brunstad testified at the CrR 3.5 hearing that he asked the hospital's emergency room interpreter (b-25) to read to Morales his Miranda right... (p. 565).
CA41	2012	*People v. Malanche*				1			25				25	Woods testified that she communicated with J.Y. through a paid Hmong interpreter from Pan National, a company contracted through the hospital (b-25) (p. 7).
Total			0	1	3	3		20	175	5	0	10	210	
Ave./Interpreter								2.86	25.00	0.71	0.00	1.43	30.00	

3. Law Enforcement/Government Officer

Federal

JD	YR	CT	T & NA	NT & NA	T & A	NT & A	Interpreter's Own Testimony	(a) 1st/N/H Lg/FL (10)	(b) Reg Jb/LT Exp (5/25)	(c) Fml Ed/Tr (5/30)	(d) Cfd/Crt (30)	(e) Own Test on Q (5)	Total (100)	Court-Ruling Descriptions
2	1983	*United States v. Da Silva*			1			10			30		40	Customs Inspectional Aide Mario Stewart, a certified Spanish interpreter (d)..., went to the examination room to interpret during the DEA interview of Da Silva (p. 829). ...Stewart grew up in Panama and has native fluency in the Spanish language (a) (p. 831).
2	1989	*United States v. Koskrides*				1			25				25	Gambino conducted the interview through an interpreter who was employed at the American Embassy in Athens (b-25) (p. 1135).

2	2001	*United States v. Bin Laden*				1			25					25	Agent Gaudin utilized Arabic interpreters (p. 28)...all conversations and documents...were translated to him in his native language by qualified interpreters... The mere fact that the interpreter was the government employee (b-25)... (p. 29).
2	2010	*United States v. Ghailani*		1										0	
3	2018	*United States v. Vega-Arizmendi*			1			10	25					35	...the Government represents that TFO Kalme's "native tongue" is Spanish and that "he had been conversing in English for 22 years (a) at the time of the interview" with Defendant. ...The Government also expects Kalme to testify (e) that "he routinely interprets from Spanish to English and English to Spanish" (b-25) in his role as a law enforcement officer (pp. 8–9).
4	1987	*United States v. Campos*				1		10						10	The interpreter was an Elkton City policeman who was fluent in Spanish (a) (p. 6).
4	2013	*United States v. Shibin*				1				30				30	Agent Coughlin explained that he used an FBI Somali linguist to translate (c-30) both his questions and Salad Ali's answers (p. 239).
4	2015	*United States v. Ceja-Rangel*			1									0	
5	1979	*United States v. Batencort*			1			10						10	...the "translator", agent Blotsky, testified about the appellant's inculpatory statements. ...He was indisputably proficient in Spanish (a) (p. 917).
5	2000	*United States v. Martinez-Gaytan*		1										0	
8	2006	*United States v. Sanchez-Godinez*			1		Special Agent Joel Jauregui of the Bureau of Alcohol, Tobacco, and Firearms (ATF) served as an interpreter. Jauregui testified (e) that he is bilingual (a) and that he serves as an interpreter for the ATF and for other agencies (b-25) (p. 959).	10	25			5	40	
9	1962	*Chin Kay v. United States*			1									0	
9	1982	*United States v. Felix-Jerez*	1				...a camp guard named Daniel Tolavera served as an interpreter...At the trial, Tolavera was called as a witness. He testified (e) that he acted as an interpreter at the interview between Hardeman and defendant...because he spoke both Spanish and English (a). ... (p. 1298).	10				5	15	
9	1989	*United States v. Sharif*			1		The interpreter testified (e) that he was an employee of the Drug Enforcement Administration, ... His native language is Urdu (a). While in college in Pakistan, he had translated Urdu into English (b-25). He previously served as an interpreter in several trials in this country and Europe (b-25) (p. 5).	10	25			5	40	
9	1991	*United States v. Herrera-Zuleta*			1									0	
9	2012	*United States v. Santacruz*			1		Deputy Davalos had significant experience speaking Spanish and interpreting (b-25) (p. 443). ...Santacruz was given the opportunity to cross-examine Agent Kuehnlein, which he did, and Deputy Davalos (e), which he declined.		25			5	30	
9	2012	*United States v. Romo-Chavez*			1		The evidence establishes that Officer Hernandez grew up in El Paso speaking Spanish (a), studied it in school (c-10), spoke it at home with his wife, and conducted interviews in it on a regular basis (b) (p. 960). ...Hernandez actually testified (e) that he "grew up listening to Spanish" (p. 962).	10	25	5		5	45	
11	1985	*United States v. Alvarez*				1								0	
Total			1	2	10	5		80	175	35	30	25	345		
Ave./Interpreter								4.44	9.72	1.94	1.67	1.39	19.17		

States

MA3	2015	*Common-wealth v. Santiago*				1		10					10	…to a Spanish-speaking officer (a), Israel Marrero's translation of the defendnats' statements (p. 2).
MA5	2018	*Common-welath v. Lujan*	1					10	25				35	The intern, whose first language was Russian (a), was a native of Kazakhstan and had moved to the United States when he was eleven years old. He began interpreting for the police at some point in 2007 (b-25), while he was still in high school, after his wrestling coach, a West Springfield police officer, asked him to (p. 98).
RI4	2006	*State v. Feliciano*				1		10					10	…a Spanish-speaking police officer (a) serving as a translator... (p. 634).
NY2	1918	*People v. Fisher*		1									0	
NY6	1991	*People v. Wing Choi Lo*		1				10					10	…the defendant made a statement…through a police officer of Chinese ancestry (a) who acted as an interpreter (p. 980).
NY11	2009	*People v. Quan Hong Ye*			1								0	
CT2	1976	*State v. Rosa*			1			10					10	..Officer Velazco, the only witness at the police station who was conversant with both Spanish and English (a) (p. 427, fn. 7).
CT3	2003	*State v. Morales*				1							0	
CT4	2004	*State v. Torres*			1			10					10	When the police interviewed the Defendant, they utilized a police officer who was fluent in both English and Spanish (a) to translate the questions (p. 317).
CT5	2004	*State v. Colon*			1			10					10	...Velez was and is Spanish speaking (a)... (p. 136).
CT7	2010	*State v. Garcia*			1		…both Tirade and the defendant testified (e), ..."[Tirado, who was] raised in Waterbury, is of Puerto Rican descent, is fluent in the Spanish language (a)...(p. 44).	10				5	15	the Defendant, who speaks Spanish but not English, came to the police station to talk to Tirado, who is bilingual (a) (p. 43).
PA3	1983	*Common-wealth v. Carrillo*			1								0	
DE1	1999	*Diaz v. State*	1				Detective Santiago testified (e) he had no difficulty communicating in Spanish with Ms. Rivera (a) (P. 1169).	10				5	15	
NC3	2009	*State v Umanzor*				1							0	
TX12	2009	*Saavedra v. State*				1			25				25	...they communicated through an interpreter, Jaime Casas. Outside the presence of the jury, Sears testified that Casas was a records clerk with the police department. Sears did not know what expertise, training, or certifications Casas might have had to qualify him to interpret from Spanish to English, but he testified that Casas was on a list of approved translators for the department and that "he's the one that we normally use." (b-25) (p. 343)
TX13	2010	*Diaz v. State*			1		Ortega testified (e)... Because Chaides could not find an officer to translate the written statement, he asked Edna Ortega, an investigator with CPS who happened to be at the police station (b-0), to orally translate the written statement to Appellant in Spanish. Ortega was very fluent in Spanish, which she spoke in her home growing up (a) and studied in grade school, high school, and college (c-10) (pp. 9-11).	10	0	5		5	20	
TX14	2010	*Saavedra v. State*		1				10	25		0		35	Detective Sears testified that to his knowledge, Casas was not a certified interpreter (d-0), but just somebody that speaks Spanish within the department (a). When asked if he knew Casas's background, training, or education, Detective Sears responded, "He was raised—actually, he's from Mexico and was raised in the valley and came up here, applied and worked for us, and I don't know if he—I can't say if he's been through the—the testing to be a recognized interpreter (d-0) for our department, but he's one we normally use (b)" (p. 8).

TX18	2015	*Palomo v. State*			1		Alvarado testified (e) that she has been employed by the Hunt County Sheriff's Department for four years and that she performs background checks. She speaks Spanish fluently (a) and provides translation services for the sheriff's department (b). ...Although she does not have any special credentials or certifications (c-0, d-0), she said none are required for the sheriff's department or the CAC (p. 4).	10	25	0	0	5	40	
IL3	2000	*People v. Villagomez*			1		Montilla testified (e) that he informed defendant that he spoke Spanish...Montilla is of Puerto Rican descent (a) (p. 3).	10				5	15	
IL4	2000	*People v. Villagomez*			1		Montilla testified (e) that he informed defendant that he spoke Spanish...Montilla is of Puerto Rican descent (a) (p. 801).	10				5	15	
IL5	2016	*People v. Uriostegui*			1		Detective De La Torre of the Chicago Police Department testified (e) that he was born in Mexico and Spanish is his primary language, which he has spoken all of his life (a) (p. 13).	10				5	15	
WI1	1990	*State v. Robles*				1		10					10	...interviewed Robles through an English/Spanish interpreter, Officer Valdez (a) (p. 61).
WI2	1991	*State v. Arroyo*			1								0	
NE3	2018	*State v. Bedolla*				1							0	
MN1	1987	*State v. Mitjans*			1			10	25				35	Officer Anatoli Globa, who speaks Spanish and is routinely used by the police department whenever the suspect is Spanish-speaking, (b-25)...(p. 827). Globa, a 14 1/2-year veteran of the Minneapolis Police Department, is fluent in Ukranian and Spanish, as well as in English. As a child he lived 10 years in Argentina, speaking Ukranian at home and Spanish outside of the home (a) (p. 829).
AK1	2003	*Cruz-Reyes v. State*			1			10	25				35	a translator -- Trooper Hervey Lopez Ibarra, whose native tongue is Spanish (a) and who had served as a translator when he was in the military (b-25) (p. 220).
MT1	1886	*Territory v Big Knot on Head*		1									0	
NV2	2006	*Baltazar-Monterossa v State*			1			10					10	Spanish-speaking police officers (a) (pp. 610–611).
					1			10					10	Spanish-speaking police officers (a) (pp. 610–611).
AZ3	1989	*State v. Terrazas*			1		Officer Ayala testified that Spanish is his native language, that he learned to speak English when he was five or six years old (a), that he took five semesters of Spanish in college (C-10), and that he continues to speak Spanish on a regular basis (b-25) (p. 361).	10	25	5		5	45	
AZ4	1997	*State v. Tinajero*				1							0	
WA3	1997	*State v. Gracia-Trujillo*	1					10	0				10	...and arranged for Special Agent Lee Bejar, a border patrol agent (b-0) in Bellingham whose first language was Spanish (a), to translate the interview (p. 205).
WA6	2004	*State v. Gonzalez-Hernandez*	1					10					10	Unable to get a certified interpreter, Pierce County Sheriff's Officer Berg asked Officer Reynaldo Punzalan to translate during her interview with Gonzalez. Punzalan grew up in central California and had also lived in Central America (a); he could communicate in Spanish "fairly well" (p. 56).
OR4	2007	*State v. Gonzalez-Guiterrez*			1		At trial, the state called police detective Grandjean. Grandjean speaks both Spanish and English (a). Although Grandjean testified (e) that he regularly translates for law enforcement agencies (b-25), he is not a court-certified interpreter (d-0) (p. 105).	10	25		0	5	40	

OR5	2008	*State v. Rodriguez-Castillo*	1				The officer explained that he had difficulty with simultaneous translation (e) (p. 54).	10				5	15	Finally, the state called an officer who speaks Spanish (a), who had interviewed defendant without the aid of an interpreter (pp. 53-54)
OR6	2012	*State v. Montoya-Franco*			1		Diaz testified (e) that he was certified through the City of Salem to act as an interpreter for Spanish speakers (d). He also testified that Spanish was his first language, that he grew up in a household with Spanish-speaking parents, and that he primarily communicated with his parents in Spanish (a) (p. 667).	10			30	5	45	
					1		Byers testified (e) that he was fluent in Spanish (a); ...and he also had taken Spanish classes at college (c-10). He further testified that he had spoken Spanish in his police work for the past 20 years, that he frequently had served as a Spanish language interpreter in his employment, that for the past seven years he had owned a local business with partners who only spoke Spanish, and that he had spoken Spanish every day for the past 20 years (b-25) (p. 667).	10	25	5		5	45	
OR7	2012	*State v. Ibarra-Ruiz*			1		Diaz testified (e) that he is a native Spanish speaker (a) who acts as a police interpreter (b-25)... (p. 657).	10	25			5	40	
		State v. Ibarra-Ruiz			1		Bethers, also a police detective, translated different portions of Tallan's interview with defendant. Bethers is not a fluent Spanish speaker (a-0), but he testified (e) that he had conversational ability to speak and understand Spanish and that he used Spanish skills daily in his job (b) (p. 657).	0	25			5	30	
CA12	1989	*People v. Torres*			1		At trial, Officer Wagner testified regarding his qualifications as an interpreter (e) and stated that he accurately translated Sergeant Greer's questions and defendant's responses (p. 1257).	10				5	15	At this point, Knickerbocker ceased questioning defendant and summoned a Spanish-speaking officer, Dale Wagner (a), to administer Miranda warnings in Spanish (p. 1254)
CA15	2001	*People v. Lau*				1		10					10	these statements (made through a Cantonese interpreter, Deputy Ly) (a) (p. 16).
CA19	2003	*People v. Huerta*			1		Raya established his competency as a translator. Raya testified (e) that Spanish was his first language, that he is fluent in Spanish (a), and that he accurately translated Huerta's statements...(pp. 26-27).	10				5	15	
CA26	2005	*People v. Rosales*	1										0	
CA27	2005	*People v. Arroyo*				1							0	
CA29	2006	*In re Joseph D.*		1				10	25		0		35	Officer Douglas assisted in her interview of Joseph. Agent Dorsey explained that she spoke some Spanish, but that she "wanted to make sure I had somebody fluent doing the interview" (a). The prosecutor asked Agent Dorsey whether Officer Douglas is a certified Spanish interpreter. Agent Dorsey replied in the affirmative. Defense counsel objected, stating that there was no proof that Officer Douglas was in fact a certified Spanish interpreter (d-0) (p. 10). ...Agent Dorsey responded, "Well I know they have to be certified to do it for the San Diego Police Department and they work for us at the port (b-25).
CA32	2007	*People v. Lopez*				1		10	25		30		65	Officer Craig interviewed defendant with Officer Dagoberto Zubiate, who acted as a Spanish-speaking interpreter (a) (pp. 6–7). Officer Craig testified that...he had utilized Officer Zubiate as an interpreter approximately 15 to 20 times (b-25). Officer Craig testified that Officer Zubiate was a certified interpreter with the police department and that he had been so certified for approximately 10 years (d) (p. 10).
CA33	2007	*People v. Lopez*				1		10	25		30		65	Officer Craig interviewed defendant with Officer Dagoberto Zubiate, who acted as a Spanish-speaking interpreter (a) (p. 5). ...the trial judge noted his familiarity with Officer Zubiate, stating that he had "previously heard Officer Zubiate testify as a certified interpreter a number of times. Probably at least 10 or 15 over the past 15 or 16 years" (b-25, d) (p. 13).

CA40	2011	*In re JP*				1		10	25				35	When Officer Bell testified, he explained that Officer Rojas was a bilingual officer who spoke Spanish (a) with whom he had worked on approximately 100 cases requiring the use of his Spanish translation skills (b-25) (p. 14).
CA43	2017	*People v. Diaz*				1		10	25				35	Regarding the translation, Anaya stated that he knew Gonzalez to be fluent in Spanish (a). Anaya believed Gonzalez received a pay incentive for being bilingual (b-25). ...Anaya had used Gonzalez as a translator "numerous times" and had heard him speak in Spanish. Gonzalez had served in the police department longer than Anaya's almost eight years (a, b-25) (p. 4).
CA44	2018	*People v. Santay*			1		Parker testified about his familiarity with the Spanish language (e). He first learned Spanish when he was 13, ...Parker thereafter spent the summer in Mexico...Parker then studied Spanish for four years in high school and four years in college (c-10). On patrol, he spoke Spanish once or twice a month... As of the time of trial, he had been called upon on five to ten occasions in his career to speak Spanish with Spanish speakers (b-25) (p. 6).		25	5		5	35	
KS1	1999	*State v. Martinez-Lumbrers*			1								0	
GA4	2008	*Hernandez v. State*				1		10	25	0	0		35	In particular, he points out that Loredo was not trained or certified as a translator (c-0, d-0), and that she only was a clerk and secretary. Notwithstanding her job title, the evidence showed that Loredo spoke both Spanish and English (a) and helped MANS officers with interviews in the course of her work (b-25) (pp. 566–567).
GA6	2011	*Ursulita v. State*			1								0	
Total			6	5	27	15		370	450	20	90	85	1015	
Ave./Interpreter								6.98	8.49	0.38	1.70	1.60	19.15	

4. Unknown

Federal

JD	YR	CT	T & NA	NT & NA	T & A	NT & A	Interpreter's Own Testimony	(a) 1st/N/H Lg/FL (10)	(b) Reg Jb/LT Exp (5/ 25)	(c) Fml Ed/Tr (5/ 30)	(d) Cfd/ Crt (30)	(e) Own Test on Q (5)	Total (100)	Court-Ruling Descriptions
2	2006	*United States v. Nouira*				1							0	
4	2012	*United States v. Teran*				1							0	
4	2017	*United States v. Kaixiang Zhu*				1							0	
5	2004	*United States v. Mane-Valrerino*				1							0	
7	1912	*Guan Lee v. United States*			1								0	
9	1991	*United States v. Nazemian*				1							0	
10	2012	*United States v. Boskovic*				1							0	
11	2013	*United States v. Curbelo*				1							0	
11	2017	*Puento v. FLAG*				1							0	
Total			0	0	1	8		0	0	0	0	0	0	
Ave./Interpreter								0.00	0.00	0.00	0.00	0.00	0.00	

States

MA2	1901	*Commonwealth v. Storti*			1									0	
RI2	1903	*State v. Epstein*		1										0	
RI3	2004	*State v Jaiman*			1									0	
NY3	1926	*People v. Chin Sing*		1				10						10	Subsequently the police called in two Chinamen and through them as interpreters (a) proceeded to interrogate defendant… (p. 422).
NY4	1984	*People v. Sanchez*		1										0	
CT1	1869	*State v. Noyes*		1										0	
CT6	2005	*State v. Cooke*				1								0	
PA2	1920	*Commonwealth v. Pava*				1								0	
NC2	1994	*State v Ysut Mlo*				1								0	
TX4	1921	*Turner v. State*		1					25					25	through the mediation of an interpreter named Frank, ... "...Old Frank was there (b-25)" (p. 617).
TX9	2008	*Saavedra v. State*		1										0	
LA1	1890	*State v. Hamilton*				1								0	
OH1	1997	*State v. Wu*		1										0	
WI5	2017	*State v. Dominguez*				1								0	
NE1	1955	*Garcia v. State*				1								0	
NE2	2006	*State v. Arevalo-Martinez*				1								0	
IA2	2005	*State v. Venegas*			1									0	
ID1	1916	*State v. Fong Loon*	1											0	
NV1	1896	*State v Buster*		1										0	
AZ1	1929	*Indian Fred v. State*			1									0	
AZ2	1963	*State v. Rivera*				1								0	
WA5	2003	*State v. Castro*				1								0	
CA1	1880	*People v. Ah Yute* (54 Cal. 89)		1										0	
CA9	1913	*People v. Ong Git*		1										0	
CA10	1934	*People v. Jaramillo*	1											0	
CA23	2004	*People v. Pantoja*		1										0	
OK1	1918	*Cherokee Blank v. State*				1								0	
OK2	1918	*Carnes v. State*				1								0	
FL1	1903	*Meacham v. State*			1									0	
FL2	1983	*Rosell v. State*	1											0	
FL3	1984	*Henao v. State*			1									0	
FL7	2002	*Alarcon v. State*		1										0	
GA7	2012	*Palencia-Barron v. State*				1								0	
Total			3	12	6	12		10	25	0	0	0	35		
Ave./Interpreter								0.30	0.76	0.00	0.00	0.00	1.06		

5. Telephone

Federal

JD	YR	CT	T & NA	NT & NA	T & A	NT & A	Interpreter's Own Testimony	(a) 1st/N/H Lg/FL (10)	(b) Reg Jb/LT Exp (5/25)	(c) Fml Ed/Tr (5/30)	(d) Cfd/Crt (30)	(e) Own Test on Q (5)	Total (100)	Court-Ruling Descriptions
3	2005	*United States v. Chang Ping Lin*				1							0	
3	2005	*United States v. Dimas*				1							0	
5	2012	*United States v. Budha*				1							0	
9	2015	*United States v. Aifang Ye*				1		10	25	30			65	...the government provided evidence that all of the translators had native fluency in Mandarin (a) the language spoken by both Ye and Zhenyan—and that all had extensive professional translation training (c-30) and experience (b-25) (p. 402).
11	2013	*United States v. Charles*		1				10					10	The government also read into the record the parties' stipulation that the interpreter was a Creole interpreter, who speaks fluent English and Creole, ... (p. 1321, fn. 2).
Total			0	1	0	4		20	25	30	0	0	75	
Ave./Interpreter								4.00	6.25	6.00	0.00	0.00	12.50	

States

MA4	2016	*Commonwealth v. AdonSoto*				1							0	
TX16	2014	*Trevizo v. State*				1							0	
TX17	2015	*Song v. State*				1							0	
OH3	2007	*State v. Igram*				1							0	
MN3	2018	*State v. Lopez-Ramos*				1							0	
AZ5	2010	*State v. Munoz*				1			25				25	The nurse carried out the interview with the assistance of a Spanish interpreter, who was available telephonically via a company called Cirricom, with which Scottsdale Health Care contracted for translation services (b-25) (p. 7).
AZ6	2018	*State v. Zamora*				1			25	30			55	The record establishes that the interpreters, employed by Language line Solutions ("Language line") (b-25), passed an oral language skills proficiency test, received advanced training in medical interpretation, and were periodically monitored to assure the quality of their interpretations (c-30) (p. 7).
						1			25	30			55	
GA3	2007	*Cuyuch v. State*				1		10	25				35	The sergeant called what he described as a "language line" to enlist the help of an interpreter (b-25) who could translate Spanish to English (a). (p. 630)
GA5	2008	*Cuyuch v. State*		1									0	
Total			0	1	0	9		10	100	60	0	0	170	
Ave./Interpreter								1.00	10.00	6.00	0.00	0.00	17.00	

6. Co-Worker/Employee

Federal

JD	YR	CT	T & NA	NT & NA	T & A	NT & A	Interpreter's Own Testimony	(a) 1st/N/H Lg/FL (10)	(b) Reg Jb/LT Exp (5/ 25)	(c) Fml Ed/Tr (5/ 30)	(d) Cfd/ Crt (30)	(e) Own Test on Q (5)	Total (100)	Court-Ruling Descriptions
11	2012	*United States v. Desire*				1		10					10	The interpreter, "Philip," who worked for American Airlines, spoke Creole (a) to Desire (p. 820). ...Officer Martin testified that he knew that Phillip spoke Creole (a) because Officer Martin had previously heard him speak the language (p. 820).
						1			25				25	At some point, another airline representative named "Stephanie" arrived...Stephanie was the employee who the airline sends to "do all of the interpreting."...Stephanie was the airline's designated interpreter (b-25) (pp. 820–821).
Total			0	0	0	2		10	25	0	0	0	35	
Ave./Interpreter								5.00	12.50	0.00	0.00	0.00	17.50	

States

NY5	1985	*People v. Perez*			1			10					10	To make conversation between the detective and the defendant possible and to interview the defendant as a complainant the detective enlisted the aid of a bilingual hospital security guard (a), Freddie Rivera (pp. 31–32).
TX7	2004	*Cassidy v. State*				1		10					10	Kassem Momin, another Pakistani native (a) employed at the convenience store, served as an interpreter (p. 714). ...Benfer testified, "I've worked that area for seven years, ...as far as knowing his qualifications on language, I believe he is fluent (a)" (pp. 715–716).
TX8	2007	*Ramirez v. State*			1		At trial, Moreno testified (e) that...he was frequently used to translate for English-speaking nurses who could not communicate with Spanish-speaking patients. ...and...he had translated the identical information to numerous Spanish-speaking patients previously (b-25) (p. 7).		25			5	30	
AR1	2013	*Barron-Gonzalez v. State*				1							0	
OR3	2007	*State v. Rodriguez-Castillo*			1		Perez testified (e) that he had worked for six years as a Spanish language tutor at the victim's school (b-10). He also testified that Spanish was his native language and that he spoke the language "quite well" (a). When the prosecutor asked Perez if he had accurately interpreted the conversation between Lane and the victim, he testified, "I think so. I think it's—yeah, as far as I—as far as I know." There was no evidence that Perez was certified as an interpreter or that he had any professional training as an interpreter. (p.485)	10	5			5	20	
OR5	2008	*State v. Rodriguez-Castillo*	1				...Perez explained (e) that he spoke Spanish "quite well," (a) that Perez works as a bilingual middle-school tutor (b-10) (50–51).	10	5			5	20	
CA14	2001	*People v. Wang*				1		10					10	...the circumstances indicated Guan had sufficient language skills to render an adequate translation. There was no demonstrated incompetence or lack of ability to translate, ...Guan was the Chinese office manager of a Chinese-owned corporation operating in California. Pena had spoken to him previously and knew Guan spoke both Mandarin Chinese and English (a). (p. 138)
Total			1	0	3	3		50	35	0	0	15	100	
Ave./Interpreter								7.14	5.00	0.00	0.00	2.14	14.29	

7. Acquaintance

Federal

JD	YR	CT	T & NA	NT & NA	T & A	NT & A	Interpreter's Own Testimony	(a) 1st/N/H Lg/FL (10)	(b) Reg Jb/LT Exp (5/ 25)	(c) Fml Ed/Tr (5/ 30)	(d) Cfd/ Crt (30)	(e) Own Test on Q (5)	Total (100)	Court-Ruling Descriptions
Total			0	0	0	0		0	0	0	0	0	0	
Ave./Interpreter								0.00	0.00	0.00	0.00	0.00	0.00	

States

NY1	1909	*State v. Randazzio*			1			10					10	...one John Marsh, an Italian padrone (a) living at Carrolton, arrived in Salamanca… (p. 153).
TX3	1915	*Boyd v. State*	1					10					10	The deceased Mexican could not speak English. Mrs. Gonzales spoke the Mexican and English languages (a) (p.32).
WI3	1998	*State v. Fuentes*			1		At trial, Brown testified (e) that she was fluent in both English and Spanish (a) and that she has acted as a translator in the past (b-25) (p. 14).	10	25			5	40	
WA1	1981	*State v. Lopez*		1									0	
CA7	1910	*People v. Petruzo*				1							0	
CA30	2007	*People v. Saetern*				1							0	
CA34	2007	*In re Gilberto T.*		1									0	
CA35	2007	*People v. Farias*				1							0	
Total			1	2	2	3		30	25	0	0	5	60	
Ave./Interpreter								3.75	3.13	0.00	0.00	0.63	7.50	

8. Family

Federal

JD	YR	CT	T & NA	NT & NA	T & A	NT & A	Interpreter's Own Testimony	(a) 1st/N/H Lg/FL (10)	(b) Reg Jb/LT Exp (5/ 25)	(c) Fml Ed/Tr (5/ 30)	(d) Cfd/ Crt (30)	(e) Own Test on Q (5)	Total (100)	Court-Ruling Descriptions
2	1991	*United States v. Lopez*				1							0	
5	1999	*United States v. Bell*			1			10					10	...the child spoke in Choctaw; and that either the mother or aunt translated, ...(p. 4) ...Further, there was no evidence that the mother was not fluent in Choctaw, or unable to provide an accurate translation (a) (p. 9).
Total			0	0	1	1		10	0	0	0	0	10	
Ave./Interpreter								5.00	0.00	0.00	0.00	0.00	5.00	

States

MA1	1892	*Commonwealth v. Vose*	0	0	0	1							0	
NY9	2002	*People v. Xiaojun Wang*		1									0	
DE1	1999	*Diaz. V. State*	1										0	
TX10	2008	*Pitts v. State*				1							0	
TX11	2009	*Driver v. State*				1							0	
						1		10					10	Nimol In grew up in this country and presumably fluent in both English and the Cambodian dialect she learned from Meach herself (a) (p. 16).
TX15	2012	*Moland v. State*		1									0	
IN1	2010	*Palacios v. State*			1								0	

WA2	1987	*State v. Huynh*		1										0	
CA16	2001	*People v. Taylor*				1		10						10	She acknowledged that she had spoken with the investigator on the telephone and that her son Arnold had interpreted for her at the time. (p. 6)
CA18	2002	*Velero v. People*		1				10						10	Natal was accompanied by her nephew, Roman, who translated Negron's questions from English to Spanish and Natal's answers from Spanish to English. ...Negro...testified he believed Roman spoke Spanish "fluently" and "his English was fine" (a) (pp. 3–4).
CA22	2004	*People v. Zavala*			1									0	
CA24	2005	*People v. Peralez*				1								0	
CA25	2005	*People v. Raquel*			1			10						10	Because Cardenas did not speak fluent English, Marcos told Bryan he would translate his mother's statements (a) (p. 3). ...During Marcos's trial testimony, neither the court nor counsel expressed concern that he was unable to understand English or to answer questions in English (a) (p. 9).
CA36	2008	*People v. Ma*			1		Annie also testified (e) for the prosecution. Annie spoke Chiu Chow with Ngor as well as English. Annie understood most of what Ngor said in Chiu Chow (a) (p. 5).	10					5	15	Annie was taught to speak Chiu Chow as a child (a) (p. 4)
CA37	2008	*People v. Gabriel*				1								0	
CA38	2008	*People v. Kasie*				1		10						10	At trial, Norman testified that he did not speak English and that he relied on his son to translate his conversations with defendant. He testified at trial through an interpreter. Jorge Jr.'s primary language was Spanish, but he speaks English as well (a) (p. 4).
FL4	1984	*Chao v. State*			1									0	
FL5	1985	*Chao v. State*			1									0	
Total			1	4	6	8		60	0	0	0	5	65		
Ave./Interpreter								3.16	0.00	0.00	0.00	0.26	3.42		

9. Neighbor/By-Stander

Federal

JD	YR	CT	T & NA	NT & NA	T & A	NT & A	Interpreter's Own Testimony	(a) 1st/N/H Lg/FL (10)	(b) Reg Jb/LT Exp (5/25)	(c) Fml Ed/Trr (5/30)	(d) Cfd/Crt (30)	(e) Own Test on Q (5)	Total (100)	Court-Ruling Descriptions
1	1985	*United States v. Beltran*			1		Dr. Richart, a native speaker of both English and Spanish (a), testified (e) that she had no problem communicating with any of the defendants and that she did not believe they had any problem in comprehending her translations (p. 10).	10				5	15	
6	2017	*Jackson v. Hoffner*				1							0	
9	1991	*United States v. Dunham*				1							0	
10	1969	*United States v. Tijerina*				1		10					10	Martinez, a police officer who spoke Spanish (a), sat next to Beier and translated certain portions of the speech for Beier who made notes of the gist of what the officer told him (p. 664).
Total			0	0	1	3		20	0	0	0	5	25	
Ave./Interpreter								5.00	0.00	0.00	0.00	1.25	6.25	

States

NY8	1995	*People v. Generoso*			1			10					10	Miele translated the subject conversations at the defendant's request, before Miele realized that he was a victim, and he spoke both languages well enough for the defendant to ask him to interpret (a) (pp. 671–672).
NY10	2005	*People v. Morel*				1		10					10	...to communicate with defendant, who understood only Spanish, the officer, who understood only English, inquired whether any of the bystanders were sufficiently bilingual to assist his investigation (a). One of the onlookers offered his services... (p. 68).
TX5	1997	*Savedra v. State*		1									0	
TX6	2001	*Gomez v. State*			1			10					10	The record also contains some evidence that Andrade was fluent in Spanish (a) (p. 459).
MI1	2011	*People v. Jackson*				1							0	
IL1	1974	*People v. Torres*				1							0	
IL2	1986	*People v. Gomez*				1							0	
MN2	2008	*In re A.X.T*				1		10					10	A.H., who is also Somali-American (a), heard N.B. hollering "Help" in Somali. A.H. followed N.B. and the two youths in his car. In the end, A.H. told the police what he had seen, and he translated between N.B. and the police to relate what N.B. said had happened... (p. 7).
HI2	2011	*State v. Huynh*			1		Nguyen testified (e) that he grew up in Vietnam, is fluent in Vietnamese as his first language (a) and had come to the United States in 1996, when he was twenty-three. When police asked if anyone could help translate, Nguyen volunteered (p. 4).	10				5	15	
CA13	2000	*Correa v. People*	1				As to his qualifications as an interpreter, Hector testified (e) he is United States born, learned the Spanish language at home from his mother, speaks Spanish on a daily basis with his mother and believes he is fluent in the Spanish language (a) (p. 634).	10				5	15	
			1				Higinia testified (e) she is Mexican born, came to live in the United States at age 10 (a), and attended elementary school in the United States. She did not specify which grades she completed. Higinia stated she is currently employed by a school district and is required to speak English (b-10) on the job, but does not consider herself fluent in English as she knows "just enough to communicate" (p.634).	10	5			5	20	
CA17	2002	*Correa v. People*			1		Hector Garcia also testified (e) at the preliminary hearing. He stated that he was a native English speaker, but that he was also fluent in Spanish because his mother spoke that language in their home (a) (p. 450).	10				5	15	
					1		Higinia Garcia also testified (e) at the preliminary hearing. Higinia stated that she was born in Mexico, came to this country at the age of 10 years (a), attended school here, and currently was employed by a school district in a position requiring her to speak English (b-10). Higinia spoke both Spanish and English at home (a) (p. 449).	10	5			5	20	

CA20	2004	*People v. Sanchez*				1		10					10	Officer Pree does not speak Spanish so, at the officer's request, Ralph Grajeda, who was "outside in the yard the [Carillo] residence," acted as an interpreter (a).
CA21	2004	*People v. Lopez*				1		10					10	The police officer interviewed them utilizing their neighbor, Jose Lopez, as a translator. Lopez was fluent in English and Spanish (a) (p. 26).
CA28	2005	*People v. Lee*				1		10					10	Mr. Creighton was not called as a witness, but Orozco-Cervin, assisted by the court interpreter, testified that the man who helped him call the police spoke Spanish. He was asked, "How would you characterize that man's Spanish? Was it good or fair?" Orozco-Cervin answered, "Well" (a) (p. 38).
CA37	2008	*People v. Gabriel*				1		10					10	Officer Cynthia Sawyer responded to the scene and interviewed La outside the medical office. La understood some English, but Sawyer primarily relied on a medical office employee to translate because she was fluent in English and Vietnamese (a) (PP. 3–4).
CA39	2011	*People v. Reyes*				1							0	
CA42	2014	*In re Christo-pher J.*				1							0	
Total			2	1	5	11		130	10	0	0	25	165	
Ave./Interpreter								6.84	0.53	0.00	0.00	1.32	8.68	

10. Co-Conspirator

Federal

JD	YR	CT	T & NA	NT & NA	T & A	NT & A	Interpreter's Own Testimony	(a) 1st/N/H Lg/FL (10)	(b) Reg Jb/LT Exp (5/ 25)	(c) Fml Ed/Tr (5/ 30)	(d) Cfd/Crt (30)	(e) Own Test on Q (5)	Total (100)	Court-Ruling Descriptions
2	1974	*United States v. Santana*				1							0	
2	2002	*United States v. Ermichine*				1							0	
4	2005	*United States v. Staffford*				1							0	
5	1994	*United States v. Cordero*				1							0	
8	1925	*Kalos v. United States*		1									0	
9	1973	*United States v. Ushakow*			1								0	
9	1994	*United States v. Garcia*				1		10					10	Special Agent Sellers testified that Jose Garcia indicated that he could speak Spanish and would serve as a translator for the group. Special Agent Sellers had previously heard Jose Garcia speak Spanish. The officer also knew that Jose Garcia was from a Spanish speaking family (a) (p. 343).
Total			0	1	1	5		10	0	0	0	0	10	
Ave./Interpreter								1.43	0.00	0.00	0.00	0.00	1.43	

States

FL6	1988	*Herra v. State*				1							0	
GA2	2006	*Lopez v. State*				1							0	
Total			0	0	0	2		0	0	0	0	0	0	
Ave./Interpreter								0.00	0.00	0.00	0.00	0.00	0.00	

11. Informant

Federal

JD	YR	CT	T & NA	NT & NA	T & A	NT & A	Interpreter's Own Testimony	(a) 1st/N/H Lg/FL (10)	(b) Reg Jb/LT Exp (5/ 25)	(c) Fml Ed/Tr (5/ 30)	(d) Cfd/ Crt (30)	(e) Own Test on Q (5)	Total (100)	Court-Ruling Descriptions
Total			0	0	0	0		0	0	0	0	0	0	
Ave./Interpreter								0.00	0.00	0.00	0.00	0.00	0.00	

States

JD	YR	CT	T & NA	NT & NA	T & A	NT & A	Interpreter's Own Testimony	(a) 1st/N/H Lg/FL (10)	(b) Reg Jb/LT Exp (5/ 25)	(c) Fml Ed/Tr (5/ 30)	(d) Cfd/ Crt (30)	(e) Own Test on Q (5)	Total (100)	Court-Ruling Descriptions
NY7	1991	*People v. Romero*	1										0	
CA31	2007	*People v. Vasquez*		1									0	
CO1	1995	*People v. Gutierre*				1							0	
Total			1	1	0	1		0	0	0	0	0	0	
Ave./Interpreter								0.00	0.00	0.00	0.00	0.00	0.00	

12. Inmate

Federal

JD	YR	CT	T & NA	NT & NA	T & A	NT & A	Interpreter's Own Testimony	(a) 1st/N/H Lg/FL (10)	(b) Reg Jb/LT Exp (5/ 25)	(c) Fml Ed/Tr (5/ 30)	(d) Cfd/ Crt (30)	(e) Own Test on Q (5)	Total (100)	Court-Ruling Descriptions
9	1973	*United States v. Martin*				1							0	
Total			0	0	0	1		0	0	0	0	0	0	
Ave./Interpreter								0.00	0.00	0.00	0.00	0.00	0.00	

States

Total			0	0	0	0		0	0	0	0	0	0	
Ave./Interpreter								0.00	0.00	0.00	0.00	0.00	0.00	

Appendix 4: Interpreting Issues Described in Court Rulings

Abbreviations	
PRF	Interpreter Profile
CR	Certified and/or Court Interpreter
AL	Alternatively Qualified Interpreter
OF	Law Enforccement/Government Officer
UK	Unknown
TL	Telephone
CW	Co-Worker/ Employee
AQ	Acquaintance
FM	Family
NB	Neighbor/By-Stander
CC	Co-Conspirator
IF	Informant
IM	Inmate
JD	Jurisdictions
YR	Year
CT	Case Title
R	Video/Audio-Recorded
T & NA	Interpreter Testified & Interpreter-Mediated Statement Not Admitted
NT & NA	Interpreter Did Not Testify & Interpreter-Mediated Statement Not Admitted
T & A	Interpreter Testified & Interpreter-Mediated Statement Admitted
NT & A	Interpreter Did Not Testify & Interpreter-Mediated Statement Admitted

1. Comprehension Issues

Federal

PRF	YR	JD	CT	T & NA	NT & NA	T & A	NT & A	Court Ruling Descriptions	R
OF	2012	9	*U.S. v. Romo-Chavez*			1		Romo-Chavez testified that he understood only 30-40% of what Hernandez said to him, which would have consisted primarily of Miranda warnings and questions (p. 965).	
Total						1			0

States

PRF	YR	JD	CT	T & NA	NT & NA	T & A	NT & A	Court Ruling Descriptions	R
AL	2012	WA8	*State v. Morales*		1			There is a clear distinction between a defendant's testimony translated through an interpreter and an interpreter's translation to the defendant of a statutory right to have a blood sample independently tested. A defendant has a much greater constitutional right in an accurate translation of his or her own words (pp. 567–568). ...The legislature has explicitly indicated a desire to ensure non-English-speaking persons are afforded the full protection of the law...Brunstad [the officer] testified that he could not say that the interpreter read any rights to Morales because he had no idea what they were talking about. All that Brunstad could say was that he asked the interpreter to read the 308 warning; he could not say that the interpreter did so (pp. 573–574).	
OF	1983	PA3	*Common-wealth v. Carrillo*			1		On various occasions during the course of the interrogation, appellant revealed that he had difficulty communicating with Officer Ruiz, e.g., both individuals would have to "repeat" questions and answers so that the other could comprehend what was being said (p. 121).	
OF	1991	NY6	*People v. Wing Choi Lo*		1			The defendant has moved to dismiss the indictment on the grounds that...the translation was unreliable, the interpreting officer speaking a dialect other than the Cantonese dialect spoken by the defendant (p. 980).	

OF	2006	CA29	*In re Joseph D.*		1			At trial, Joseph repeatedly testified that Officer Douglas did not speak Spanish well and that Douglas did not fully understand Joseph's statements. For example, Joseph noted that "there were several things that I would tell [Officer Douglas] that he wouldn't understand and he [w]ould [stay] quiet and then all of the sudden he would ask me again, you know, "What's that again, what's that again?" (p. 14).	
OF	2008	OR5	*State v. Rodriguez-Castillo*	1				Defendant testified that he tried to explain what had happened to the officer, but the officer did not speak Spanish "very well; 50, 60 percent." Defendant testified that their difficulty communicating occurred either because of the officer's limited Spanish or because the officer was trying to get him to say that he had touched the victim's vagina. Additionally, defendant called an expert, who testified that the officer's Spanish was "poor" (p. 54).	1
OF	2018	MA5	*Common-welath v. Lujan*	1				The judge credited the testimony of Jakub, a court-certified interpreter, that the defendant often did not understand even basic everyday words in Russian, let alone legal terms. By way of example, Jakub testified that the defendant did not know the Russian verb to "brush," a term that was central to the investigation and one the intern led the defendant to adopt (p. 102).	1
OF	2018	CA44	*People v. Santay*			1		Parker testified it was difficult to speak with Micaela for "a number of reasons. First of all, she continued sobbing. She was almost hysterical...with her crying... Also, we had the language barrier. I would ask a question. She wouldn't quite understand it. I would say it again. In some cases, we used hand gestures to make sure our communication was clear." Parker testified... He asked if she was in pain, and she said her face and head hurt. He asked how her eye got hurt, and she said her husband Enrique hit her. Parker asked, "[C]omo esto...?" ("like this?" gesturing with an open hand) or "como esto?" (gesturing with a fist). She said, "Como esto" and closed her hand into a fist and brought it to her face. He asked her "quantos" (how many), and she answered "dos" (two). ...When Parker asked why defendant did that, she said the only reason she knew of was that he was drunk.(pp. 7–8)	
UK	1994	NC2	*State v Ysut Mlo*				1	...although an interpreter was provided who was fluent in both Vietnamese and English, the defendant's native language was Dega, the language of the Montagnard region of Vietnam. Defendant asserted these grounds as the basis for his allegation that he did not understand English well enough to waive his rights effectively (pp. 363–364). ...In the opinion of both Officer Roseman and the interpreter...the defendant appeared to understand the conversation and made logical, coherent and responsive answers to the questions propounded (p. 365).	
TL	2016	MA4	*Common-wealth v AdonSoto*				1	The officer, through the interpreter, read the defendant her rights, and in response, the defendant nodded her head "up and down" and verbally stated, "Yes," in Spanish. Moreover, after the officer's verbal instructions about how to perform the breathalyzer test, the defendant performed most of the actions as instructed... The defendant failed to properly seal her lips around the mouthpiece, but her conduct indicated that the translator properly relayed at least part of the instructions (p. 503).	
NB	2000	CA13	*Correa v. People*	1				Higinia testified...she had no trouble understanding what the women said. Like Hector, she had no recollection of the specific questions asked or the answers given. Although she also did not use an interpreter at the hearing, the record indicates she had some trouble understanding a few of the prosecutor's questions (p. 634).	
NB	2002	CA17	*Correa v. People*			1		Higinia spoke both Spanish and English at home. She testified at the preliminary hearing without an interpreter, but stated that she was uncertain whether she spoke English fluently (p. 449)	
Total				3	3	3	2		2

2. Factual Descrepancy

Fedeal

PRF	YR	JD	CT	T & NA	NT & NA	T & A	NT & A	Court Ruling Descriptions	R
OF	2000	5	*United States v. Martinez-Gaytan*		1			Appellant answered Hubbard's questions as interpreted by Garza, purportedly saying that he had picked up the vehicle in Mexico, that he knew the vehicle was "loaded," and that he was to be paid $ 800 for dropping the vehicle at a local mall in the United States. Appellant said he needed the money for his son's birthday (A). ...Appellant refused to sign any confession despite having ostensibly just confessed to Garza (B).	
OF	2013	4	*United States v. Shibin*				1	During his testimony at trial, Salad Ali denied making some of the statements recorded in Agent Coughlin's notes (A). After Salad Ali concluded his testimony, the government called Agent Coughlin as a rebuttal witness, and Coughlin testified that Salad Ali did in fact make the statements he denied making (B).	
CC	1925	8	*Kalos v. United States*		1			...he could not speak or understand English, he is a Greek, and Leventis did the talking, he did not understand the conversation between Leventis and the postmaster, he "told Leventis to tell the postmaster to open the package to be sure it was mine (A)," but he did not know what Leventis told the postmaster. ...the postmaster handed the package to him and he handed it to Leventis, ... The two were immediately arrested (B) (pp. 269–270).	
Total					2		1		0

States

PRF	YR	JD	CT	T & NA	NT & NA	T & A	NT & A	Court Ruling Descriptions	R
CR	1902	RI1	*State v. Terline*		1			If the jury find that defendant testified that he stood at the corner of Spruce and Acorn streets (A), then, as the indictment charges that he testified that he stood at the corner of Spruce and Sutton streets (B), there is a variance, and defendant must be found not guilty (p. 537).	
CR	1907	TX1	*Cervantes v. State*		1			The witness Trevino...testified...that he...heard the deceased say to the defendant, "You damned Mexican son-of-a-bitch, I am going to kill you" (A)...T. H. Ligon, who was a member of the grand jury...answered...that...he was present and heard the witness Trevino give his testimony before that body through an interpreter, Jose Garcia...and that the interpreter after holding a conversation with the witness in Spanish...that deceased did not say anything whatever to the defendant at the time of their meeting, and that no such testimony was reported to them as having been stated by Trevino that the deceased said, "you damned Mexican son-of-a-bitch I am going to kill you" (B) (p. 83).	
OF	1976	CT2	*State v. Rosa*			1		The defendant...told Officer Velazco that two other persons had attacked the decedent and that he had tried to help but got scared and left for Newburgh (A) (p. 422, fn. 2)... At this point, according to Officer Velazco, the Defendant volunteered that "he wanted to tell me the truth now and that he told me that he had acted alone in the apartment with Luis Moran (B) (p. 423).	
OF	1983	PA3	*Common-wealth v. Carrillo*			1		...the officer testified that appellant was warned of all of his rights (A) and the appellant testified to the contrary (B), it was a question of credibility...a matter which is peculiarly within the bailiwick of the trier of fact hearing the testimony (p. 32. fn. 5).	
OF	1999	DE1	*Diaz v. State*	1				According to Ms. Rivera [the victim], Diaz took her into the bedroom, threw her on the bed, ripped off her clothes, and attempted to have sexual intercourse with her (A) (P. 1169). ...She [Maria, the victim's daughter] testified that she saw her father push her mother. Maria testified that her father also hit her but "by accident" (B) (p. 1170).	
OF	2005	CA27	*People v. Arroyo*				1	Appellant testified...that...the $ 2,400 in his wallet was from the truck sale and rent (A) (p. 6). ...As rebuttal, the prosecution offered the testimony of Gist, who testified he interviewed appellant at the scene with the aid of Detective Delacruz, who acted as an interpreter. According to Gist, ...appellant told him, through Delacruz, ...that appellant never mentioned the sale of the truck (B) (pp. 6–7).	
OF	2010	TX13	*Diaz v. State*			1		Appellant stated that he...only signed it because he was told that if he did, R.C. would be returned to Diaz. Appellant acknowledged that his statement was translated to him in Spanish, but he denied that the translator told him that it said he placed his finger in R.C.'s vagina and that he got an erection as a result (A・B). He further denied that the translator told him the statement said R.C. intentionally touched his penis (A・B) (p. 7).	
OF	2011	CA40	*In re J.P.*				1	With Officer Rojas translating, the brother told Officer Bell that minor and minor's friend had forced him to drink beer and smoke marijuana on the previous weekend...that minor had given him minor's black metal and chrome gun to hold (A) (p. 2). ...Minor's brother then testified that he was "kidding" when he told his teacher about things that had happened at his house. He denied that minor had ever given him beer or marijuana and stated that minor's gun was a toy (B) (p. 3).	
UK	1869	CT1	*State v. Noyes*		1			...Frank Frazio as a witness, who, being unable to speak or understand the English language, was examined through an interpreter, and who testified that he saw the defendant near Sprague, on the road leading towards Norwich, about the hour of five o'clock on the day when the crime was committed (A)...the defendant offered William A. Lewis as a witness, to prove that...Frazio, through a third person acting as interpreter, then stated to him that it was about the hour of four, and not five o'clock, when he met the defendant (B) (p. 80).	
UK	1903	FL1	*Meacham v. State*			1		Galvin testified that he gave defendant the cigars to sell for him upon a commission of five per cent., (A) ...The defendant admitted receiving the cigars, but claimed that he purchased them from Galvin with the understanding that he was to pay for them at a designated time (B) (p. 72). ...Webster was examined by defendant and testified that on the occasion inquired about he acted as interpreter at the request of Galvin (p. 73).	
UK	1921	TX4	*Turner v. State*		1			The witness admitted...that when the appellant was brought before him, he shook his head and said "no," (A)...appellant was brought before Hernandez...on the night of the robbery and such conservation as took place was through the mediation of an interpreter named Frank...[t]he sheriff tetified..."I don't know what the Mexicans said to Frank, but Frank told us the Mexican identified the negro as the one that had hit him. He said he identified Earnest Turner as the one" (B) (p. 617).	
UK	1934	CA10	*People v. Jaramillo*	1				A policewoman was...permitted to testify, ...that, ...the interpreter told her that the appellant admitted having had relations with the girl (A). ...the interpreter, when called by the state, denied that the appellant made the answer which the former witness said the interpreter told her he had made. ...the interpreter, ...testified that the appellant turned to the girl and said in the Spanish language: "Now you know this is all wrong. I promised to marry you around the first of the year. . . ." (B) (p. 235)	
UK	1955	NE1	*Garcia v. State*				1	There had also been a question raised as to defendant's age. He testified he was 29 at the time (A) whereas in his statement taken on August 5, 1953, he stated he was 27 (B). This was apparently done for the purpose of affecting the credibility of Julian W. Lopez, who acted as interpreter in taking defendant's statement, and to thereby discredit his signed confession (p. 575).	

UK	1983	FL2	*Rosell v. State*	1				Aldridge [the interpreter] testified that appellants' only statement at that time was that they did not know what was in the bags (A). Deputy Tucker was asked to testify concerning the interrogation session at which Aldridge interpreted for appellants. ...Deputy Tucker then testified that Aldridge told him that the appellants had told her that they thought a grassy material was in the bags. (B) (p. 1262).	
UK	2002	FL7	*Alarcon v. State*			1		He testified that his community control officer would often speak to him in English, but he could understand only a few words. When they met in Satterfield's office to discuss the alleged violations, Satterfield began their conversation in English. He later went out and returned with an interpreter. Appellant denied saying anything about getting his car serviced or going to his daughter's school (A). He testified that he was at home at those times and that he stayed home that evening watching rented movies (B) (p. 1182).	
UK	2005	CT6	*State v. Cooke*				1	At trial, Flores testified that he saw the victim fall after apparently being shot...He also testified that he did not see Quinones get shot (A). On cross-examination, Santana's counsel sought to refresh Flores' recollection with a prior written statement... In his statement, Flores indicated that he saw the victim and Quinones get shot at the same time from gunshots fired from the same direction (B) (p. 547).	
UK	2012	GA7	*Palencia-Barron v. State*				1	At trial, the driver testified that Palencia-Barron "didn't know anything about this" (A). ...The prosecutor asked the driver whether he had given a statement days earlier, during his guilty plea hearing, that both he and Palencia-Barron knew they were delivering drugs. The driver replied: "Yeah" (B) (p. 303). ...the officer who testified as to the driver's out-of-court statements had interviewed the driver through the use of an interpreter...(pp. 304–305).	
CW	1985	NY5	*People v. Perez*			1		Through the translator, the defendant told the detective that as he was walking on 4th Avenue (A), he saw a male black running, then heard a shot and felt pain in his wrist. After further investigation defendant was charged with the homicide. Defendant testified at trial, alleging that he was shot by unknown assailants at 300 Douglas Street (B), the scene of the double homicide. During cross-examination of defendant, the the District Attorney asked if he had ever told Detective Peaslee that he was shot while walking on 4th Avenue, by a male black. The defendant denied ever making such statement (p. 32).	
CW	2007	TX8	*Ramirez v. State*			1		Most of the questioning between Nurse Cates and appellant was translated by the hospital's security guard, Martin Moreno, because appellant was not fluent in English. During the questioning, appellant told Nurse Cates that he was the driver of the white truck and that he had been drinking the night before the collision (A). ...After waiving his Miranda rights, appellant told Detective Montemayor that he was not the driver of the white truck (B) (p. 2).	
AQ	2007	CA35	*People v. Farias*				1	Greer [the detective] testified...he had "no idea of O'Campo's ability to translate from Spanish to English... Second, he understood O'Campo is related to Hernandez. Third, "it appeared...there was a considerable amount of confusion between Hernandez in translation (A) and then the events in (B) that I was having trouble following the events. And I think it got lost...in translation literally" (pp. 11–12).	
FM	1999	DE1	*Diaz v. State*	1				According to Ms. Rivera [the victim], Diaz took her into the bedroom, threw her on the bed, ripped off her clothes, and attempted to have sexual intercourse with her (A) (P. 1169). ...She [Maria, the victim's daughter] testified that she saw her father push her mother. Maria testified that her father also hit her but "by accident" (B) (p. 1170).	
FM	2001	CA16	*People v. Taylor*				1	...appellant's mother...testified through a sign language interpreter that she returned from work to her home...at approximately 1:45 p.m. on May 3, 2000, and found appellant there, lying on the sofa (A) (p. 5). ...Braga relied on Arnold's interpretation. Through Arnold, Taylor told Braga that she remembered May 3, 2000, because appellant had come home from work with a toothache and headache about 1:45 that afternoon, and he went right to bed (B) (P. 7).	
FM	2004	CA22	*People v. Zavala*			1		Rudolfo testified at trial and denied that Andreas told the officer that defendant had threatened to kill Gonzalez (A); instead, Andreas had said defendant was going to kill himself (B) (p. 6). Rudolfo testified at trial and recanted some of the statements he translated for Andreas (p. 18).	
FM	2005	CA24	*People v. Peralez*				1	Caballero testified she...got into a fight with a Black woman over beer (A) (p. 2)... Caballero's daughter, Erica, translated the officer's questions into Spanish and her mother's answers into English. Through her daughter, Caballero stated she had been assaulted. She said appellant [Caballero's husband] had punched her in the face three or four times with a closed fist (B) (p. 7).	
FM	2005	CA25	*People v. Raquel*			1		Cardenas then told Bryan, through Marcos, that Raquel had stabbed her in the eye after an argument, and that ...she wanted Raquel arrested and agreed to sign a citizen's arrest report. Bryan filled out the form and asked Marcos to tell his mother that by signing the form, she was agreeing to have Raquel taken to juvenile hall for stabbing her in the eye (A). ...At trial, Cardenas and Marcos both recanted their earlier statements and denied Cardenas told Marcos that Raquel cut her with a knife (B) (pp. 3-4).	
FM	2008	CA36	*People v. Ma*			1		Ngor denied that defendant said he would kill her. Ngor testified, "No. He never said that. My kid is a good kid. He never said that..." (A) (p. 3) ...Annie also testified for the prosecution. ...Ngor said she had been in an argument with defendant about cleaning his car. Defendant "blew up" and began threatening people. Annie was uncertain if defendant threatened her parents first or her uncle, but he said he was going to kill them (B) (p. 5).	

NB	2004	CA20	*People v. Sanchez*				1	Through the interpreter, Francisco told the officer the following: appellant brought the microwave to his house...and offered to sell it to Francisco for $ 10 (A) (pp. 4–5.)... Luisa testified...she...did not tell the officer that Francisco had paid appellant $ 10 for the microwave. Francisco testifie...he did not give appellant any money for the microwave; and did not remember if he told the police he paid appellant $ 10 for the microwave (B) (pp. 5–6).	
Total				4	4	10	9		0

3. Tense

Fedeal

PRF	YR	JD	CT	T & NA	NT & NA	T & A	NT & A	Court Ruling Descriptions	R
OF	2012	9	*United States v. Romo-Chavez*			1		Similarly, Hernandez translated a phrase as "I sign this document," whereas the [court] interpreter translated it as "I have signed this document." ...this kind of verb tense mistake is one that someone with a good grasp of Spanish should not be making (p. 964).	
Total						1			0

States

PRF	YR	JD	CT	T & NA	NT & NA	T & A	NT & A	Court Ruling Descriptions	R
CR	2016	MD1	*Taylor v State*		1			Taylor has contested the accuracy of the interpreter's assertion that he admitted to specific incidents of inappropriate touching: he contends that he never admitted to having actually touched any of the young women's breasts or buttocks, but merely to have stated that if he had done so, it would have been an accident, for which he would have apologized (p. 325).	1
CR	2016	MD1	*Taylor v State*		1				1
OF	1997	WA3	*State v. Gracia-Trujillo*	1				Bejar testified that he now remembered some of the questions and answers he had translated when he acted as an interpreter for Detective Moser. Specifically, he remembered translating the question, "Do you know how old [V.C.] is?" and Garcia's answer, "No." He also remembered translating the question "How old do you think she is?" but remembered only that Garcia's response was an age under 18. The State then recalled Detective Moser, who testified that he had asked five or six questions regarding V.C.'s age, including "how old he thought [V.C.] was" and "how old did he think that she was" (p. 206).	
OF	2005	CA26	*People v. Rosales*	1				Although there is absolutely no evidence Flores misled or distorted the information, there was the potential for inaccurate translation. Rosales testified he told Flores in Spanish, "[he] wasn't driving any car." This may have been interpreted by someone unqualified as "I don't drive" (p. 21).	
Total				2	2				2

4. Other Syntactic Issues

Fedeal

PRF	YR	JD	CT	T & NA	NT & NA	T & A	NT & A	Court Ruling Descriptions	R
OF	2012	9	*United States v. Romo-Chavez*			1		...the court interpreter translated the phrase "me han leido" as "they have read to me," whereas Hernandez translated it is "I have read." Obviously, such a transposition of subject and object could matter mightily when a suspect is giving his story in reponse [*sic*] to questioning (p. 964).	
Total						1			0

States

PRF	YR	JD	CT	T & NA	NT & NA	T & A	NT & A	Court Ruling Descriptions	R
UK	2004	CA23	*People v. Pantoja*		1			The text of the handwritten declaration, with its many spelling and grammatical errors, is reproduced as it appears in the record. The spelling and grammatical errors in the declaration itself certainly suggest that whoever wrote it was not particularly skilled as an English speaker. Thus, there is no assurance that the critical phrase emphasized by the prosecution, that defendant told Montero he would kill her if she did not "go back" with him, was accurately translated and transcribed. (p. 12)	
Total					1				0

5. Word Choice

Fedeal

PRF	YR	JD	CT	T & NA	NT & NA	T & A	NT & A	Court Ruling Descriptions	R
OF	1983	2	*United States v. Da Silva*			1		...the only concrete error adduced by Da Silva is Stewart's mistranslation of the word for "businessman" as "handyman" (p.831).	
TL	2013	11	*United States v. Charles*		1			...when the interpreter supposedly said that Charles told her the document "didn't fit her profile," ...no opportunity to cross-examine the interpreter regarding whether Charles used those actual words or different words... Likewise, when the interpreter said Charles knew the form was "illegal,"...no cross-examination about what actual words Charles used and whether the words she used in Creole could have had other meanings than "illegal" (pp. 1321–1322).	
TL	2015	9	*United States v. Aifang Ye*				1	Ye further contends that the use of the word "forged" in Zhenyan's original translated statement is in fact evidence of pro-government distortion because Zhenyan would not have used such a loaded word (p. 401).	
CC	1994	9	*United States v. Garcia*				1	Agent Sellers testified that Jose Garcia stated that the amount for each kilogram was "cinco cientos." Rock testified that a Spanish speaking person would not have used the phrase "cinco cientos" when negotiating for 500 kilograms. The correct translation of 500 is "quienientos" (p. 343).	
Total					1	1	2		0

States

PRF	YR	JD	CT	T & NA	NT & NA	T & A	NT & A	Court Ruling Descriptions	R
OF	2015	MA3	*Commonwealth v. Santiago*				1	That statement—that the defendant "wanted to confront [the victim] and that he did confront him on Washington Street which [*sic*] a fight broke out"—was put in evidence through Detective Harris when he testified...to a Spanish-speaking officer, Israel Marrero's translation of the defendant's statements (pp. 1–2). ...The defendant acknowledged using the word "confrontar" during the interview with Detective Harris, but testified that the word means to "dialogue, to have a conversation" (p. 3).	
OF	2003	CT3	*State v. Morales*				1	During the Defendant's cross-examination of Hawkins [the detective], the following exchange took place: Q: Okay. And do you recall there being a discussion, whether it was in English or in Spanish amongst the woman, Nilsa Morales [Defendant's bilingual daughter-in-law who assisted Gonzalez]; Detective Gonzalez [the officer interpreter]; and quite possibly, the Defendant, about the word "toto" and the words "private parts" versus "vagina"?... A: No, I don't recall. I don't have anything written down (p. 44, fn. 10).	
OF	2004	WA6	*State v. Gonzalez-Hernandez*	1				But Punzalan could not recall if Gonzalez said he was sorry; he was also not sure he would have recognized the word "sorry" in Spanish. Punzalan testified that if Gonzalez "said he was sorry, it was probably in English." And when asked what the Spanish word for "rape" was, Punzalan stated that he believed he used the English word (p. 56).	
AQ	2007	CA34	*In re Gilberto T.*		1			G.S. "offered to translate," and...told Oborski that N.O. said, "Gilberto choked her with his hands" (p. 3). ...N.O. testified that Gilberto had not intentionally choked her, but instead grabbed her shirt "strongly" around her neck to assist her after she lost her balance. ..."A: No. He was not asphyxiating me" (p. 5). ..."INTERPRETER: Not asphyxiate, but maybe—she is using 'ahorcar,'...but that technically in English means to 'hang somebody with a rope.' So there might be something erroneous in the use of the word." "THE COURT: Well, the record is going to have to reflect that the word that was used in Spanish was 'ahorcar' as opposed to 'asfixaido'...In other words, he was hanging her. That's the word they use in Mexico. I am going to take that as synonymous with strangling...I am going to try this. You can translate this in Spanish. He was placing pressure on her neck causing her to not be able to breathe." "THE WITNESS: Yes" (p. 7).	
UK	2017	WI5	*State v. Dominguez*				1	Dr. Brazelton testified that...he understood Castillo-Dominguez to have said, "I killed my baby" based on both his knowledge of Spanish and the interpreter's translation. Dr. Brazelton testified that he could not "remember exactly what [Castillo Dominguez's] words were," but that he recalled her saying "Y-o l-e m-a-t-o...with an accent over the O" (p. 18). ...Castillo-Dominguez's trial counsel, a native Spanish speaker, testified that "Yo le mato," does not "literally" mean "I just killed my baby." Counsel testified that he did not "think there is a comprehensible or a literal [translation] that would be comprehensible or...grammatically correct." Counsel testified that "I killed my baby" is stated "Yo mate mi bebe" in Spanish (pp. 18–19).	
Total				1	1		3		0

6. Other Semantic Issues

Fedeal

PRF	YR	JD	CT	T & NA	NT & NA	T & A	NT & A	Court Ruling Descriptions	R
OF	1989	9	*United States v. Sharif*			1		During a vigorous cross-examination, Sharif's attorney brought out certain discrepancies in the witness's English translation. The jury heard the witness' concessions of inaccuracies in his translation (p. 5).	1
OF	2010	2	*United States v. Ghailani*		1			there was substantial doubt as to the accuracy of their alleged translations. ... Moreover, at least one arguably significant translation error was conceded at the suppression hearing by the police inspector in charge of the Tanzanian police investigation (p. 121)	
Total					1	1			1

States

PRF	YR	JD	CT	T & NA	NT & NA	T & A	NT & A	Court Ruling Descriptions	R
CR	1975	CA11	*People v. Johnson*	1				...appellants offered evidence of the investigating officer involved in the matter who was totally fluent in Spanish and English and who was present throughout the preliminary hearing to the effect that there were significant errors in the translation. The trial judge refused to hear the testimony, basing his ruling upon his conception that translation by an interpreter is the equivalent of transcription by a court reporter so as not to be subject to "collateral attack"...if in fact the interpreter was not interpreting questions to Rubio accurately from English into Spanish and Rubio's answers in the inverse, counsel were helpless in their examination of the prosecution's key witness and no meaningful opportunity to cross-examine him existed. (pp. 703–704).	
OF	2018	MA5	*Commonwelath v. Lujan*	1				We have counted approximately ten instances where the intern mistranslated the detectives' question (or statement), eight instances where the intern asked a question other than the one the detective asked, twelve instances where the intern mistranslated the defendant's answers, twenty-two instances where the intern either did not translate the defendant's statement at all or did not translate it fully, thirty-three instances where the intern asked his own question, nine instances where the intern added something to the defendant's answer, sixteen instances where the intern suggested either a word or an answer to the defendant, and nine instances where the intern supplied an answer without hearing from the defendant (p. 100, fn. 4).	1
OF	1983	PA3	*Commonwealth v. Carrillo*			1		...there were mistakes in the translation of the officer-interpreter, as noted by the appellant's counsel, the official court interpreter present to aid the appellant and the court. However, "[o]ccasional errors in translation do not demonstrate that an interpreter is not qualified (p. 132, fn. 5).	
OF	2006	NV2	*Baltazar-Monterossa v State*			1		At trial, the videotapes of Baltazar-Monterrosa's two interviews were played for the jury, and the two police interpreters testified that, upon review, their translations were accurate. Afterwards, however, the defense raised a translation issue, noting that the court interpreters informed them that the police interpreters' translations in the video were not word-for-word and that there were additions and omissions (p. 611).	1
OF						1			1
OF	2008	GA4	*Hernandez v. State*				1	The court-appointed translator indicated that Loredo had provided an inexact translation as to one of Hernandez's statements, and then testified that another translation was inaccurate (p. 566, fn. 6), ...Hernandez, who also spoke some English, testified that he was unable to tell during the interview whether she translated correctly or incorrectly. Before the tape on the interview was played to the jury, defense counsel argued that "a lot" of Loredo's translation was incorrect, but did not specify in what way the translation was incorrect (p. 567).	1
CW	2008	OR5	*State v. Rodriguez-Castillo*	1				...the ability to speak a second language is quite different from the ability to serve as an interpreter, that there was no evidence that Perez was a qualified interpreter, nor was there any evidence that he had employed one of two accepted methods of interpretation...Rather, as the dissenting opinions reasoned, "[i]t is possible that [Perez] summarized or paraphrased the victim's statements instead. When asked whether he had accurately translated the conversation, Perez responded only, 'I think so. I think it's...yeah, as far as I...as far as I know'" (p. 51).	

Appendix 5: Testimony Types from Court Ruling Descriptions (by Profiles)

Abbreviations	
F	Fact-Type Testimony (see Chapter Five)
G	General-Type Testimony (see Chapter Five)
S	Accuracy-Specific-Type Testimony (see Chapter Five)
A	Interpreter-Mediated Statement Admitted by Interpreter's Testimony
NA	Interpreter-Mediated Statement Not Admitted by Insterpreter's Testimony
R	Video/Audio-Recorded

1. Court and/or Certified Interpreter

Federal

YR	JD	CT	F	G	S		A	NA	R
2009	11	*United States v. Kramers, et al.*		1		...the record does not reflect that the translators were sworn at the deposition in Liechtenstein...all three translators testified at the hearing. ...All three have a college education with majors in translation of German and English: Ms. Harland at the University at Erlangen...Ms. Harland...was a translator for the State Department... All three translators are freelancing in the business of translation (p. 894). ...At the evidentiary hearing... The court was satisfied unequivocally that the translation was truthful and correct (p. 895).	1		
				1		...the record does not reflect that the translators were sworn at the deposition in Liechtenstein...all three translators testified at the hearing. ...All three have a college education with majors in translation of German and English...; Ms. Wimmer at Concordia University in Montreal, whose Bachelor's degree and her training enables her to translate not only German and English but French...Ms. Wimmer was a translator for three years at the Austrian Trade Commission... All three translators are freelancing in the business of translation (p. 894). ...At the evidentiary hearing... The court was satisfied unequivocally that the translation was truthful and correct (p. 895).	1		
				1		...the record does not reflect that the translators were sworn at the deposition in Liechtenstein...all three translators testified at the hearing. ...All three have a college education with majors in translation of German and English...; Ms. Baur from the University at Heidelberg, and her studies led to a Bachelor's degree in translating. All three translators are freelancing in the business of translation (p. 894).	1		
Total			0	3	0		3	0	0

States

YR	JD	CT	F	G	S		A	NA	R
1882	CA4	*People v. Lee Ah Yute (60 Cal. 95)*	1			The defendant denied that he had ever so testified, and for the purpose of contradicting him, the Chinese interpreter, Louis Locke, was called for the prosecution, and he was asked if the defendant did not testify in the manner stated (p. 95).	1		
1893	HI1	*Prov. Gov't of Hawaiian Is v. Hering*	1			...the interpreter, Thompson, was sworn in the case and testified to the jury, of his own recollection, what the witness had said in the district court, ...(p. 188).	1		
1910	CA8	*People v. Luis*	1			...the Chinese interpreters, who were present throughout the proceedings, were allowed to testify to what questions were asked the defendant and what answers he gave thereto. While the interpreters testified at great length as to the conversation between the district attorney and defendant, which they interpreted, and heard everything that was said in that conversation, ...testifying in effect that defendant said that he killed Gon Ying Luis with a pistol found in the watercloset where he had put it, ...(pp. 191–192).	1		
2004	OR2	*Alcazar v. Hill*	1			In rebuttal, the state called Leone in response to petitioner's cross-examination of Usery and his denials regarding the content of the April 19 interview. During her testimony, Leone recounted portions of petitioner's statements from the interview. To counter defense counsel's cross-examination of Usery, the prosecutor asked Leone, "What was Detective Usery's demeanor like while he was speaking to [petitioner]?" Leone responded,"100 percent kind, total gentleman, very friendly" (p. 506).	1		

1902	CA5	*People v. John*		1		"First, the interpreter testified that he accurately stated in English, at the examination, all that the defendant said in Chinese. Second, the official stenographer then testified to every word which the interpreter had stated. By this method, the exact words of the defendant were conveyed through the double medium of the interpreter and the stenographer to the jury; neither of them alone could have accomplished this result." To admit such testimony would be to make a new rule of evidence (p. 221).		1	
1913	TX2	*Mares v. State*		1		This interpreter testified on this trial, but testified in substance that he could not remember fully the testimony of the appellant in the County Court case, ...The court, in allowing the bill, qualified it by explaining that the interpreter in this case testified that he had forgotten what the defendant testified to in the case in the County Court, but he truly and correctly interpreted what he said at the time (p.306).	1		
1917	PA1	*Common-wealth v. Brown*		1		That officer [interpreter] testified that he acted as interpreter in a great many cases yearly, and could not remember the particular testimony given in the former trial (p. 526).	1		
1975	CA11	*People v. Johnson*		1		The judge did hear testimony from the translator himself which generally established that no dereliction in translation had occurred (p. 704).		1	
1980	OR1	*State v. Letterman*		1		Ms. Shisler testified that at the time of the interview between defendant and the officer she translated all questions and answers accurately. She was unable, however, to recall any of the answers given by defendant to the officer's questions (p. 1147).	1		
1986	MO3	*State v. Spyvey*		1		The interpreter, Mr. Atwood, testified that he was required to be neutral and bound by a code of ethics to communicate only what comes from the sender (p. 297).	1		
2017	OR8	*State v. Ambriz-Arguello*			1	The interpreter testified that she started learning Spanish at the age of seven, and that she studied Spanish throughout grade school, high school, and college. The interpreter also testified that she studied abroad at a university in Mexico and was certified by the City of Beaverton as a Spanish interpreter. The interpreter further testified that, in the nine years since becoming certified with the City of Beaverton Police Department, she has interpreted "hundreds" of times and is 98 percent fluent in Spanish. The interpreter testified that she reviewed the audio-video recording and transcript of the interview with defendant in which she had acted as translator and confirmed the accuracy of her translation (pp. 586–587).		1	1
Total			4	6	1		8	3	1

2. Altenatively Qualified Interpreter

Federal

YR	JD	CT	F	G	S		A	NA	R
Total			0	0	0		0	0	0

States

YR	JD	CT	F	G	S		A	NA	R
2002	OH2	*State v. Carrillo*	1			Allen testified that she read appellant his Miranda rights in Spanish. Allen also gave appellant a Miranda warning card in Spanish which appellant signed. Upon reading appellant his Miranda rights, Allen asked him if he understood he had no obligation to speak to the Detectives without the presence of an attorney. Appellant indicated he understood, and stated he did not need an attorney as he had done nothing wrong. Appellant also stated that he wanted to speak to the Detectives without an attorney present. Allen testified that appellant never asked for clarification while she was reading his Miranda rights in Spanish (p. 26)	1		
2015	KY2	*Lopez v. Common-wealth*		1		Melgar testified at trial that Detective Adams read Lopez his Miranda rights, which Melgar translated for Lopez. Melgar also testified about his experience as an interpreter; that Lopez understood and waived his Miranda rights; that he believed Lopez answered questions voluntarily; and that his translations were true and accurate. Melgar did not testify regarding the contents of Lopez's statement (p. 870).	1		1
1999	WA4	*State v. Bernal*		1		The social worker, the examining nurse, the on-duty physician, and the hospital's interpreter testified at trial. (p. 3).	1		
Total			1	2	0		3	0	1

3. Law Enforcement/Government Officer

Federal

YR	JD	CT	F	G	S		A	NA	R
1979	5	*United States v. Batencort*	1			First, the "translator", agent Blotsky, testified about the appellant's inculpatory statements (p. 917).	1		
1991	9	*United States v. Herrera-Zuleta*	1			Agent Olivieri testified at length as to the conversation (primarily in Spanish) that occurred... Finally, Olivieri testified that "Herrera asked if the cocaine could be delivered to either—somewhere on the West Coast rather than South Florida, ...Mr. Seal told him that, yes, he could do it to the West Coast. And Mr. Herrera said either Los Angeles or Las Vegas would be—it would be okay, and then he agreed...that Las Vegas would be the place where he would deliver it" (pp. 3–4).	1		
2006	8	*United States v. Sanchez-Godinez*	1			Jauregui testified that during the interview, Sanchez-Godinez admitted to knowing about the marijuana in the truck. He also testified that Sanchez-Godinez told him where he had picked up the marijuana and where it was going (p. 959).	1		
2018	3	*United States v. Vega-Arizmendi*	1			At the evidentiary hearing, TFO Kalme was able to describe aspects of the interview and its surrounding circumstances in detail (p. 3).	1		
1962	9	*Chin Kay v. United States*		1		Agent Wong did not testify at the hearing on the motion, but he did testify at the trial. About all his testimony amounted to was that there was a conversation which he translated, but he did not testify as to what the conversation was (p. 326)	1		
1982	9	*United States v. Felix-Jerez*		1		He testified that he acted as an interpreter at the interview..., but that he had no independent recollection of the questions and answers and could not testify what they were. He said that his translations were accurate... (pp. 1298–1299).		1	
1983	2	*United States v. Da Silva*		1		Not only did both Stewart and Cruz testify to Da Silva's understanding of Spanish, after having conducted effective dialogues with him... (p. 831).	1		
2012	9	*United States v. Santacruz*		1		...Santacruz was given the opportunity to cross-examine Agent Kuehnlein, which he did, and Deputy Davalos, which he declined (p. 443).	1		
2012	9	*United States v. Romo-Chavez*		1		Both Officer Hernandez and Agent Simboli testified that they had never attempted to Mirandize a suspect in any language without the use of a preprinted form (p. 960).	1		
2015	4	*United States v. Ceja-Rangel*		1		...the Government indicated at the March 30, 2015 pretrial hearing that the interpreter would be at trial (p. 4).	1		
1989	9	*United States v. Sharif*			1	During a vigorous cross-examination, Sharif's attorney brought out certain discrepancies in the witness's English translation. The jury heard the witness' concessions of inaccuracies in his translation (p. 5).	1		1
Total			4	6	1		10	1	1

States

JD	YR	CT	F	G	S		A	NA	R
1976	CT2	*State v. Rosa*	1			At this point, according to Officer Velazco, the Defendant volunteered that "he wanted to tell me the truth now and that he told me that he had acted alone in the apartment with Luis Moran but it only had been because of the insistence of Carmen Rivera Sanchez. ...He told me that she had been making signs behind Luis Moran's back for him to hit him over the head and take his money, by whispers and signs." The Defendant said that he hit Moran with the pipe, took $ 187, ran down the stairs and drove off to Newburgh with Carmen Sanchez. This oral Statement was translated by Officer Velazco from Spanish into English for his fellow officer (p. 423).	1		
1983	PA3	*Commonwealth v. Carrillo*	1			...the officer testified that appellant was warned of all of his rights... (p. 132. fn. 5).	1		
1987	MN1	*State v. Mitjans*	1			Globa testified that...defendant said, "I know I did it, I did it, I feel bad, my conscience has to say it"...defendant was interpreted as saying that he thought he got the gun from his residence because of an argument caused by "the man" calling him a "shitty nigger"; that he pulled out the gun after he was grabbed by the man; that he thought only one shot was fired; that the man "did offend me, but not enough to shoot him"; that he did not remember if he felt his life was being threatened; and "I feel I am responsible and my conscience feels bad" (pp. 826–827).	1		

1991	WI2	*State v. Arroyo*	1			Detective Sandoval's testimony as to the oral assertion transmitted between Arroyo and himself is admissible… (p. 79).	1		
1997	WA3	*State v. Gracia-Trujillo*	1			Bejar testified that he now remembered some of the questions and answers he had translated when he acted as an interpreter for Detective Moser. Specifically, he remembered translating the question, "Do you know how old [V.C.] is?" and Garcia's answer, "No." He also remembered translating the question "How old do you think she is?" but remembered only that Garcia's response was an age under 18 (p. 206).		1	
1999	DE1	*Diaz v. State*	1			Detective Santiago testified he had no difficulty communicating in Spanish with Ms. Rivera. During an interview on February 27, 1996, Ms. Rivera told Detective Santiago of the assault by Diaz that she had related two days earlier to Officer Sutton. Speaking in Spanish, Ms. Rivera told Detective Santiago that she was sitting on the living room couch when Diaz climbed in the window. According to Ms. Rivera, Diaz took her into the bedroom, threw her on the bed, ripped off her clothes, and attempted to have sexual intercourse with her (P. 1169).		1	
1999	KS1	*State v. Martinez-Lumbrers*	1			Serrano testified as to what Martinez-Lumbreras said directly to him, albeit in Spanish rather than English (p. 3).	1		
2000	IL4	*People v. Villagomez*	1			Montilla testified that he was unsure whether he told the assistant State's Attorney that defendant said Socorro attacked him (pp. 805–806).	1		
2003	AK1	*Cruz-Reyes v. State*	1			Cross was not the only witness who testified about the conversation with Cruz-Reyes; Ibarra did too. Because Ibarra's account of the conversation was the same as Cross's, and because the defense did not attack the accuracy of that account, we conclude that any arguable error in allowing Cross to describe the conversation was harmless (p. 224).	1		
2004	WA6	*State v. Gonzalez-Hernandez*	1			Punzalan could not recall if Gonzalez said he was sorry; he was also not sure he would have recognized the word "sorry" in Spanish. Punzalan testified that if Gonzalez "said he was sorry, it was probably in English." And when asked what the Spanish word for "rape" was, Punzalan stated that he believed he used the English word (p. 56).		1	
2005	CA26	*People v. Rosales*	1			Flores testified the previous day concerning where he found Rosales, but the district attorney did not question him regarding Rosales's statements (p. 23).		1	
2007	OR4	*State v. Gonzalez-Guiterrez*	1			At trial, Grandjean summarized the contents of four of those calls (p. 106).	1		1
2008	OR5	*State v. Rodriguez-Castillo*	1			Essentially, the officer testified that defendant denied, then admitted, and then denied that, on one occasion, he had put his hand inside the victim's pants and touched either the top of her pubic hair or the outside of her vagina (p. 54).		1	1
2009	NY11	*People v. Quan Hong Ye*	1			Moreover, the interpreting officer testified as to the truthfulness and accuracy of his translation. Furthermore, this officer also testified as to the substance of defendant's admissions, and this testimony was essentially the same as that given by the interrogating officer (pp. 473–474).	1		
2010	CT7	*State v. Garcia*	1			After conducting an evidentiary hearing on the Defendant's motion, at which both Tirado [a bilingual officer who interviewed the defendant] and the Defendant testified, the trial court made the following relevant factual findings (pp. 43–44).	1		
2010	TX13	*Diaz v. State*	1			According to Ortega, Appellant seemed calm as she translated the statement, and he did not ask any questions or indicate that he had been threatened or promised anything (p.10). ...Ortega testified generally that CPS's job is to protect the children, and that while police are investigating a criminal case, CPS conducts its own civil investigation (p. 22).	1		
2011	GA6	*Ursulita v. State*	1			...Restrepo himself testified to the interview with Ursulita (p. 738).	1		

2018	MA5	*Commonwelath v. Lujan*	1			...the intern admitted he did not recall asking the defendant what his primary language was and noticed that the defendant "had problems finding [the] right vocabulary for some of the stuff." She [the trial judge] highlighted this portion of defense counsel's cross-examination: DEFENSE COUNSEL: "So he had difficulty finding the vocabulary to tell you what he wanted to convey to you. Is that correct?" THE INTERN: "Yes." DEFENSE COUNSEL: "And his fluency in Russian, was it restricted by some of the words?" THE INTERN: "He seemed <pause> somewhat fluent in Russian, I mean maybe there was some hiccups in some of the vocab that he was looking to use." DEFENSE COUNSEL: "And during the point you were interpreting, did you help him find the words?" THE INTERN: "Yes." DEFENSE COUNSEL: "Did you suggest words to him?" THE INTERN: "Yes" (p. 100, fn. 5).		1	1
2018	CA44	*People v. Santay*	1			Parker testified...He asked if she was in pain, and she said her face and head hurt. He asked how her eye got hurt, and she said her husband Enrique hit her. Parker asked, "'[C]omo esto...?'" ("like this?" gesturing with an open hand) or "'como esto?'" (gesturing with a fist). She said, "'Como esto'" and closed her hand into a fist and brought it to her face. He asked her "'quantos'" (how many), and she answered "'dos'" (two). She said that, after defendant punched her, the males in the house tried to stop him from hurting her more, and defendant stabbed them. She did not explain what happened in any more detail. When Parker asked why defendant did that, she said the only reason she knew of was that he was drunk (pp. 7–8).	1		
1989	AZ3	*State v. Terrazas*		1		Officer Ayala testified that...although he no longer recalled the substance of the interrogation, he had fairly and accurately translated Cometh's questions to defendant and defendant's answers to Cometh. He testified that he had no trouble communicating with the defendant, that he noticed no dialectical difference in their Spanish, and that defendant appeared to understand his questions and responsively answered the questions asked (p. 361).	1		
1989	CA12	*People v. Torres*		1		At trial, Officer Wagner testified regarding his qualifications as an interpreter and stated that he accurately translated Sergeant Greer's questions and defendant's responses (p. 1257).	1		
2000	IL3	*People v. Villagomez*		1		Montilla testified that he accurately translated the conversation, including additional Miranda warnings (p. 4).	1		
2004	CT4	*State v. Torres*		1		Regarding each Statement, the translator testified that he translated the Defendant's responses accurately, and that the Defendant appeared to understand his questions and gave answers that were responsive to the questions (p. 317).	1		
2004	CT5	*State v. Colon*		1		Velez testified that he read what Ricci was typing on the computer screen and confirmed that it was, in fact, what he just had translated. ...Velez verified that the statement that Ricci was transcribing was an accurate representation of what the defendant had stated in Spanish (p. 105)	1		
2006	NV2	*Baltazar-Monterossa v State*		1		At trial, the videotapes of Baltazar-Monterrosa's two interviews were played for the jury, and the two police interpreters testified that, upon review, their translations were accurate. (p. 611)	1		1
				1		At trial, the videotapes of Baltazar-Monterrosa's two interviews were played for the jury, and the two police interpreters testified that, upon review, their translations were accurate. (p. 611)	1		1
2012	OR6	*State v. Montoya-Franco*		1		Diaz testified that he was certified through the City of Salem to act as an interpreter for Spanish speakers. He also testified that Spanish was his first language, that he grew up in a household with Spanish-speaking parents, and that he primarily communicated with his parents in Spanish. Diaz testified that, when he assisted Remilly in conducting defendant's interview, he and defendant were able to communicate effectively with each other. Diaz explained that he interpreted "word for word," that he had no communication problems during the interview, and that he translated everything accurately (p. 667).	1		
2012	OR7	*State v. Ibarra-Ruiz*		1		At trial, Diaz testified that he is a native Spanish speaker who acts as a police interpreter. He testified that he and defendant were able to understand each other, that he interpreted defendant's statements word for word, that Tallan took down specific quotes from defendant's translated responses, that Diaz later read Tallan's written report, and that the report was accurate (p. 657).	1		

2016	IL5	*People v. Uriostegui*		1		Detective De La Torre of the Chicago Police Department testified that...defendant's typewritten statement was a true and accurate memorialization of the questions that were asked by Park and the responses provided by defendant (p. 32).	1		
2003	CA19	*People v. Huerta*			1	Raya testified that Spanish was his first language, that he is fluent in Spanish, and that he accurately translated Huerta's statements during the interview on April 3, 1998. During an in limine hearing, Raya translated portions of a report from English to Spanish, and the trial court concluded, using a court-certified interpreter, that Raya's translation was accurate (pp. 26-27). ...At trial, Raya testified that the report accurately reflected what Huerta said, although he did not use the reported word "broker" in his translation. Bottomley's testimony was based upon his independent recollection, refreshed by the report, and Bottomley testified that Raya did not actually use the word "broker" (p. 27).	1		
2012	OR6	*State v. Montoya-Franco*			1	Byers testified that he was able to communicate effectively with defendant during the interview with Boyce. Byers understood defendant's words but, at times during the interview, he had difficulty understanding what defendant was saying in relation to Boyce's questions. That difficulty, Byers explained, arose because he was unfamiliar with the underlying facts of the case, and defendant's answers sometimes were not responsive to Boyce's questions. Instead, defendant sometimes would add or change facts during his answers to the questions. When that occurred, Byers would clarify defendant's responses before translating them to Boyce (p. 667).	1		
2015	TX18	*Palomo v. State*			1	Alvarado testified that, for the most part, she was able to translate both Ralph's questions and Ellen's answers word for word. She denied adding anything of her own to either the questions or the answers. At least twice, however, she found it necessary to rephrase the question when Ellen did not understand the word-for-word translation. Palomo was able to point to only one instance during the approximately twenty-minute interview in which he claimed Alvarado mistranslated one of Ellen's answers. Even then, Alvarado readily admitted that, if Ellen stated the phrase as Palomo claimed, then her translation would be incorrect (p. 10).	1		1
Total			19	11	3		27	6	6

4. Unknown

Federal

YR	JD	CT	F	G	S		A	NA	R
1912	7	*Guan Lee v. United States*		1		Mr. Kan testified that the questions were asked by Mr. Thompson in English, translated into Chinese, and put to appellant, and the answers translated into English, and that the interpreting was correctly done, but did not testify what appellant said (p. 599).	1		
Total				1			1		

States

JD	YR	CT	F	G	S		A	NA	R
1903	FL1	*Meacham v. State*	1			Webster was examined by defendant and testified that on the occasion inquired about he acted as interpreter at the request of Galvin in a conversation carried on between Galvin and defendant, the former speaking Spanish, the latter English. The testimony of this witness tended to show that in this conversation Galvin admitted that he sold the cigars to the defendant, to be paid for at a designated time (p. 73).	1		
1916	ID1	*State v. Fong Loon*	1			Yee Wee, upon cross-examination with reference to the foregoing statement, testified: "Fong Chung say a good many times that he don't know whether he is going to get well or whether he is going to die, I cannot remember. I have pretty bad memory--I say pretty bad sometimes--pretty good sometimes" (pp. 254–255).		1	
1929	AZ1	*Indian Fred v. State*	1			The interpreter, however, testified in person as to the statements made by defendants, and since the hearing was before the court and not before the jury, ...Thereafter the jury was called in, and the interpreter again testified before it as to the terms of the confession (p. 56).	1		
1934	CA10	*People v. Jaramillo*	1			...the interpreter, when called by the state, denied that the appellant made the answer which the former witness said the interpreter told her he had made. On the other hand, the only competent evidence of appellant's conduct at the time came from the interpreter, who testified that the appellant turned to the girl and said in the Spanish language: "Now you know this is all wrong. I promised to marry you around the first of the year..." (p. 235).		1	
1983	FL2	*Rosell v. State*	1			Mary Aldridge, an interpreter, testified that she interpreted between appellants and Deputy Tucker on November 14, 1981. Aldridge testified that appellants' only statement at that time was that they did not know what was in the bags (p. 1262).		1	
1984	FL3	*Henao v. State*	1			...the interpreter herself took the stand and gave a version of Henao's statements which did not materially differ from the officer's (P. 20).	1		
2004	RI3	*State v Jaiman*	1			The trial justice permitted portions of the police statement to be read to the jury by the interpreter who had assisted Muriel at the time he gave the statement (p. 986). ...The defendant's objection that the statement "ought not to be delivered to this jury through the mouth of the police officer" was sustained and the interpreter read those portions into evidence (p. 987).	1		
1901	MA2	*Commonwealth v. Storti*		1		The interpreter was a witness at the trial, and swore that he accurately translated all that was said by the officer to the prisoner and all the answers which the prisoner made (p. 343).	1		
2005	IA2	*State v. Venegas*		1		Ochoa testified at the trial that he honestly and accurately translated from English to Spanish and from Spanish to English (pp. 9–10).	1		1
Total			7	2	0		6	3	1

5. Telephone

Federal

YR	JD	CT	F	G	S		A	NA	R
Total			0	0	0		0	0	0

States

YR	JD	CT	F	G	S		A	NA	R
Total			0	0	0		0	0	0

6. Co-Worker/ Employee

Federal

YR	JD	CT	F	G	S		A	NA	R
Total			0	0	0		0	0	0

States

YR	JD	CT	F	G	S		A	NA	R
1985	NY5	*People v. Perez*		1		Mr. Rivera testified that although he could not recall the contents of the conversation, his translation at the hospital was accurate (p. 32).	1		
2007	TX8	*Ramirez v. State*		1		Moreno also testified that he had no specific memory of appellant and could not say whether what he told Nurse Cates was accurate (p. 5). ...Moreno testified that...he was able to effectively communicate with appellant regarding the particular information he translated, ...(p. 7).	1		
2007	OR3	*State v. Rodriguez-Castillo*		1		Perez testified that he had worked for six years as a Spanish language tutor at the victim's school. He also testified that Spanish was his native language and that he spoke the language "quite well." When the prosecutor asked Perez if he had accurately interpreted the conversation between Lane and the victim, he testified, "I think so. I think it's—yeah, as far as I—as far as I know" (p. 485).	1		
2008	OR3	*State v. Rodriguez-Castillo*		1		When asked whether he had accurately translated the conversation, Perez responded only, "I think so. I think it's—yeah, as far as I—as far as I know" (p. 51).		1	
Total			0	4			3	1	0

7. Acquaintance

Federal

YR	JD	CT	F	G	S		A	NA	R
Total			0				0	0	0

States

YR	JD	CT	F	G	S		A	NA	R
1909	NY1	*State v. Randazzio*	1			Marsh testified that while he could remember some of the questions and answers he could not remember all...(p. 154).	1		
1915	TX3	*Boyd v. State*	1			Mrs. Gonzales could testify to the dying declaration if proper predicate had been laid. The deceased Mexican could not speak English. Mrs. Gonzales spoke the Mexican and English languages. She testified on the trial, and, of course, her testimony would be admissible provided the proper predicate should be laid (p. 32)		1	
1998	WI4	*State v. Fuentes*			1	...Fuentes contends that Brown acted as more than a language conduit because she altered Kuhl's questions and Fuentes's answers to explain them better (p. 14). ...Brown testified that she would give her own explanations of questions and answers because they could not be translated directly. We see nothing wrong with Brown's attempt to translate questions and answers for their true meaning instead of giving a word-for-word translation that may not accurately convey what Kuhl or Fuentes was trying to say (p. 15).	1		
Total			2	0	1		2	1	0

8. Family

Federal

YR	JD	CT	F	G	S		A	NA	R
1999	5	*United States v. Bell*		1		Although she testified that her translations had been correct, Phoebe Martin insisted that Dr. Coats had received almost all of the information directly from the child (p. 4).	1		
Total			0	1	0		1	0	0

States

YR	JD	CT	F	G	S		A	NA	R
1999	DE1	*Diaz v. State*	1			She testified that she saw her father push her mother. Maria testified that her father also hit her but "by accident" (p. 1171).		1	
2010	IN1	*Palacios v. State*	1			Brenda testified on re-direct examination that Martina stated to her where she was hit, that "it still hurt a little bit," that C.P. was in Martina's lap at the time she was hit, and that Palacios had yelled for "everybody [to] get [out] of the house or [he] was going to kill [them] all" (pp. 1031–1032).	1		
2004	CA22	*People v. Zavala*	1			Rudolfo testified at trial and denied that Andreas told the officer that defendant had threatened to kill Gonzalez; instead, Andreas had said defendant was going to kill himself (p. 6). ...Rudolfo testified at trial and recanted some of the statements he translated for Andreas (p. 18).	1		
2005	CA25	*People v. Raquel*	1			Marcos testified he told Bryan that his mother said, in Spanish, "She did this [to me]" (p. 8). ...Marcos also testified that Cardenas had not told him Raquel cut her with a knife. He maintained only that Cardenas told him, "Tell [the police] that she did this" (p. 14).	1		
2008	CA36	*People v. Ma*	1			Annie merely testified that she translated "as best she could" (p. 13). ...Annie testified that Ngor was really worried and upset during their April 2, 2006 telephone conversation. Ngor told Annie that defendant had "just gone crazy." Annie described Ngor's statement in the telephone conversation: "I don't know who he threatened first. Either— I don't know if it was my parents first or my uncle. But saying that he was going to kill them, but that's what I got from her" (p. 19.)	1		
1984	FL4	*Chao v. State*		1		Mendez testified that at Rigdon's request, he read the Miranda warnings to the defendant, and the defendant acknowledged that he understood his Miranda rights. Mendez could not remember what the ensuing questions and answers were, but stated that he truthfully translated the "questions and answers between Detective Rigdon and the defendant" (p. 879)	1		
1985	FL5	Chao v. State		1		Mendez answered in the affirmative when asked whether he translated questions and answers between Rigdon and Chao, but he stated that, "I don't remember exactly what he told me" (p. 31).	1		
Total			5	2	0		6	1	0

9. Neighbor/By-Stander

Federal

YR	JD	CT	F	G	S		A	NA	R
1985	1	*United States v. Beltran*		1		Dr. Richart, a native speaker of both English and Spanish, testified that she had no problem communicating with any of the defendants and that she did not believe they had any problem in comprehending her translations (p. 10).	1		
Total			0	1	0		1	0	0

States

JD	YR	CT	F	G	S		A	NA	R
1995	NY8	*People v. Generoso*	1			The court permitted Miele to testify as to conversations translated by him from Italian to English and vice versa (p. 671).	1		
2001	TX6	*Gomez v. State*	1			At trial, Andrade testified that when Officer Peters asked appellant if he had been drinking, appellant said that he had drunk two or three beers; Andrade relayed this information to Peters (p. 457).	1		
2011	HI2	*State v. Huynh*	1			Nguyen testified...Nguyen asked complaining witness what happened and she responded, "the husband attack her." ...Nguyen was then allowed to testify that complaining witness told him her husband had attacked her neck from behind with the cable (pp. 4–5).	1		

2000	CA13	*Correa v. People*		1		Hector further testified he attempted to translate the officer's questions and the witnesses' answers as accurately as possible. However, he admitted he only related in English to the officers the "general gist" of what was being said in Spanish. He indicated he did not provide an exact word-for-word translation but did not add or leave out anything "of substance." He could not remember the specifics of any of the questions or answers given (p. 634).		1	
				1		Higinia testified...she had no trouble understanding what the women said. Like Hector, she had no recollection of the specific questions asked or the answers given (p. 634).		1	
2002	CA17	*Correa v. People*		1		Hector testified that he had translated accurately. He reported that he had been approached by a woman he had never met (apparently Patricia), who asked to use his telephone. He granted permission and later observed a man (apparently Miguel), also a stranger, who appeared with a bleeding wound on his left side. Then two police officers arrived, and he translated for them at their request. He did not add anything or leave anything out, although he may not have given a word-for-word translation (p. 450).	1		
				1		Higinia also testified that she had understood Patricia perfectly and believed she had provided a word-for-word translation. At the time of the preliminary hearing, Higinia no longer recalled exactly what Patricia had said or exactly what questions the officer had asked. Higinia testified that she had translated faithfully (p. 449).	1		
Total			3	4			5	2	0

10. Co-Conspirator

Federal

YR	JD	CT	F	G	S		A	NA	R
9	1973	*United States v. Ushakow*	1			...he [Ushakow] objects to a conversation related by Carlon between Chicas and himself pertaining to who sold marijuana in Nogales. Chicas spoke in Spanish and there was no proof that Ushakow understood Spanish. ...Carlon was translating and was merely a language conduit between Ushakow and Chicas. Therefore, his testimony is within the same exception to the hearsay rule as when a defendant and another are speaking the same language (p. 1245).	1		
Total			1	0	0		1	0	0

States

YR	JD	CT	F	G	S		A	NA	R
Total			0	0	0		0	0	0

11. Informant

Federal

YR	JD	CT	F	G	S		A	NA	R
Total			0	0	0		0	0	0

States

YR	JD	CT	F	G	S		A	NA	R
1991	NY7	*People v. Romero*	1			Davila testified in English as to what was said in the three-way conversations among Tillery, defendant and himself at the time of the two drug sales and in various preliminary meetings (p. 360). ...Davila testified to the conversations and thereby "verified" the translation he had given to Tillery (p.361).		1	
Total			1	0	0		0	1	0

12. Inmate

Federal

YR	JD	CT	F	G	S		A	NA	R
Total			0	0	0		0	0	0

States

YR	JD	CT	F	G	S		A	NA	R
Total			0	0	0		0	0	0

Appendix 6: Offenses, Interpreter Profiles, Languages, & Evidentiary Admission

Abbreviations						
JD	Jurisdictions					
YR	Year					
LG	Language					
NA	Interpreter-Mediated Statement Not Admitted					
A	Interpreter-Mediated Statement Admitted					
Party	D	Defendant	V	Victim	O	Other
Inter-preter Profiles	CR	Certified/Court Interpreter	AL	Alternatively Qualified Interpreter	OF	Law Enforcement/ Government Officer
	UK	Unknown	TL	Telephone	CW	Co-Worker/Employee
	AQ	Acquaintance	FM	Family Member	NB	Neighbor/By-Stander
	CC	Co-Conspirator	IF	Informant	IM	Inmate
Lan-guages	AR	Arabic	CC	Chiu Chow (Chiuchow)	CH	Chinese
	CK	Cheokee	CR	Creole	CT	Choctaw
	FR	French	FS	Farsi	GK	Greek
	GR	German	HA	Hawaiian	HM	Hmong
	IT	Italian	JP	Japanese	KM	Khmer
	KR	Korean	MD	Moldovan	NA	Native American (Tribe Unknown)
	NJ	Navajo	NP	Nepali	NV	Non-Verbal Language
	PG	Piegan	PJ	Punjabi	SM	Somali
	SL	Sign Language	SP	Spanish	SR	Serb
	SW	Swahili	TK	Turkish	UK	Unknown
	UR	Urdu	RS	Russian	VT	Veitnamese
	YD	Yiddish				

Federal Offenses **(54 Interpreters in Total)**

1. Drug-Related Offenses

YR	JR	Case Title	LG	Offense	Who Interpreters Translated For			Interpreter's In-Court Testimony		Evidentiary Admission of Interpreter-Mediated Statement		Appellate Ruling	Interpreter Profile										
					D	V	O	YES	NO	NA	A		CR	AL	OF	UK	TL	CW	AQ	FM	NB	CC	IF	IM
1925	8	*Kalos v. United States*	GK	Unlawful Receipt and Concealment of Morphine	1				1	1		Reversed & Remanded										1		
1962	9	*Chin Kay v. United States*	CH	Fraudulently & Knowingly Concealing Narcotics	1			1			1	District Court's Decision Affirmed			1									

1973	9	*United States v. Ushakow*	SP	Possession of Marjana with Intent to Distribute	1			1			1	Conviction Affirmed										1		
1973	9	*United States v. Martin*	SP	Illegal Possession of Heroin with Intent to Distribute	1				1		1	Judgment Affirmed												1
1974	2	*United States v. Santana*	FR	Conspiracy to Buy, Sell, and Transport Narcotic Drugs	1				1		1	Judgments Affirmed										1		
1979	5	*United States v. Batencort*	SP	Importation of Controlled Substance	1			1			1	Judgment Affirmed			1									
1983	2	*United States v. Da Silva*	SP	Intentionally Importing Cocaine	1			1			1	Judgment Affirmed			1									
1985	1	*United States v. Beltran*	SP	Possession of & Conspiracy to Import Controlled Substance	1			1			1	District Court's Decision Affirmed									1			
1985	11	*United States v. Alvarez*	SP	Cocaine Deal & Fatal Shoot-Out, etc.	1				1		1	Convictions Affirmed			1									
1989	9	*United States v. Sharif*	UR	Using Telephone to Facilitate Conspiracy (Drug-Related)	1			1			1	Judgment Affirmed			1									
1991	2	*United States v. Lopez*	SP	Conspiracy to Distribute & Possession with Intent to Distribute More Than 500 Grams of Cocaine	1				1		1	Judgments Affirmed							1					
1991	9	*United States v. Herrera-Zuleta*	SP	Importation of More Than One Kilogram of Cocaine	1			1			1	Judgment Affirmed			1									
1991	9	*United States v. Nazemian*	SP	Conspiracy to Possess with Intent to Distribute Heroin, etc.	1				1		1	Judgment Affirmed				1								
1994	5	*United States v. Cordero*	SP	Possession with Intent to Distribute Marijuana	1				1		1	Convictions Affirmed										1		
1994	9	*United States v. Garcia*	SP	Conspiracy & Possession of More Than 500 Kilograms of Cocaine	1				1		1	Judgment Affirmed										1		
2000	5	*United States v. Martinez-Gaytan*	SP	Transporting 75 Pounds of Marijuana	1				1	1		Vacated & Remanded			1									
2004	5	*United States v. Mane-Valrerino*	SP	Possession and Conspiracy to Possess with Intent to Distribute More Than 1000 Kilograms of Marijuana	1				1		1	Judgment Affirmed				1								
2005	4	*United States v. Staffford*	SP	Conspiracy to Possess with Intent to Distribute Cocaine	1				1		1	Judgment Affirmed										1		
2006	8	*United States v. Sanchez-Godinez*	SP	Possession of Marijuana with Intent to Distribute	1			1			1	District Court's Decision Affirmed			1									
2012	9	*United States v. Santacruz*	SP	Conspiracy to Distribute, etc. Methamphetamine and/or Cocaine	1			1			1	Judgment Affirmed			1									
2012	9	*United States v. Orm Hieng*	KM	Cultivation of More Than 1000 Marijuana Plants	1				1		1	Judgment Affirmed	1											

2012	9	*United States v. Romo-Chavez*	SP	Knowing Possession of Methamphetamine with Intent to Distribute	1			1			1	Judgment Affirmed			1									
2013	11	*United States v. Curbelo*	SP	Conspiracy to Manufacture & Possess Marijuana with Intent to Distribute			1		1		1	Conviction & Sentence Affirmed				1								
2018	3	*United States v. Vega-Arizmendi*	SP	Drug-Related Offense	1			1			1	Motion Denied			1									
Total					23	0	1	11	13	2	22		1	0	11	3	0	0	0	1	1	6	0	1

2. Immigration-Related Offenses

YR	JR	Case Title	LG	Offense	Who Interpreters Translated For			Interpreter's In-Court Testimony		Evidentiary Admission of Interpreter-Mediated Statement		Appellate Ruling	Interpreter Profile											
					D	V	O	YES	NO	NA	A		CR	AL	OF	UK	TL	CW	AQ	FM	NB	CC	IF	IM
1912	7	*Guan Lee v. United States*	CH	Illegal Entry	1			1			1	Decrees Affirmed				1								
1991	9	*United States v. Dunham*	SP	Conspiracy & Creating Fraudulent Documents for Alien Residence Application	1				1		1	Convictions Affirmed									1			
2005	3	*United States v. Dimas*	SP	Transportation of Illegal Aliens	1				1		1	Motion Denied					1							
2006	2	*United States v. Nouira*	UK	Conspiring to Fraudulently Obtain Green Cards	1				1		1	Certificate of Non-Existence Inadmissible				1								
2009	4	*United States v. Vidacak*	SR	Making False Statements on Immigration Applications	1				1		1	Verdicts Affirmed		1										
2012	5	*United States v. Budha*	NP	Failure or Refusal to Apply for Travel Documents	1				1		1	Affirmed in Part & Vacated in Part				0	1							
2012	9	*United States v. Boskovic*	UK	Possession of Green Card Through False Statements	1				1		1	Judgment Affirmed				1								
2012	11	*United States v. Desire*	CR	Currency Concealment & Transporting, etc.	1				1		1	Convictions Affirmed						1						
			CR	Currency Concealment & Transporting, etc.	1				1		1	Convictions Affirmed						1						
2013	7	*United States v Skiljevic*	SR	Immigration Fraud	1				1		1	Motions Denied; Motion to Sever Granted		1										
2013	11	*United States v. Charles*	CR	Knowing Use of Fraudulent Entry Documents	1				1	1		Conviction Affirmed					1							
2015	9	*United States v. Aifang Ye*	CH	False Statement in Passport Application	1				1		1	Judgment Affirmed					1							
2017	4	*United States v. Kaixiang Zhu*	CH	Conspiracy to Commit Immigration Fraud, etc.			1		1		1	Judgment Affirmed				1								
Total					12	0	1	1	12	1	12		0	2	0	4	4	2	0	0	1	0	0	0

3. Terrorism, Murder, Kidnapping & Piracy

YR	JR	Case Title	LG	Offense	Who Interpreters Translated For			Interpreter's In-Court Testimony		Evidentiary Admission of Interpreter-Mediated Statement		Appellate Ruling	Interpreter Profile											
					D	V	O	YES	NO	NA	A		CR	AL	OF	UK	TL	CW	AQ	FM	NB	CC	IF	IM
2001	2	*United States v. Bin Laden*	AR	Embassy Bombing	1				1		1	Motions Denied			1									
2005	3	*United States v. Chang Ping Lin*	CH	Kidnapping Extortion, etc.	1				1		1	Judgment Affirmed; Remanded for New sentencing					1							
2010	2	*United States v. Ghailani*	SW	Conspiracy in U.S. Embassy Bombings in Africa			1		1	1		Evidence Excluded			1									
2012	4	*United States v. Teran*	SP	Murder for Hire			1		1		1	Convictions Affirmed				1								
2013	4	*United States v. Shibin*	AR	Piracies in Somali Waters			1		1		1	Convictions Affirmed			1									
2015	4	*United States v. Ceja-Rangel*	SP	Kidnapping, etc.	1			1			1	Motion Denied			1									
2017	6	*Jackson v. Hoffner*	NV	1st-Degree Premediated Murder		1			1		1	Petition Denied									1			
Total					3	1	3	1	6	1	6		0	0	4	1	1	0	0	0	1	0	0	0

4. Property/Finanicial Offenses

YR	JR	Case Title	LG	Offense	Who Interpreters Translated For			Interpreter's In-Court Testimony		Evidentiary Admission of Interpreter-Mediated Statement		Appellate Ruling	Interpreter Profile											
					D	V	O	YES	NO	NA	A		CR	AL	OF	UK	TL	CW	AQ	FM	NB	CC	IF	IM
1987	4	*United States v. Campos*	SP	Bank Robbery	1				1		1	Judgment Affirmed			1									
1989	2	*United States v. Koskrides*	GR	Tax Evasion			1		1		1	Judgment Affirmed			1									
2002	2	*United States v. Ermichine*	TK	Conspiring to Commit Robbery	1				1		1	Motion Denied										1		
Total					2	0	1	0	3	0	3		0	0	2	0	0	0	0	0	0	1	0	0

5. Rape/Sexual Offenses

YR	JR	Case Title	LG	Offense	Who Interpreters Translated For			Interpreter's In-Court Testimony		Evidentiary Admission of Interpreter-Mediated Statement		Appellate Ruling	Interpreter Profile											
					D	V	O	YES	NO	NA	A		CR	AL	OF	UK	TL	CW	AQ	FM	NB	CC	IF	IM
1999	5	*United States v. Bell*	CT	Abusive Sexual Contact with Child		1		1			1	Judgment Affirmed								1				
2017	11	*Puento v. FLAG*	SP	Sexual Battery		1			1		1	Certificate of Appealability Denied				1								
Total					0	2	0	1	1	0	2		0	0	0	1	0	0	0	1	0	0	0	0

6. Others

YR	JR	Case Title	LG	Offense	Who Interpreters Translated For			Interpreter's In-Court Testimony		Evidentiary Admission of Interpreter-Mediated Statement		Appellate Ruling	Interpreter Profile										
					D	V	O	YES	NO	NA	A		CR	AL	OF	UK	TL	CW	AQ	FM	NB	CC	IF	IM
1969	10	*United States v. Tijerina*	SP	Criminal Contempt of Violating Court Order	1				1		1	District Court's Decision Affirmed									1			
1982	9	*United States v. Felix-Jerez*	SP	Escape from Prison	1			1		1		Judgment Reversed & Remanded for New Trial			1									
1990	11	*United States v. Kramers, et al.*	GR	Unknown (Not Mentioned)			1	1			1	Defendants' Motion Denied	1											
			GR	Unknown (Not Mentioned)			1	1			1	Defendants' Motion Denied	1											
			GR	Unknown (Not Mentioned)			1	1			1	Defendants' Motion Denied	1											
Total					2	0	3	4	1	1	4		3	0	1	0	0	0	0	0	1	0	0	0

State Offenses (189 Interpreters in Total)

1. Homicide (e.g. Murder)

YR	JR	Case Title	LG	Offense	Who Interpreters Translated For			Interpreter's In-Court Testimony		Evidentiary Admission of Interpreter-Mediated Statement		Appellate Ruling	Interpreter Profile											
					D	V	O	YES	NO	NA	A		CR	AL	OF	UK	TL	CW	AQ	FM	NB	CC	IF	IM
1880	CA1	*People v. Ah Yute (54 Cal. 89)*	CH	Murder			1		1	1		Judgment & Order Reversed; Remanded for New Trial				1								
1880	CA3	*People v. Ah Yute (56 Cal. 119)*	CH	Murder	1				1	1		Judgment & Order Reversed	1											
1887	MO1	*State v. Chyo Chiagk*	CH	1st-Degree Murder	1				1	1		Conviction Reversed & Remanded for New Trial	1											
1892	MA1	*Commonwealth v. Vose*	FR	Abortion (Murder)	1				1		1	Affirmed (Exceptions Overruled)								1				
1893	HI1	*Prov. Gov't of Hawaiian Is v. Hering*	HA	2nd-Degree Manslaughter			1	1			1	Affirmed (Exceptions Overruled)	1											
1896	NV1	*State v Buster*	NA	1st-Degree Murder	1				1	1		Judgment Affirmed (Interpreter-Mediated Statement Inadmissible)				1								
1901	MA2	*Common-wealth v. Storti*	IT	Murder	1			1			1	Affirmed (Exceptions Overruled)				1								
1903	RI2	*State v. Epstein*	RU	Murder		1			1	1		New Trial Granted (No Determination on Verdict)				1								
1907	TX1	*Cervantes v. State*	SP	Manslaughter	1				1	1		Judgment Reversed & Remanded for New Trial	1											
1909	NY1	*State v. Randazzio*	IT	1st-Degree Murder	1			1			1	Judgment Affirmed							1					
1910	CA7	*People v. Petruzo*	GR	1st-Degree Murder		1			1		1	Judgment & Order Affirmed							1					
1910	CA8	*People v. Luis*	CH	Murder	1			1			1	Judgment & Order Affirmed	1											
1913	CA9	*People v. Ong Git*	CH	1st-Degree Murder			1		1	1		Judgment & Order Affirmed				1								
1915	TX3	*Boyd v. State*	SP	Murder		1		1		1		Judgment Reversed & Remanded							1					
1916	ID1	*State v. Fong Loon*	CH	Manslaughter		1		1		1		Judgment Vacated & Remanded; New Trial Granted				1								
1918	ND1	*State v. Mueller*	GR	2nd-Degree Murder			1		1		1	Judgment Affirmed	1											
1918	OK2	*Carnes v. State*	CK	1st-Degree Manslaughter			1		1		1	Judgment Affirmed				1								
1920	PA2	*Commonwealth v. Pava*	UK	2nd-Degree Murder	1				1		1	Judgment Affirmed	0			1								
1926	NY3	*People v. Chin Sing*	CH	1st-Degree Murder	1				1	1		Judgement Reversed; New Trial Granted				1								
1929	AZ1	*Indian Fred v. State*	NJ	Attempted Train Wrecking	1			1			1	Judgment Affirmed with Modified Sentence				1								
1931	NJ1	*State v. Mangino*	IT	2nd-Degree Murder	1				1		1	Judgment Affirmed	1											
1955	NE1	*Garcia v. State*	SP	1st-Degree Murder	1				1		1	Judgment Affirmed				1								
1963	AZ2	*State v. Rivera*	SP	2nd-Degree Murder	1				1		1	Judgment Affirmed				1								
1974	IL1	*People v. Torres*	SP	Murder			1		1		1	Judgment Affirmed									1			

1976	CT2	*State v. Rosa*	SP	Felony Murder	1			1			1	Judgment Affirmed			1									
1983	PA3	*Commonwealth v. Carrillo*	SP	Shooting Death	1			1			1	Conviction Affirmed			1									
1984	FL4	*Chao v. State*	SP	Attempted First-Degree Murder	1			1			1	Judgment Affirmed								1				
1985	NY5	*People v. Perez*	SP	2nd-Degree Murder	1			1			1	Testimony to Interpreter-Mediated Statement was Admissible						1						
1985	MO2	*State v. Randolph*	SL	Capital Murder	1				1		1	Judgment Reversed & Remanded for New Trial (Interpreter-Mediated Statement Admissible)	1											
1985	FL5	*Chao v. State*	SP	Attempted First-Degree Murder	1			1			1	Conviction Affirmed								1				
1986	IL2	*People v. Gomez*	SP	Attempted Murder & Aggravated Battery	1				1		1	Judgment Affirmed									1			
1986	MO3	*State v. Spyvey*	SL	Capital Murder	1			1			1	Judgment Reversed & Remanded for New Trial (Interpreter-Mediated Statement Admissible)	1											
1987	MN1	*State v. Mitjans*	SP	2nd-Degree Felony Murder	1			1			1	Appellate Court Ruling Reversed & Conviction Reinstated			1									
1987	WA2	*State v. Huynh*	VT	Aggravated 1st-Degree Murder, Attempted Murder, 1st-Degree Arson	1				1	1		Reversed & Remanded for New Trial								1				
1989	CA12	*People v. Torres*	SP	Accessory After Fact To Murder	1			1			1	Judgment Affirmed			1									
1991	NY6	*People v. Wing Choi Lo*	CH	2nd-Degree Murder, etc.	1				1	1		2nd-Degree Murder, etc. Dismissed			1									
1991	WI2	*State v. Arroyo*	SP	1st-Degree Intentional Homicide & Armed Robbery	1			1			1	Judgment Affirmed			1									
1992	NC1	*State v Felton*	SL	1st-Degree Murder & 2nd-Degree Murder	1				1		1	Judgment Affirmed	1											
1994	NC2	*State v Ysut Mlo*	VT	1st-Degree Murder	1				1		1	Conviction & Sentence Affirmed				1								
1997	TX5	*Savedra v. State*	SP	Murder			1		1	1		Judgment Affirmed (Interpreter-Mediated Statement Inadmissible)									1			
1997	AZ4	*State v. Tinajero*	SP	Manslaughter (DUI) & Aggravated Assault	1				1		1	Convictions Affirmed; Remanded for Resentencing			1									
1998	WI3	*State v. Fuentes*	SP	1st-Degree Reckless Homicide	1			1			1	Conviction Affirmed							1					
2000	IL3	*People v. Villagomez*	SP	1st-Degree Murder	1			1			1	Conviction Affirmed			1									
2000	IL4	*People v. Villagomez*	SP	1st-Degree Murder	1			1			1	Judgment Affirmed			1									
2002	OH2	*State v. Carrillo*	SP	Murder	1			1			1	Judgment Affirmed (Counsel Fees and Financial Sanctions Reversed)		1										
2004	RI3	*State v Jaiman*	SP	Murder (and Conspiracy to Murder, Felony Assault)			1	1			1	Judgment Affirmed				1								
2004	CT4	*State v. Torres*	SP	Murder & Capital Felony	1			1			1	Judgment Affirmed			1									
2004	CT5	*State v. Colon*	SP	Capital Murder, etc.	1			1			1	Judgment; Death Sentence Reversed & Remanded			1									

2005	CT6	*State v. Cooke*	SP	Felony Murder			1		1		1	Judgment Affirmed				1									
2006	RI4	*State v. Feliciano*	SP	1st-Degree Murder, etc.		1			1		1	Judgment Affirmed			1										
2006	NE2	*State v. Arevalo-Martinez*	SP	Aiding & Abetting Manslaughter	1				1		1	Judgment Affirmed				1									
2006	NV2	*Baltazar-Monterossa v State*	SP	1st-Degree Murder	1			1			1	Convictions Affirmed			1										
			SP	1st-Degree Murder	1			1			1	Convictions Affirmed			1										
2007	TX8	*Ramirez v. State*	SP	Intoxication Manslaughter	1			1			1	Judgment Affirmed						1							
2007	OR4	*State v. Gonzalez-Guiterrez*	SP	1st-Degree Sexual Abuse	1			1			1	Judgment Affirmed			1										
2008	TX10	*Pitts v. State*	SP	Capital Murder	1				1		1	Judgment Affirmed								1					
2009	TX11	*Driver v. State*	KM	Capital Murder			1		1		1	Judgment Affirmed								1					
			KM	Capital Murder			1		1		1	Judgment Affirmed		1											
			KM	Capital Murder			1		1		1	Judgment Affirmed								1					
2011	MI1	*People v. Jackson*	NV	1st-Degree Premediated Murder, etc.		1			1		1	Convictions & Sentences Affirmed									1				
2012	TX15	*Moland v. State*	SL	Capital Murder			1		1	1		Judgment Affirmed (Interpreter-Mediated Statement Inadmissible)								1					
2012	OR6	*State v. Montoya-Franco*	SP	Murder, Attempted Aggravated Murder, 1st-Degree Assault, etc.	1			1			1	Judgment Affirmed			1										
			SP	Murder, Attempted Aggravated Murder, 1st-Degree Assault, etc.	1			1			1	Judgment Affirmed			1										
2012	OR7	*State v. Ibarra-Ruiz*	SP	Conspiracy to Commit Murder, etc.	1			1			1	Judgment Affirmed			1										
			SP	Conspiracy to Commit Murder, etc.	1			1			1	Judgment Affirmed			1										
2017	WI4	*State v. Dominguez*	SP	1st-Degree Reckless Homicide	1				1		1	Judgment Affirmed				1									
Total					47	6	13	31	35	14	52		10	2	19	17	0	2	4	8	4	0	0	0	

2. Sexual Offense (e.g. Rape, Sexual Offense to Minors, etc.)

YR	JR	Case Title	LG	Offense	Who Interpreters Translated For			Interpreter's In-Court Testimony		Evidentiary Admission of Interpreter-Mediated Statement		Appellate Ruling	Interpreter Profile											
					D	V	O	YES	NO	NA	A		CR	AL	OF	UK	TL	CW	AQ	FM	NB	CC	IF	IM
1869	CT1	*State v. Noyes*	UK	Rape			1		1	1		New Trial Not Advised (Affirmed; Interpreter-Mediated Statement for Defendant Inadmissible)				1								
1906	KY1	*Fletcher v. Common-wealth*	GR	Rape		1			1		1	Judgment Affirmed	1											
1917	IA1	*State v. Powers*	GR	Assault with Intent to Commit Rape	1				1		1	Reversed & Remanded	1											
1934	CA10	*People v. Jaramillo*	SP	Rape with Force and Violence	1			1		1		Judgement Reversed & Remanded for New Trial				1								
1994	GA1	*Davis v. State*	SL	Aggravated Sexual Battery, Child Molestation, Aggravated Assault, etc.		1			1		1	Judgment Affirmed	1											

1997	OH1	*State v. Wu*	CH	Sexual Conduct, Felonious Sexual Penetration, & Gross Sexual Imposition with 9-Year-Old Girl	1				1	1		Convictions Affirmed				1								
1997	WA3	*State v. Gracia-Trujillo*	SP	2nd-Degree Rape (Statutory Rape)	1			1		1		Conviction Reversed & Remanded for New Trial			1									
1999	KS1	*State v. Martinez-Lumbrers*	SP	Attempted Rape	1			1			1	Judgment Affirmed			1									
2003	CT3	*State v. Morales*	SP	Risk of Injury to Child (Sexual)	1				1		1	Judgment Affirmed			1									
2003	WA5	*State v. Castro*	SP	1st-Degree Rape	1				1		1	Judgment Affirmed				1								
2004	WA6	*State v. Gonzalez-Hernandez*	SP	1st-Degree Rape of Child & 1st-Degree Child Molestation	1			1		1		Conviction Reversed & Remanded for New Trial			1									
2004	OR2	*Alcazar v. Hill*	SP	1st-Degree Rape & 1st-Degree Sodomy	1			1			1	Judgment Affirmed	1											
2007	OR3	*State v. Rodriguez-Castillo*	SP	1st-Degree Sexual Abuse		1		1			1	Judgment Affirmed						1						
2008	TX9	*Saavedra v. State*	SP	Aggravated Sexual Assault	1				1	1		Judgment Reversed & Remanded for New Trial				1								
2008	OR5	*State v. Rodriguez-Castillo*	SP	1st-Degree Sexual Abuse	1			1		1		Judgment Reversed & Remanded for Further Proceedings			1									
			SP	1st-Degree Sexual Abuse		1		1		1		Judgment Reversed & Remanded for Further Proceedings						1						
2009	TX12	*Saavedra v. State*	SP	Aggravated Sexual Assault of Child	1				1		1	Judgment of Court of Appeals Vacated and Remanded for Further Proceedings			1									
2010	TX13	*Diaz v. State*	SP	Aggravated Sexual Assault of Child	1			1			1	Judgment Affirmed			1									
2010	TX14	*Saavedra v. State*	SP	Aggravated Sexual Assault of Child	1				1	1		Judgment Reversed & Remanded			1									
2010	AZ5	*State v. Munoz*	SP	Kidnapping & Sexual Assault		1			1		1	Judgment Affirmed					1							
2012	CA41	*People v. Malanche*	HM	Rape, Sodomy, & Sexual Penetration		1			1		1	Judgment Affirmed with Counts 2 & 3 Vacated & Remanded		1										
2013	NV3	*Newberg v. State*	SP	1st-Degree Kidnapping &Sexual Assault		1			1		1	Judgment Affirmed	1											
2014	TX16	*Trevizo v. State*	SP	Aggravated Sexual Assault & Prohibited Sexual Conduct		1			1		1	Judgment Affirmed					1							
2015	TX18	*Palomo v. State*	SP	Continuous Sexual Assault of Two Young Girls		1		1			1	Judgment Affirmed			1									
2015	KY2	*Lopez v. Common-wealth*	SP	1st-Degree Unlawful Transaction with Minor, 3rd-Degree Rape, 1st-Degree Sexual Abuse, etc.	1			1			1	Judgment Affirmed		1										
2016	MD1	*Taylor v State*	SL	Sexual Abuse of Minors	1				1	1		Judgment Reversed & Remanded	1											
			SL	Sexual Abuse of Minors	1				1	1		Judgment Reversed & Remanded	1											
2016	IL5	*People v. Uriostegui*	SP	Sexual Exploitation of Child	1			1			1	Judgment Affirmed			1									
2016	GA8	*Orengo v. State*	SL	Rape, False Imprisonment, Sexual Battery, etc.		1			1		1	Judgment Affirmed	1											
2017	OR8	*State v. Ambriz-Arguello*	SP	1st-Degree Rape, 1st-Degree Sodomy, 2nd-Degree Sodomy, & 1st-Degree Sexual Abuse	1			1		1		Reversed & Remanded	1											

2018	MA5	*Common-welath v. Lujan*	MD	Rape	1			1		1		Motion to Suppress Affirmed			1				0					
2018	NE3	*State v. Bedolla*	SP	3rd-Degree Sexual Assault on Child	1				1		1	Judgment Affirmed			1									
2018	MN3	*State v. Lopez-Ramos*	SP	1st-Degree Criminal Sexual Conduct	1				1		1	Judgment Affirmed					1							
Total					22	10	1	14	19	13	20		9	2	12	5	3	2	0	0	0	0	0	0

3. Property/Financial Offenses (Theft, Robbery, Burglary, Larceny, Fraud, Embezzlement, etc.)

YR	JR	Case Title	LG	Offense	Who Interpreters Translated For			Interpreter's In-Court Testimony		Evidentiary Admission of Interpreter-Mediated Statement		Appellate Ruling	Interpreter Profile										
					D	V	O	YES	NO	NA	A		CR	AL	OF	UK	TL	CW	AQ	FM	NB	CC	IF	IM
1886	MT1	*Territory v Big Knot on Head*	PG	Horse Theft	1				1	1		Judgment Reversed & Remanded for New Trial			1									
1890	LA1	*State v. Hamilton*	UK	Robbery			1		1		1	Judgment Affirmed				1								
1903	FL1	*Meacham v. State*	SP	Embezzlement	1			1			1	Judgment Reversed & New Trial Granted				1								
1904	CA6	*People v. Lewandowski*	JP	Robbery		1			1		1	Judgment & Order Affirmed	1											
1918	NY2	*People v. Fisher*	IT	1st-Degree Grand larceny		1			1	1		Judgment Reversed; New Trial Granted			1									
1918	OK1	*Cherokee Blank v. State*	CK	False Pretenses	1				1		1	Judgment Affirmed				1								
1921	TX4	*Turner v. State*	SP	Robbery		1			1	1		Judgment Reversed & Remanded				1								
1975	CA11	*People v. Johnson*	SP	1st-Degree Attempted Burglary		1		1		1		Judgment Reversed	1											
1980	OR1	*State v. Letterman*	SL	2nd-Degree Burglary	1			1			1	Judgment Affirmed	1											
1981	WA1	*State v. Lopez*	SP	1st-Degree Robbery	1				1	1		Judgment Affirmed (Interpreter-Mediated Statement Inadmissible)							1					
1989	AZ3	*State v. Terrazas*	SP	Armed Robbery	1			1			1	Judgment Affirmed			1									
1995	NY8	*People v. Generoso*	IT	Grand Larceny	1			1			1	Conviction Affirmed									1			
2001	CA14	*People v. Wang*	CH	Grand Theft by Embezzlement		1			1		1	Judgment Reversed with Directions						1						
2001	CA15	*People v. Lau*	CH	Counterfeit of Registered Mark	1				1		1	Judgment Affirmed			1									
2001	CA16	*People v. Taylor*	SL	2nd-Degree Robbery			1		1		1	Judgment Affirmed								1				
2003	AK1	*Cruz-Reyes v. State*	SP	3rd-Degree Theft of Services	1			1			1	Judgment Affirmed			1									
2004	CA20	*People v. Sanchez*	SP	Receiving Stolen Property			1		1		1	Judgment Affirmed									1			
2004	CA21	*People v. Lopez*	SP	Felonies (Carjackings, 2nd-Degree Robbery, etc.)		1			1		1	Judgment Affirmed with Partial Amendments									1			
2005	IA2	*State v. Venegas*	SP	1st-Degree Robbery	1			1			1	Judgment Affirmed				1								
2005	CA26	*People v. Rosales*	SP	Unlawful Taking of Vehicle, etc.	1			1		1		Judgment Affirmed			1									
2005	CA28	*People v. Lee*	SP	Vehicle Theft, etc.		1			1		1	Judgment Affirmed									1			

2008	MN2	*In re A.X.T*	SM	Theft		1			1		1	District Court's Disposition of Juvenile Affirmed									1			
2008	CA37	*People v. Gabriel*	VT	Carjacking & Attempted Robbery		1			1		1	Judgment Affirmed									1			
2008	CA37	*People v. Gabriel*	VT	Carjacking & Attempted Robbery		1			1		1	Judgment Affirmed								1				
2008	CA38	*People v. Kasie*	SP	Grand Theft, etc.		1			1		1	Judgment Affirmed								1				
2010	CT7	*State v. Garcia*	SP	1st-Degree Robbery, etc.	1			1			1	Judgment Affirmed			1									
2013	AR1	*Barron-Gonzalez v. State*	SP	1st-Degree Forgery	1				1		1	Judgment Affirmed						1						
2014	CA42	*In re Christo-pher J.*	SP	Robbery & Attempted Robbery		1			1		1	Judgment Affirmed								1				
2017	CA43	*People v. Diaz*	SP	Robbery		1			1		1	Judgment Affirmed			1									
Total					13	13	3	9	20	6	23		3	0	8	5	0	2	1	3	7	0	0	0

4. Domestic Violence

YR	JR	Case Title	LG	Offense	Who Interpreters Translated For			Interpreter's In-Court Testimony		Evidentiary Admission of Interpreter-Mediated Statement		Appellate Ruling	Interpreter Profile											
					D	V	O	YES	NO	NA	A		CR	AL	OF	UK	TL	CW	AQ	FM	NB	CC	IF	IM
1999	DE1	*Diaz v. State*	SP	2nd-Degree Attempted Unlawful Sexual Intercourse, 3rd-Degree Assault, etc. (DV)		1		1		1		Convictions Reversed & Remanded for New Trial			1									
1999	DE1	*Diaz. V. State*	SP	2nd-Degree Attempted Unlawful Sexual Intercourse, 3rd-Degree Assault, etc. (DV)		1		1		1		Convictions Reversed & Remanded for New Trial								1				
1999	WA4	*State v. Bernal*	SP	2nd-Degree Rape & Unlawful Imprisonment (DV)		1		1			1	Judgment Affirmed		1										
2000	CA13	*Correa v. People*	SP	Assault &Child Endangerment (DV)		1		1		1		Writ Granted with Order to Grant Dismissal									1			
			SP	Assault &Child Endangerment (DV)		1		1		1		Writ Granted with Order to Grant Dismissal									1			
2002	CA17	*Correa v. People*	SP	Assault &Child Endangerment (DV)		1		1			1	Judgment Reversed									1			
			SP	Assault &Child Endangerment (DV)		1		1			1	Judgment Reversed									1			
2002	CA18	*Velero v. People*	SP	DV		1			1	1		Writ Granted with Order to Grant Motion								1				
2004	CA22	*People v. Zavala*	SP	Attempted Murder, etc. (DV)			1	1			1	Judgment Affirmed								1				
2004	CA23	*People v. Pantoja*	SP	First-Degree Murder & Child Endangerment		1			1	1		Judgment Reversed & Remanded for Further Proceedings				1								
2005	CA24	*People v. Peralez*	SP	Assault Inflicting Great Bodily Injury		1			1		1	Conviction Affirmed; Remanded for Resentencing								1				
2005	CA25	*People v. Raquel*	SP	Assault with Deadly Weapon (DV)		1		1			1	Judgment Affirmed								1				

2007	CA34	*In re Gilberto T.*	SP	Assault, Simple Assault, & Resisting Arrest (DV)		1			1	1		Counts 1 & 3 Reversed; Judgment Affirmed							1					
2008	CA36	*People v. Ma*	CC	Criminal Threats & Possession of Controlled Substances for Sale, etc. (DV)		1		1			1	Judgment Affirmed								1				
2010	IN1	*Palacios v. State*	SP	Domestic Battery (Class D Felony)		1		1			1	Conviction Affirmed								1				
2011	HI2	*State v. Huynh*	VT	Harassment (DV)		1		1			1	Conviction Affirmed (Judgment Vacated and Remanded for Resentencing)									1			
2011	CA39	*People v. Reyes*	SP	Battery upon Cohabitant, etc. (DV)		1			1		1	Judgment Affirmed									1			
2018	AZ6	*State v. Zamora*	SP	Aggravated Assault (DV)		1			1		1	Convictions and Dispositions Affirmed; Restitution Vacated					1							
			SP	Aggravated Assault (DV)		1			1		1	Convictions and Dispositions Affirmed; Restitution Vacated					1							
2018	CA44	*People v. Santay*	SP	Willful Inflection of Corporal Injury upon Wife (DV)		1		1			1	Judgment Affirmed			1									
Total					0	19	1	13	7	7	13		0	1	2	1	2	0	1	7	6	0	0	0

5. Drug

YR	JR	Case Title	LG	Offense	Who Interpreters Translated For			Interpreter's In-Court Testimony		Evidentiary Admission of Interpreter-Mediated Statement		Appellate Ruling	Interpreter Profile											
					D	V	O	YES	NO	NA	A		CR	AL	OF	UK	TL	CW	AQ	FM	NB	CC	IF	IM
1983	FL2	*Rosell v. State*	SP	Possession of More Than 20 Grams of Cannabis	1	0	0	1		1		Reversed & Remanded				1								
1984	FL3	*Henao v. State*	SP	Possession of Over 400 Grams of Cocaine	1			1			1	Judgment Affirmed				1								
1988	FL6	*Herra v. State*	SP	Trafficking & Conspiracy to Traffick Cocaine	1				1		1	Judgment Affirmed										1		
1991	NY7	*People v. Romero*	SP	Sale and Possession of Controlled Substance	1			1		1		Conviction Reversed; Remanded for New Trial											1	
1995	CO1	*People v. Gutierre*	SP	Selling & Conspiring to Sell Cocaine	1				1		1	Judgment Affirmed											1	
2003	CA19	*People v. Huerta*	SP	Sale of Methamphetamine	1			1			1	Judgment Affirmed			1									
2005	CA27	*People v. Arroyo*	SP	Sale of Methamphetamine, etc.	1				1		1	Judgment Affirmed			1									
2006	CA29	*In re Joseph D.*	SP	Unlawful Transport & Possession of Marijuana for Sale	1				1	1		Judgment Reversed & Remanded with Directions			1									
2006	GA2	*Lopez v. State*	SP	Trafficking in Methamphetamine	1				1		1	Judgment Affirmed										1		

2007	CA30	*People v. Saetern*	HM	Possession of Cocaine Base	1				1		1	Judgment Affirmed							1					
2007	CA31	*People v. Vasquez*	SP	Kidnapping, Use of Firearm (Drug-Related)		1			1	1		Judgment Affirmed											1	
2007	CA32	*People v. Lopez*	SP	Burglary & Transportation of Methamphetamine	1				1		1	Judgment Reversed & Remanded for Resentencing			1									
2007	CA33	*People v. Lopez*	SP	1st-Degree Burglary & Transportation of Methamphetamine	1				1		1	Prior Opinion Vacated & Judgment Affirmed			1									
2008	GA4	*Hernandez v. State*	SP	Trafficking Methamphetamine, etc.	1				1		1	Judgment Affirmed with Direction			1									
2009	NY11	*People v. Quan Hong Ye*	CH	2nd-Degree Criminal Possession of Controlled Substance	1			1			1	Judgment Unanimously Affirmed			1									
2009	NC3	*State v Umanzor*	SP	Trafficking 400 or More Grams of Cocaine by Possession, etc.	1				1		1	No Error in Part (Affirmed) & Vacated in Part			1									
2012	GA7	*Palencia-Barron v. State*	SP	Trafficking in Methamphetamine			1		1		1					1								
Total					15	1	1	5	12	4	13		0	0	8	3	0	0	1	0	0	2	3	0

6. Assault, Battery, Harassment, etc.

YR	JR	Case Title	LG	Offense	Who Interpreters Translated For			Interpreter's In-Court Testimony		Evidentiary Admission of Interpreter-Mediated Statement		Appellate Ruling	Interpreter Profile											
					D	V	O	YES	NO	NA	A		CR	AL	OF	UK	TL	CW	AQ	FM	NB	CC	IF	IM
1917	PA1	*Common-wealth v. Brown*	YD	Cruelty to Animals				1			1	Judgment Reversed for Venire Facias De Novo (Interpreter-Mediated Testimony Admissible)	1											
1990	WI1	*State v. Robles*	SP	Aggravated Battery					1		1	Conviction Affirmed (Sentences Reversed & Remanded)			1									
2002	NY9	*People v. Xiaojun Wang*	CH	Harassment					1	1		Defendant's Motion Granted								1				
2004	TX7	*Cassidy v. State*	PJ	Aggravated Assault					1		1	Judgment Affirmed						1						
2007	OH3	*State v. Igram*	AR	Felonious Assault with Firearm					1		1	Convictions Affirmed					1							
2007	CA35	*People v. Farias*	SP	Assault					1		1	Judgments Reversed							1					
2007	GA3	*Cuyuch v. State*	SP	Aggravated Battery					1		1	Judgment Affirmed					1							
2008	GA5	*Cuyuch v. State*	SP	Aggravated Battery					1	1		Judgment Reversed					1							
2011	GA6	*Ursulita v. State*	SP	1st-Degree Arson, etc.				1			1	Judgment Affirmed			1									
2015	MA3	*Common-wealth v. Santiago*	SP	Assault & Battery					1		1	Judgment Affirmed			1									
Total								2	8	2	8		1	0	3	0	3	1	1	1	0	0	0	0

7. DUI, Reckless Criving, etc.

YR	JR	Case Title	LG	Offense	Who Interpreters Translated For			Interpreter's In-Court Testimony		Evidentiary Admission of Interpreter-Mediated Statement		Appellate Ruling	Interpreter Profile											
					D	V	O	YES	NO	NA	A		CR	AL	OF	UK	TL	CW	AQ	FM	NB	CC	IF	IM
2001	TX6	*Gomez v. State*	SP	DUI	1			1			1	Judgment Affirmed									1			
2005	NY10	*People v. Morel*	SP	Reckless Driving	1				1		1	Judgment Unanimously Affirmed									1			
2010	WA7	*State v. Morales*	SP	Vehicular Assault & DUI	1				1		1	Judgment Affirmed		1										
2012	WA8	*State v. Morales*	SP	Vehicular Assault & DUI	1				1	1		Convictions Reversed & Remanded for New Trial		1										
2015	TX17	*Song v. State*	KR	DWI (DUI)	1				1		1	Judgment Affirmed					1							
2016	MA4	*Common-wealth v. AdonSoto*	SP	DUI	1				1		1	Judgment Affirmed					1							
Total					6	0	0	1	5	1	5		0	2	0	0	2	0	0	0	2	0	0	0

8. Perjury

YR	JR	Case Title	LG	Offense	Who Interpreters Translated For			Interpreter's In-Court Testimony		Evidentiary Admission of Interpreter-Mediated Statement		Appellate Ruling	Interpreter Profile											
					D	V	O	YES	NO	NA	A		CR	AL	OF	UK	TL	CW	AQ	FM	NB	CC	IF	IM
1880	CA2	*People v. Lee Fat*	CH	Perjury	1				1	1		Judgment & Order Reversed	1											
1882	CA4	*People v. Lee Ah Yute (60 Cal. 95)*	CH	Perjury	1			1			1	Judgment & Orders Affirmed	1											
1902	RI1	*State v. Terline*	IT	Perjury	1				1	1		Petition for New Trial Granted, and Case Remanded for Further Proceedings	1											
1902	CA5	*People v. John*	CH	Perjury	1			1		1		Judgment & Orders Reversed	1											
1913	TX2	*Mares v. State*	SP	Perjury	1			1			1	Conviction Affirmed	1											
Total					5	0	0	3	2	3	2		5	0	0	0	0	0	0	0	0	0	0	0

8. Others

YR	JR	Case Title	LG	Offense	Who Interpreters Translated For			Interpreter's In-Court Testimony		Evidentiary Admission of Interpreter-Mediated Statement		Appellate Ruling	Interpreter Profile											
					D	V	O	YES	NO	NA	A		CR	AL	OF	UK	TL	CW	AQ	FM	NB	CC	IF	IM
1984	NY4	*People v. Sanchez*	UK	Unknown (Grand Jury Procedure)	1				1	1		Indictments Dismissed				1								
2002	FL7	*Alarcon v. State*	SP	Violation of Community Control	1				1	1		Order Reversed & Remanded				1								
2011	CA40	*In re JP*	SP	Possession of Live Ammunition, Child Endangerment, etc.		1			1		1	Judgment Affirmed with Modification			1									
Total					2	1	0	0	3	2	1		0	0	1	2	0	0	0	0	0	0	0	0