Esta tesis doctoral contiene un índice que enlaza a cada uno de los capítulos de la misma.
Existen asimismo botones de retorno al índice al principio y final de cada uno de los capítulos.

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Anar directament a l'índex

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Doctoral Thesis
presented by
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directed by
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Language Mediation in the Judicial System:
The Role of the Court Interpreter

Vº Bº
The Director,
Signed: Dr. Enrique Alcaraz Varó
Alicante, April 14, 1997
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INTRODUCTION
"Que los intérpretes de los indios tengan las partes y
calidades necesarias ..."

Thus begins the First Law of the fourteen that governed the use of interpreters by the Spanish state in its official dealings with the indigenous peoples of the New World. Between the years 1529 and 1630, a remarkably complete and comprehensive set of rules for the correct use of interpreters in the system of justice was promulgated as law. The laws covered many issues that professionals and scholars continue to grapple with several hundred years later. With few exceptions,

These laws are compiled in a four volume collection which was ordered published by King Charles II of Spain in the 17th century. See Title 29, Recopilación de Leyes de los Reinos de las Indias, (5th edition), Volume I, Madrid: Boix, 1841, p. 305-307.

For example, Law I, dated May 10, 1583, recognizes the interpreter as an instrument of justice and states textually: “Muchos son los daños é inconvenientes que pueden resultar de que los intérpretes de la lengua de los indios no sean de la fidelidad, cristianidad y bondad que se requiere, por ser el instrumento por donde se ha de hacer justicia . . .” (Much harm and many inconveniences can occur if the interpreters of the language of the Indians are not sufficiently loyal, Christian and kind, as they are the instrument by which justice must be done . . . [Translation mine]). Law II, dated October 4, 1563, addresses issues related to interpreter ethics and mentions compensation. It reads: “Ordenamos y mandamos que en las audiencias haya número de intérpretes, y que antes de ser recibidos juren en forma debida, que usarán su oficio bien y fielmente, declarando é interpretando el negocio y pleito que les fuere cometido, clara y abiertamente, sin encubrir ni añadir cosa alguna, diciendo simplemente el hecho, delito ó negocio, y testigos que se examinaren, sin ser parciales á [sic] ninguna de las partes, ni favorecer mas á uno que a otro, y que por ello no llevarán interes [sic] alguno mas [sic] del salario que les fuere tasoado y señalado . . .” (We do hereby order and dictate that there be a sufficient number of interpreters at all hearings, and that before they are received, they take the proper oath to fulfill their duties well and faithfully, stating and
the guidelines found in these laws could still be used successfully today. Unfortunately, a close examination of the situation that currently exists in many parts of the world, including Spain, shows that language mediation practices nowadays, more than 400 years later, are at best irregular and do not systematically guarantee the human and civil rights of language handicapped individuals in their dealings with the judicial system.

Equal access to the judicial system by all parties involved in a legal dispute or by anyone accused of a crime is a sign of a progressive and humanitarian society. If a person involved in legal proceedings is not proficient in the official language of the court, he cannot be considered to have equal access. In Spain, the law guarantees any individual involved in legal proceedings who is not proficient in Spanish the right to have a competent language interpreter assist him. This right is held equally by a foreigner who is not proficient in Spanish and by any citizen who speaks one of the officially recognized languages of Spain other than Castillian, when his native language is not the language of the court. At present, however, there is no uniform interpreting the matter and dispute charged to them clearly and openly, without deleting or adding anything, by simply stating the event, offense or matter, and witnesses who are questioned, without showing any partiality for any of the parties nor favoring one over the other, and that for this, they will receive no compensation whatever except for the wages that they are assigned and stipulated... [Translation mine]). Interestingly, ethical issues such as maintaining impartiality, refraining from improper contact with individuals needing interpretation services, accepting compensation other than stipulated wages and availability and the obligation to serve are dealt with quite extensively and in a very detailed manner in several of the laws.
process for identifying who is entitled to or could benefit from the services of a court interpreter, nor is there a valid and reliable certification or testing procedure in place to guarantee that the person called upon to serve as an interpreter in a legal situation is capable of carrying out that task correctly. In reality, poor interpreting services are equivalent to no interpreting services as justice is no better served when a decision is based on erroneous information believed to be accurate than when it is based on no information at all. Ensuring quality in language mediation services is an essential part of ensuring that justice is done.

Personal Motivation

Growing up in the southwestern part of the United States where there is a large Spanish-speaking population, I was regularly exposed to the realities of living in a bilingual community. It was clear from the start that in many aspects of every day life, the two languages that coexisted and the people who spoke them were not always given equal treatment or consideration. While monolingual English-speaking children were encouraged to study and become proficient in a "foreign" language, children from Mexican-American families were being told that if they wanted to prosper, they had to let go of their native language and embrace English. While monolingual English-speaking children were given the opportunity to learn a foreign
As an adult, my understanding of the realities of being a member of an ethnic and linguistic minority matured. In 1982, I was offered a teaching post at a medium security federal prison where my assignment was to teach non-English speaking “residents” (we were not allowed to call them inmates) to communicate in English so that they could interact with prison officials and the justice system. To my surprise, my classes were quite large, and it did not take long to see that these individuals were at a great disadvantage in the legal system. Once accepted by my “students”, I was frequently asked to translate documents they received from the courts that they could not read and to give legal advice on how they should proceed. Some of these encarcerated men did not even understand the charges that had put them in prison in the first place, much less the rights they were guaranteed by the Constitution. They depended upon other “residents” whom they perceived to be bilingual to try to understand and confront the complexities of the American court and penal systems.

As a result of these experiences, I became interested in language issues in the courts. I informed myself about court interpreting and even tried my hand at the federal certification exam. Having had no training or preparation, it was perhaps naïve of me to think I would pass (which I did not). However, simply taking the exam provided a lesson in the complexity and exacting nature of the field of court...
I became aware of the work done by Dr. Roseann Dueñas González, who in 1977, while still a young scholar, was commissioned by a judge in Tucson, Arizona (USA) to develop a method by which a determination could be made in a courtroom of just who needed interpreting services. This was one of the first steps taken to structure and standardize the practices being used in cases involving linguistically handicapped individuals. Dr. González's work on this project later became the basis for her doctoral thesis. In the 20 years that have transpired since that time, the efforts made by Dr. González and her colleagues have contributed significantly to the tremendous progress that has been made in the United States toward guaranteeing the constitutional and human rights of non-English speaking people or people of limited English-language proficiency who find themselves involved in legal proceedings whether at the federal or state level. This example is inspirational. It is proof that in the span of one professional career, significant improvements can be made and change can be effected through personal effort and determination.

Upon taking up a post at the University of Alicante, I again found myself in the midst of scholars with a very strong interest in the legal arena. Drs. Enrique

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1 Dr. González's thesis is entitled *The design and validation of an evaluative procedure to diagnose the English aural-oral competency of a Spanish-speaking-person in the justice system* (1977). Another important document that came out of Dr. González's initial research is *English language handicap diagnostic instrument no. 1*, published by the Pima County Superior Court (Tucson, Arizona), Justice Interpreters Model Development. A copy is available from Dr. Roseann González, University of Arizona, Modern Languages 67, Room 445, Tucson, Arizona 85721 (USA).
Alcaraz and Brian Hughes were in the process of preparing what has since come to be recognized as one of the premier Spanish-English bilingual legal dictionaries in the world today, and Dr. Alcaraz was writing a book on legal English. As regards interpreting as a field, I learned in the doctoral courses that I was taking that the Ministry of Education in Spain had recently recognized a new field of inquiry which had been christened Applied Linguistics for Translating and Interpreting and had approved an undergraduate degree program in the field which is now offered in several universities throughout the country, including the University of Alicante. The official name of these programs was later changed by the Ministry of Education from Applied Linguistics for Translating and Interpreting to simply Translating and Interpreting in recognition of the fact that the field encompasses a broad spectrum of related fields including applied, socio-, and psycholinguistics, professional languages, speech, psychology, human information processing, and public policy, along with written translation and oral interpreting. The creation of this new field and the dearth of advanced scholarly work in Spain in this field provided a perfect framework for the thesis that I proposed to do on oral interpreting.

Spain’s unique linguistic circumstances also contributed to my decision to focus my work on interpreting in legal settings. Not only is Spain a part of the

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Enrique Alcaraz Varó and Brian Hughes, *Diccionario de términos jurídicos (inglés- español)*, Barcelona: Editorial Ariel, 1993, and Enrique Alcaraz Varó, *El inglés jurídico. Textos y documentos*, published by the same publishing company in 1994. Drs. Alcaraz and Hughes have also published another dictionary that is very useful for legal translating and interpreting. This one is dedicated to the area of economics and finance and is also published by Ariel: *Diccionario de términos financieros, económicos y comerciales* (1996).
European Union, a political entity that is multilingual in nature, it is also a country with a great deal of linguistic diversity within its borders, with regional languages such as Catalán, Gallego and Basque sharing co-official status with Castillian Spanish. In addition to this, Spain’s geographical position makes it a gateway country to Europe and a bridge between two continents and, therefore, a frequently visited and transited country. Interlingual communication is an everyday occurrence. It seemed reasonable to assume that in such a linguistically diverse country there would be many legal situations in which language mediation services would be needed. The debate that was taking place in academic and professional circles on the role of the sworn interpreter in the judicial system and on the reform of the legal regulation of this figure proved this to be true. Given these circumstances, it was clear that a thesis on court interpreting not only fit fully within a newly recognized field in need of academic research, but also responded to an issue of social significance that was in a moment of flux.

These were the factors, then, that led me to study the issues related to language mediation in legal settings in Spain. My research would be aimed at identifying areas for action with the hope that my efforts might prove to contribute in some small way to an informed debate on the issues and to the progress being made in the field.
Objectives

Before any significant steps can be taken towards correcting the faults or strengthening the areas of weakness that might exist within a system, a clear understanding of the system as a whole must be achieved and a framework within which to work must be developed. The original objective of this thesis was to carry out an in-depth study of the characteristics of oral legal language as used in the courts in Spain in order to identify possible testing areas and perhaps even develop specific test items for a valid and reliable court interpreter’s exam. While the main focus of this thesis still remains the testing and certification of qualified individuals to work as interpreters in the system of justice, it became clear early on in my research that there was very little awareness of what a court interpreter does or should do, and that outside of some professional translating and interpreting circles, there was a general lack of understanding of and interest in court interpreting, especially within the legal profession itself. Therefore, a comprehensive descriptive document needed to be drawn up that could provide a foundation and a framework for further studies on more specific and delimited areas within the field. This document would necessarily include a description of the legal foundations which mandate language mediation in the courts and of current practices as regards interpreting services in legal settings. It would also require a review of interpreting as a field from both a theoretical and a practical point of view, and of how the context of the courts or of legal settings...
conditions interpreting as it is practiced in other venues. The characteristics of both spoken and written legal language as important determiners of the knowledge and skills that are required for adequate language mediation also merit careful consideration, and understanding the paralinguistic and pragmatic aspects of courtroom communication is also key to providing quality interpretation. Finally, the issue of professional ethics is of great relevance and must be discussed in any comprehensive treatment of the field.

Therefore, the first objective of this thesis is to identify the legal, ethical and theoretical foundations on which the field of court interpreting is based, and to provide a comprehensive description of the state of court interpreting as it exists in Spain today.

The second area of interest for this thesis continues to be the certification of individuals as qualified to work as interpreters in courts of law and other legal settings. In order to ascertain whether or not the currently used procedures for obtaining language mediation services in the judicial system are able to guarantee quality, these procedures and any qualifying exams or processes used in conjunction with them, must be identified and evaluated. Principles of testing theory must be understood and carefully applied in order to measure validity and reliability, the two main criteria against which all evaluative tools must be measured. In this way, test elaboration, administration and evaluation guidelines can be adopted and followed.

The second objective of this thesis, then, is to revisit established testing theory
in order to identify the validity and reliability criteria for exam instruments, especially profession-specific language exams, and then apply these criteria to the procedures currently being used in Spain. In order to meet this objective, a careful description of current practices in Spain is presented, and these are then tested against each of the established criteria to identify areas in need of improvement.

Given that efforts made in other countries provide a valuable tool for evaluating one’s own system when seeking ways in which to improve procedures and instruments, a comparative study of the situation in a select group of nations is included in the thesis. Special attention will be given to the development of the Federal Court Interpreter’s Certification Exam in the United States and to some of the efforts made by individual states in conjunction with the federal project as they provide the best and most advanced example available today.

Finally, suggestions will be made as to what type of training is needed to prepare translators and interpreters for their role in the system of justice. Training and preparation are vital as it does no good to prepare an excellent certification exam if no one has the skills and knowledge required to pass it. Qualified professionals are needed in the court system, and a certification exam is the final step in the process of ensuring that they are available. Education and training based on a clear understanding of the issues related to the field is the first step.

It is my hope that this thesis will contribute in some small way to shedding some light on the issues involved so that adequate decisions can be made and quality
court interpreting guaranteed throughout the Spanish judicial system.

Structure

Several related fields of study are involved in providing the framework and carrying out the analysis stated above as the objectives of this thesis. Issues related to legal foundations and how the law and legal practices condition the interpreting function must be addressed. Interpreting itself must be examined and discussed thoroughly, including how the context of legal settings affects the way in which different modes of interpreting are carried out. From a linguistic perspective, the study must include a complete description of the language used in legal settings including pragmatic and paralinguistic elements and their importance in providing accurate court interpretation. Finally, the basic tenets of testing theory must be enumerated so that established criteria can be applied to the analysis of current practices in Spain. A comparative approach based on studying examples of similar situations in other countries or communities provides added insight for the analysis of the system under study. The structure of the thesis, then, is based on these issues and areas of concern.

This thesis is divided into two main parts in accordance with the two main objectives stated above. The first is dedicated to establishing the theoretical, ethical
and practical foundations for the field of court interpreting and to providing a
descriptive framework from which to work. The second looks at the specific
practices in place in Spain today and provides information about other working
models that can provide some answers to the questions raised. It also includes a brief
section on guidelines for court interpreter training. Part one is comprised of chapters
one through four, and part two of chapters five through eight.

The first chapter of the thesis is dedicated to general interpreting theory. The
importance of interpreting as a field of academic and scholarly research has increased
greatly over the last four decades, and there now exist several models that attempt to
describe the cognitive processes involved in oral interpreting and the simultaneity and
progression of functions that define this task. This chapter presents a brief overview
of how the theoretical development of models has evolved over the last few decades
and describes in some detail the model known as SHIP (Simultaneous Human
Information Processing) that was developed by court interpreting researchers
specifically with the functions of oral interpreting in mind.

The second chapter of the thesis addresses the characteristics of legal
language. The first section of this chapter deals with written legal language as much
research has been done on the nature of this subset of language -- especially as
regards English. An understanding of the characteristics of written language
provides a basis for understanding the additional elements of spoken language. A
description of these characteristics is given for both Spanish and English and
examples are provided.

The second section of this chapter deals exclusively with spoken language as used in a courtroom and with several of the pragmatic and paralinguistic aspects that are important for the court interpreter. Examples are most often taken from English, but precise and less precise Spanish-language renditions are given with explanations of the effects of each of the different interpreted versions.

The third chapter of the thesis sets the legal foundations for the use of interpreters or language mediators in courtrooms and other legal settings. It reviews legislative, code and case law in several countries. Without a strong legal foundation, the figure of the court interpreter would very likely not exist. Even with strong legal mandates in place, a study of current practices shows that very questionable practices are still used in many places, and that they are more often the norm than the exception. This chapter gives special attention to the legal foundations for court interpreting services in Spain and in the United States.

Chapter Four defines the role of the interpreter in the judicial system and includes a detailed description of the skills and abilities an interpreter must have to successfully complete each type of interpreting task involved in legal proceedings. A discussion of when an interpreter should be used in a courtroom is included and the virtues of the party versus witness approaches are debated. The issue of court interpreter ethics is also addressed in this chapter. This topic is often overlooked in discussions of this field in favor of language skills (often heavily weighted with lexical
items), interpreting skills and sometimes knowledge of the law or of the system of justice. The ethics of court interpreting, as is the case with all types of professional ethics, are under constant scrutiny and are subject to change, but there are some basic canons that can be agreed upon as desirable in all court related language mediation situations.

Chapter Five presents a thorough review of established testing theory with special emphasis on profession-specific performance exams. The theoretical underpinnings of proficiency-based, criterion-referenced exam theory are revisited and the issues of validity (all five types) and reliability are explained. Detailed "roadmaps" or guidelines are given for correct language test development which cover all aspects of the exam development process, including domain referencing, the establishment of performance criteria, test item elaboration, pre-piloting and pilot testing, the development of marking keys and other evaluation related issues, the selection and training of raters, the preparation of instruction manuals for candidates and even the nuts and bolts of exam administration such as cost, setting, materials, personnel, and so on, although this is dealt with in a much more summary fashion.

Chapter Six describes in detail the current practices that are used in Spain as regards the procurement of court interpreting services. These range from using the staff interpreters provided by the Ministry of Justice to entering into contracts with commercial translating and interpreting agencies who take on the responsibility of monitoring quality. In this chapter, the exams used in Spain for Ministry of Justice
staff interpreter positions and for legal or sworn interpreter certification are carefully
described and analyzed and tested against the validity and reliability criteria
established in Chapter Five.

Chapter Seven provides a close look at the efforts made in the United States
to deal with many of the issues presented in earlier chapters of the thesis. The United States is the country that has made the most progress in the area of court interpreter certification. It can serve as a model in many areas. However, some areas of concern in the U.S. testing procedure will also be mentioned.

Finally, Chapter Eight presents some general guidelines for educational programs and includes information on developing adequate language, public speaking and interpreting skills and an awareness of the ethical issues involved in this profession.

The thesis ends by listing a series of conclusions which can be drawn from the research done, several of which can also serve as recommendations for specific action or areas for further research.
PART ONE

FOUNDATIONS
Chapter One: INTERPRETING

A. General considerations

Interpreting is often defined in terms of translating and is usually considered “the oral form of the translation process” (González et al., p. 295). It is interesting to note, for example, that in the Webster’s Third New International Dictionary (1976), interpreting as a noun does not appear. Of the four definitions given for the term interpretation, none refers to the interlingual transfer of meaning or messages. One must go to the verb form, interpret, to find mention of this definition which falls in very last place and is stated simply as: “to act as an interpreter: TRANSLATE”. (p. 1182). This definition leads to the term interpreter, for which the second definition of three reads: “one that translates, esp. a person who translates orally for parties conversing in different tongues” (p. 1182). Therefore, in order to understand interpreting, it seems we must take into consideration translating.

Translation in the same dictionary, is defined as “a rendering from one language or representational system into another” and translate as a verb as “to turn into one’s own or another language” (p. 2429).

Almost all treatments of interpreting as a specialized field include an introductory chapter or at least some introductory comments on how to distinguish interpreting from translating. There is even discussion as to what correct terminology
is, and one school of thought accepts the term *translation* as appropriate for both the written and oral forms of linguistic transfer, while the other accepts the dichotomy mentioned above. In this thesis, the second approach will be adopted. Translation as a term will refer to the written mode and interpreting to the oral or spoken mode.

The term *interpretation* is ambiguous on another front as well. As stated above, none of the definitions given in the dictionary had to do with language transfer per se. The principal definition of the term refers to ways in which words, actions or events can be explained, usually by examining hidden relationships or elements that are not readily understandable. A related definition has to do with a performance of some type, usually in the area of the musical or dramatic arts, which relays the performer’s or interpreter’s individual understanding or perception of a piece.

In linguistics, newer approaches such as pragmatics, have given more serious attention to language users and have recognized their role as *interpreters*. This role supposes active participation by language users, especially as receptors of a message, who must apply their own knowledge of the world to the “construction” of the meaning of a message (Alcaraz 1993, pp. 100-1). This application of the concept of interpretation adds another dimension, but one that is closely related to the definitions given above.

Finally, a further complication of the use of the term *interpretation* is the fact that the law in and of itself and by its very nature, requires interpreting. As will be shown in the section of this thesis dedicated to legal language, the language of the law is sometimes intentionally vague, and in any case is always complex. The role of
judges when deciding cases is to decipher the letter of the law and to give it the interpretation that seems correct and appropriate. Lawyers also participate in this interpretive task when they prepare their briefs for the court, in an attempt to persuade or convince the presiding judge or judges that their version or interpretation of the law as applicable to a specific case is more valid that the version presented by the opposition. And finally, academics and legal scholars also grapple with the intention of the law, yet another aspect of the interpretation of the law.

This perhaps unhappy coincidence of terms has produced some discussion among professional court interpreters and interpreters of the law as to the adequacy of the term court interpreter. Terms such as sworn or legal interpreters are used in some countries and the terms official or judiciary interpreters have been proposed as possible alternatives. Discussion as to which is the most appropriate is on-going.

In this thesis, we will be discussing interpreting as a tool of interlingual communication and within this broad definition we will be looking at the specific sphere of application that is the system of justice.

B. Approaches to research

Language transfer, or translation, has always been difficult to define, and theories that have attempted to explain the cognitive processes involved have often been confusing and contradictory. Many views and opinions have been put forth only
to be abandoned before full research could be done on them, and new contributions
and ideas have taken their place. As Wolfran Wils said in the introduction to The
Science of Translation:

(...) it could be said that the many views expressed on translation in
the past centuries amount to a mass of uncoordinated statements;
some very significant contributions were made, but these never
coaalesced into a coherent, agreed upon, intersubjectively valid theory
of translation.

If this is true of translating, it is doubly true of interpreting -- which could
colloquially be called the poor relations of translating -- especially as regards research.
For many years, interpreting seemed to be simply a tag hooked onto the end of
translating, and the assumption was often made that the results or findings of research
done into written translation could be applied, at least partially, to oral interpretation.
After all, both deal with reproducing source language in a target language and this
process can be explained with relatively simple decoding/encoding models. There
seemed to be little effort to treat translating and interpreting as two very different
functions. Perhaps this was due to the fact that trying to understand the processes
involved in interpreting (especially in the simultaneous mode) and attempting to
produce a workable model complete with definable variables and an experimental
design was quite a formidable challenge.
After World War II, both translating and interpreting began to take on greater significance and more frequently became the object of serious scholarly research. Interpreting, especially in the simultaneous mode, gained in prominence and recognition as a result of the efforts to manage the language mediation needs of the Nuremberg war crimes trials. The proliferation of international organizations and cooperative efforts brought about an unprecedented need for the services of translators and interpreters in all fields, not just in the humanities. Furthermore, advances in technology and the sciences provoked and, in some ways, facilitated the upsurge in the field.

Interpretation began to be recognized as a separate field as evidenced by the fact that many international translating and interpreting conferences introduced special categories related specifically to interpreting in all of its aspects: theory, practice, didactics. More and more articles were being written and published in both general linguistic journals and in specialized journals in the field of T&I, and books dedicated completely to one of the many topics related to one or all of the modes of oral interpreting began to appear. A journal dedicated exclusively to interpreting has recently appeared. Perhaps not surprisingly, it is simply called *Interpreting*.

*Interpreting. International Journal of Research and Practice in Interpreting* is edited by Barbara Moser-Mercer of the University of Geneva and Dominic W. Massaro of the University of California at Santa Cruz, and will be published biannually by John Benjamins Publishing Company. The journal is described by the publisher as follows: “The aim of this journal is to promote interdisciplinary research in all areas of interpreting: simultaneous, consecutive, media, conference, court, community, sign language and computer-assisted interpreting by encouraging cross-disciplinary inquiry into the process of interpreting, its history, practice and the training of interpreters. The journal will publish articles on current issues in interpreting research and practice related to the disciplines of linguistics, sociology, psychology, neurolinguistics,
This increased interest in research into interpreting as a separate field is the culmination of a long, slow process of acceptance and recognition of the complexities and uniqueness of interpreting, and a realization that oral interpreting is a field that can be studied in a structured and rigorous manner. A look at the early research that was done and its evolution and the models that have been produced will provide a theoretical framework and context for current efforts and future projects.

A quick review of the very sparse literature available on the early days of interpreting research showed that most research was related to simultaneous interpreting and was descriptive in nature, with relatively little work done on the development of theoretical models or of experimental designs which would allow theories to be tested (Gerver 1976, p. 167). Areas of research included problems related to simultaneous listening and speaking (Paneth, Master’s thesis, 1957, and later Goldman-Eisler 1968, and Barik 1973), how the organization of incoming material affects the speed of delivery of interpreted discourse (Oleron and Nanpon 1965; Triesman 1965; Goldman-Eisler 1972), the effect of source language presentation rate on interpreters’ performance (Miller 1964; Gerver 1969; Chernov 1969), the length of target language utterances compared with source language renditions (Krusina 1971), and the effects of background noise on the simultaneous cognitive science, artificial intelligence, discourse analysis, cultural studies, language planning, translation and terminology."


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interpreter’s performance (Broadbent 1958; Woodhead 1958; Gerver 1972a, 1974; Pinhas 1972). Segmentation of the source-language message was studied by Barik (1969), Pintner (1969), Johnson (1970), Gerver (1971) and Goldman-Eisler (1972) and the issue of how many tasks simultaneous interpreters carried out at the same time was tackled by Van Hoof (1962), while Hromosová (1972) addressed the interaction between short- and long-term memory (Gerver 1976, p. 191). Issues related specifically to interpreters’ output such as omission, addition, substitution and interpreting errors were also the object of several studies (Barik 1971; Gerver 1969, 1974a). Finally, even topics such as booth design and optimal working conditions were addressed in the broader context of interpreter stress (Bergman 1973; Joosting 1970).

While most of the work cited above has to do with simultaneous interpreting, this is by no means the only area of the field that has been of interest to the scholar or researcher. Interpreting is related in some way to many other disciplines including linguistics, sociology, psychology, neurolinguistics, cognitive science, artificial intelligence, cultural studies, and language planning, and an inter- or cross disciplinary approach has been taken in many studies. Within the discipline of linguistics, for example, interpreting can be studied in relation to discourse analysis, speech act theory, pragmatics, lexicology or terminology studies to name a few.

Research is also being done on specific spheres of interpreting activity such as community, conference, medical or judicial interpreting as awareness grows of the specific application of the findings of the research done in the areas mentioned above.
Others are designed to focus on one mode of interpreting, such as consecutive or simultaneous, or on one general aspect of interpreting such as its history or practice, or the training of interpreters. Finally, it is important to mention the newer areas of interest within this broad field such as computer-assisted, telephone, and media interpreting, dubbing, and so on.

C. Theoretical models

Parallel to the work being done on specific aspects of interpreting, there was a growing interest in the development of theoretical models which could explain the complexities of interpreting and graphically represent the continuity and simultaneity of the processes involved. A chronological review of the models developed over the last two decades shows the direction in which research has evolved and progress has been made. In this section, a brief overview of the evolution of these models will be presented, with special attention given to the models that best explain the oral interpreting mode. This section will culminate with an explanation of the Simultaneous Human Information Processing Model or SHIP, the most complete and unique of the models to be developed to date.

Most of the models presented in this section are taken from the excellent overview presented by González et al. in *Fundamentals of Court Interpretation*, Durham, North Carolina: Carolina Academic Press, 1991, pp. 315-358.
1. Early models

a. Triangular Models

The earliest theoretical models on interpreting that we are going to present are triangular models. These basically show that the interpreting process is a tripart activity which consists of a “three phase operation in which the first phase is verbal -- incoming discourse, the second is non-verbal, and the third is again verbal -- the interpreter’s reproduction of the message in the TL”. (Mackintosh 1985, p. 37, in González et al., p. 316).

Comprehension

[Diagram: SL perception to Comprehension to TL expression]

This model clearly shows the interpreter’s role as both receptor and source. As the receptor, he receives the message and decodes it, choosing the meaning that makes the most sense based on his knowledge of the language and understanding of the context in which the utterance is made. All inappropriate choices are discarded at this stage. The information is then divided into chunks, a process Kelly calls

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As a matter of expediency, the masculine pronoun will be used throughout this thesis to represent all interpreters. This is in no way meant to exclude female interpreters or to favor male interpreters in any way.

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segmentation (González et al., p. 304), which allows the interpreter to focus on units of meaning. Attention is also paid to the form of the message given that form contains some important elements of the message itself, especially in the context of court interpreting where hedges, false starts, hesitation, and other paralinguistic elements contribute to the perception of a witness’s or defendant’s credibility.

The next step takes the interpreter from receptor to source, at which point the interpreter reproduces a target language version of the original message which is as true to the meaning and form of the original as is possible. In court interpreting it is especially important that form, and not only meaning, be taken into account as the form, in other words register, tone and style, etc., are an important part of the overall message which needs to be transmitted. For example, the utterance “Someone tipped off the cops” should not be translated as “Alguien informó a la policia”. In this case, meaning would be preserved but register would not. Berk-Seligson and others have shown that in a court of law different styles of testimony have a definite impact on judges and juries and their perception of the facts of a case and the credibility of a particular actor in a legal case.

This model allows for on-going self-evaluation on the interpreter’s part and

correction of his work. The corrections made by the interpreter may be due to recognition of an error on his part or may come about as a reaction to cues being given by the receptor such as puzzled expressions which indicate that communication is not being successfully achieved.

b. The Wilss Modified Triangular Model

Wilss developed a model that recognizes the demands of the target language (1982, in González et al., p. 316). The model is a graphic representation of the balance that should exist in a translation with equal importance given to the nature of the source language and of the target language. However, Wilss also developed models which show what happens when there is an imbalance between the two and when form is emphasized over content. These are modified triangular models that are mainly applicable to written translation but have implications for oral interpreting as well. (See models, p. 27)

c. The Cokely Model

In 1984, Dennis Cokely, a researcher in the field of sign language interpretation, introduced a model which tried to incorporate the many operations that take place during interpretation including sociocultural and psycholinguistic factors (González et al., p. 316). Cokely considered errors and miscues important sources of information that could be used in studying how the interpreting process works. His model was innovative in that it did not see the interpreter as simply a mediator.
The Wilss modified triangular models

The Wilss modified triangular models

The Wilss modified triangular models

The Wilss modified triangular models

The Wilss modified triangular models

The Wilss modified triangular models

The Wilss modified triangular models

The Wilss modified triangular models

The Wilss modified triangular models

The Wilss modified triangular models
between two languages but also as a mediator between individuals and communities. The model recognizes cultural awareness, associated relations and contextual knowledge along with more linguistic based knowledge such as lexical, syntactic and semantic knowledge and includes social markers and cross-cultural awareness features. (See model, p. 29)

d. The Gerver and Moser Models:

Models in which an even greater effort was made to reflect the complexity of oral interpretation were those developed by Gerver (1976) and Moser (1976, 1978). These models focused exclusively on the task of simultaneous interpretation and defined the decoding and encoding functions of interpreting while stressing the simultaneity of the process.

The most important features of Gerver’s model are the buffer storage zones he incorporates into it. Gerver claims that a short-term memory buffer can account for an interpreter’s ability to translate while further information is being received, and the short-term output buffer memory allows interpreters to monitor and correct their own output. The model also assumes that there is long-term storage of the lexicons and grammars of both languages being used which permits the decoding and encoding processes to take place.

In his model, Gerver stresses that an on-going comparison of input and output is possible. He states that research has shown that attention can be shared between various tasks and that the degree of attention given to each task depends upon the
circumstances, needs and abilities of the interpreter at a given point in time. Attention can be equally divided when conditions are optimum -- for example, when there is no acoustic interference during the interpreting process, when the speed of the source language emission is manageable, and when the level of difficulty of content of the source language utterances is moderate. On the other hand, when these conditions are not present, for example, when source text is quite difficult or when acoustic conditions are poor, more attention will have to be devoted to decoding and encoding than to monitoring of input and output.

Decoding and encoding are important elements of Gerver's model. Gerver uses the terms “surface” and “deep” in his model, but points out in his explanation of that model that "these terms do not necessarily imply any particular generative transformation theory of language" (p. 197). These terms are simply used to refer to the decoding and encoding of the phonetic representation of source language utterances according to the underlying structure and meaning of the utterance in relation to a given context.

As the graphic representation of Gerver’s model shows (see p. 31), this model also includes a correction loop, called "retry", that accounts for the processing of errors perceived by the interpreter during the interpreting process. The decision to use this loop depends on the interpreter's perception of whether or not carrying out the retry will affect his ability to process the incoming input. If there is a substantial amount of information or input in the buffer short-term memory, the interpreter may decide to forego the retry or correction process, especially if the error is minor and
does not affect overall meaning in a significant way. According to Gerver, "monitoring and possible revision and correction are an integral part of the process of simultaneous interpretation, rather than an additional activity after translation" (p. 202).

Moser’s model is similar to Gerver’s but incorporates several elements such as structural components, decision making and what she calls a rehearsal loop. Moser’s model stresses the decision-making component of the process and the effect of possible external factors such as sensorial distractions on the interpreting process. (See model, p. 33)

The flow chart shows a series of processes. The boxes represent structural components and the intermediate headings, functional components. These functional components are the individual tasks or operations performed at each stage of the process. Diamonds mark decision points. At each of these points, a yes answer is required for the process to continue. If a no answer is given, the information is fed back into the system and processed some other way until a yes answer is achieved. This is the so-called rehearsal loop. The rehearsal loop is also sometimes initiated even when the answer at the previous stage was a yes answer. This reflects the simultaneity of the interpreting process.

The model can be divided into three main sections. The first is identified by the author of the model as the initial processing stage. During this stage the source language message is received in the auditory receptor system and is available for processing, or what Moser calls feature detection or the readout process. The
The Moser Model

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information received is first stored in preperceptual auditory storage, and then the phonological rules of the source language are used to synthesize the acoustic features into a percept (a syllable) which is stored in the synthesized auditory memory. A series of these percepts is called a string of perceptual units in the model. These strings are then processed into words using both syntactic and semantic tools. If a word is recognized, the process continues in the same way, transforming strings of words into meaningful phrase units. If a word is not recognized, the process loops back to wait for enough information for word identification to take place. Context and lexical stress patterns are other tools used for word identification, although lexical stress patterns are often faulty, especially when an utterance is emitted by a non-native speaker of the source language. According to Massaro, cited by Moser in the explanation of her model, all of this process takes place within a 1 to 2 second time period (Massaro 1975, in Moser 1978, p. 356).

Once a string of words is available for processing, we have entered the second stage, which in this model is called generated abstract memory, or GAM. According to Moser, this is more or less equivalent to the short term memory discussed in other models and theoretical constructs. Information is received and "chunked", and semantic and syntactic processing takes place. Moser accepts Miller's assertion that GAM or short term memory can deal with 7 plus or minus 2 chunks of information of various sizes at a time, but points out that in interpreting, the more difficult secondary recognition is, the less capacity an interpreter can devote to the recoding and rehearsal process in GAM. In addition to this, the more capacity an interpreter
has to devote to recoding information, the less capacity is available for storing already recoded information. Therefore, the ability to "chunk" longer phrases or larger units enables an interpreter to better process information and produce more accurate target language renditions (1978, p. 356).

The third stage of this process is the organization of semantic information. In Moser's model, the terms "concepts", "conceptual framework" and "conceptual relations" are used, which reflects the generative semantics tradition that underlies it. Moser states that there are two languages involved in the interpreting process, but only one underlying thought system and one conceptual framework used by the interpreter who then follows mapping rules for a specific language to comprehend input in the source language and to prepare utterances in the target language.

Prediction is another tool that is used by the interpreter as a strategy to help economize on processing capacity. Prediction is based to a great degree, on the interpreter's knowledge of the subject matter being presented for interpretation and on the "shared knowledge" between the speaker and the interpreter. Of course, a certain risk is always inherent in the prediction process as incorrect predictions can be made and then a correction process must be implemented. Correction depends to a great degree on the interpreter's ability to monitor his or her own production. Since the interpreter receives the source language input into both ears through earphones, it is sometimes difficult to monitor output. Moser claims that the more difficult input is to process, the more capacity in GAM it uses, and therefore the less capacity is available for other functions. She also states that correction usually takes place within
a maximum time frame of 15-20 seconds or it is lost. Her research has shown that interpreters who do not correct errors often report not being aware of having made them (1978, p. 361).

The final step of the model is the application of the phonological rules of the target language to the underlying concepts which have already been processed for syntactic and semantic features, and target language output is then achieved.

e. The Colonomos Model

Colonomos has proposed an interesting model from the perspective of sign language interpreting that is of interest to other types of interpreting as well. (See model, p. 37) This model presents interpreting as a psycholinguistic interactive process. According to González et al.,

Colonomos takes into account the situational content and the speaker and hypothesizes the factors that influence analysis to be a) process and management skills, b) linguistic and cultural competence, c) knowledge of the world, d) learning and e) knowledge of the environment. These help the interpreter comprehend and process the source message. Composing the equivalent target message is also influenced by those same competencies and skills. (p. 322)

Colonomos’s model recognizes the creative processes involved in interpreting
The Colonomous Model

Processed Transliteration

Source Language

Receptive Mode

Active STM

Passive LTM

Analysis

Message

Use of Source Language Features

Expressive Mode

Comprehension

Message

Target Language

Feedback

Monitor

Sentences
and better explains “the relationship of the interpreter’s knowledge and experience to the successful analysis and construction of meaning” (González et al., p. 322).

Each of these models contributes to an overall understanding of the cognitive processes involved in translating and interpreting, but for a more complete understanding of the theories underlying many of these models, we must look further into the field of human information processing.

2. Human Information Processing Models

Human information processing theory tries to equate the functions of the human mind when processing information with computer processing of information. Elements included in this approach are sensory registers, short term memory, long term memory and external stimuli. An understanding of how human memory works, what its capacity is, and how information is processed is central to an understanding of how an interpreter interprets.

González et al. tell us that according to classic human information processing or HIP theory, short term memory is limited by time and volume with maximum storage in short term memory believed to be 15 seconds if information is not processed for long term memory storage (Wortman et al., p. 88). The maximum number of bits of information STM can retain is purported to be “seven plus or minus two” (Miller 1956). This number of bits of information might seem quite limited,
especially if we think in terms of single words as bits of information. This would be
the case if a receptor were to hear seven totally unrelated words; in this case each
would be processed as a single bit. However, the information that can be held in
short term memory is expanded in theory by the concept of "chunking" which
basically means that one "bit of information" is a semantic unit or chunk often
consisting of many words. For example, in a sentence such as "He told me he left the
house alone at 9:00 on the night in question" the semantic units or chunks of
information might be considered to be:

He told me
he left the house
alone
at 9:00
on the night in question.

In this way a sentence with 15 words can really be considered to be five
chunks or bits of information and can then be remembered or held in short term
memory.

In interpreting, the same process occurs. Josette Coughlin, an interpreter
trainer at Georgia State University, provides an interesting analogy in an article she
wrote on the bilingual switch mechanism in simultaneous interpreting. She says:
In the interpreting process, the trained mind is able to grasp a whole unit of meaning at a time and consequently transfers it as an entity to be rendered as such. The untrained subject will attempt to transfer each lexical item or word as it is perceived. An illustration will better exemplify the difference between the two methods: let us imagine the task of a manual worker who has to transfer pearls from one container into another, both containers being placed on conveyer belts moving in different directions. If his task is to transfer the pearls one by one at the rhythm of eighty units a minute, he will wear himself out and many of the pearls will not be transferred. On the other hand, if the pearls are already strung into bracelets, necklaces and other pieces of jewelry, transferring of eighty pearls per minute becomes quite feasible. In the same manner an interpreter cannot interpret simultaneously lists of unconnected words but is able to process whole units of meaning. (pp. 337-8)

With as important as short term memory is for interpreting, long term memory cannot be overlooked as this is what makes more complex processes such as learning and language production possible (Wortman et al., p. 88, in González et al., p. 325). Information stored in long term memory is considered to be one of the following types:
1) Procedural knowledge - learned associations which allow humans to adapt old behaviors to new situations

2) Semantic knowledge - mental representations of reality, images, etc.

3) Episodic memories - personal experiences stored in memory

Information is received and held momentarily in a buffer also called primary memory. If it endures beyond this stage it enters short term memory where, according to Kihlstrom (87) and Wortman et al. (88), all thinking takes place. The short term memory interacts with long term memory. Information stored in long term memory is retrieved and used to process the information entering STM. This process of receiving and retrieving is what allows higher order cognitive processing to take place.

Information in LTM is stored in the form of schema (Bartlett, in González et al., p. 326) which are sets of related or associated information or what Gerver (1988) calls “frameworks for the organization of knowledge about different domains.” Forgetting, an important aspect of memory, takes place when information is not successfully received or stored in STM or when schemata are not successfully retrieved from LTM for use in processing.

Classic HIP is basically a linear model that assumes information is processed sequentially. It also posits that there is a “central control center” called working memory that combines many perceptual-cognitive functions into one system. For
these reasons, González and her colleagues claim that classic HIP is not an adequate model for the explanation of interpretation, as the processes involved cannot be carried out sequentially and the model cannot explain the multiplicity of tasks in which an interpreter simultaneously engages. For this reason, they developed a new model which they call the Simultaneous Human Information Processing Model (SHIP) specifically developed to address the complexity of interpreting and the “unique properties of court interpretation not accounted for by prior interpretation models.” (González et al., p. 335). They first outline two further models that set the basis for the development of SHIP. These two models are Anderson’s ACT Model and the PDP or Parallel Distributive Processing Model.

a. The ACT Model

Anderson developed ACT in 1983 and called it a “theory of cognitive architecture” (González et al., p. 328). According to this model, memory is viewed as a unified storage system, not divided into any types of compartments or differentiating functions, the capacity of which is quite extensive. Anderson identified three areas of memory that information coming into the system can be channeled into:

1) declarative - representations of the external environment
2) working - active goals which require processing
3) production - pre-existing knowledge structures
According to this model (see representations of model on pp. 44-45), knowledge can be either declarative or procedural. Declarative knowledge refers to both specific facts, which Anderson labels semantic memory and mental lexicon, and schema, which refers to episodic memory with the self as an agent. These are basically autobiographical memories. Procedural knowledge consists of the skills, rules and strategies an individual uses to perform higher cognitive functions.

Declarative knowledge is accessed through procedural knowledge nodes as the author shows us in his conceptualization of this idea. One of the important elements in this model is the concept of introspection. Anderson posits that declarative knowledge is available for introspection but that procedural knowledge is not. An individual “can be aware of the goals, conditions, and products of procedural knowledge, though not the actual process or procedure he or she engages in” (González et al., p. 331).

Working memory is activated by either external stimuli or internal thought processes. All related nodules of information are activated through associative links. This results in a large field of related concepts being brought up at once and has implications for interpreting. This model “can account for conscious as well as unconscious cognitive processes that operate independently or interactively and chronologically or simultaneously” (González et al., p. 331).

Nevertheless, subsequent theoretical studies challenged the ACT system and a new model was presented, the PDP, or Parallel Distributive Processing Model of human information processing.
ACT Model - Representation 1
ACT MODEL - Representation II

- Produce Spanish (Goal)
- Conservation (Strategy)
- Interpretation (Cognitive Function)
- Listening to English (Skill)
- Abstraction (Internal Action)
- Comprehension (Thought)
- Semantic Memory
- Grammatical (Rules)
b. The Parallel Distributive Processing Model.

This model differs from other models in that it does not use the basic analogy of human information processing and computer processing of information. It is based on a physiological approach that tries to build a model on the functioning of the brain itself, and specifically on the synaptic connections of the neurons. (McClelland, Rumelhart, and the PDP Groups 1986, pp. 10-1, in González et al., p. 332) This approach is based on the belief that knowledge and information is widely distributed throughout the brain and not located in one central location. It then follows that there exists a distribution method or mechanism by which to process knowledge or information. Activation time for this system is thought to be one-half second (González et al., p. 332).

The authors of the PDP theory (McClelland, et al.) recognize both internal and external stimuli. Response to stimuli can be either activation of useful and pertinent processing units or inhibition of those that would not be useful or pertinent to a particular goal. Each unit has a specific and simple task, and many processing units work simultaneously. The great number of units that work together goes beyond the capabilities of conscious awareness. Therefore these theorists state that "unconscious processing is fast and parallel, while conscious processing is slow and sequential". (Kihlstrom 1987, p. 1446, in González et al., p. 332).

According to González and her colleagues, the PDP framework is of particular interest to interpreters in that one of its underlying assumptions is that
(...) if an ambiguity exists in the stimulus pattern, such as a miscue in
hearing a word, then there will be a vacillation between alternatives
(Kihlstrom 1987). This would account for pauses and hedges while
interpreters are considering alternatives to a word or phrase which are
not immediately available to them while interpreting. (p. 332)

The concept of unconscious processing is quite important. It implies that
certain tasks can become “routinized” through practice and training and explains how
an individual can handle the multi-faceted aspects of interpreting. Some of the tasks
involved can be learned and routinized and eventually become semi-automatic.

c. Simultaneous Human Information Processing

This brief overview of the models that have been proposed in the last two
decades brings us to the most recent model on interpreting theory. As was mentioned
earlier, González and her colleagues developed a non-linear, three dimensional model
to try to accommodate the unique properties of interpreting and specifically the need
for court interpreters to be able to conserve the meaning of a message without
forfeiting the paralinguistic and extralinguistic qualities of that message.

This model draws extensively from the other models that have been described.
It further develops some of the posits of those models to accommodate the
peculiarities of court interpreting. Its purpose, as stated by González and her
colleagues, is to “attempt to account for known phenomena with a model having the
power and flexibility to explain and predict observed behaviors” (p. 335). The main contribution of the SHIP model is that it is three dimensional and is not based on the linear approach of traditional HIP. Therefore it encompasses the multiple functions that operate simultaneously during the interpreting process. Even though the authors recognize that some cognitive functions may be linear, they maintain that the global functioning of SHIP is not. The model tries to simulate the functioning of the human brain as closely as possible. In this it is similar to the PDP model that was briefly outlined above. It recognizes that the brain receives stimuli through several different channels and in many different ways and that much information can be processed simultaneously. It posits that one piece of information need not be completely processed before the next piece can be treated. According to this model, large quantities of information can be processed without having to be prioritized.

This model also views memory as a series of modules (see model p. 50) which include both short term memory and long term memory components which operate simultaneously rather than successively. Unlike the more traditional HIP models, SHIP assumes unlimited memory capacity. According to the authors, this is an important issue when addressing the complex task of interpreting:

Unlimited memory can more reasonably account for the multiple and simultaneous tasks requisite to the rendering of an interpretation.

Assuming the existence of multiple memory modules may be the key to understanding how an interpreter can hold several units of meaning.
in short-term memory -- each a distinct abstraction -- while at the same time searching for lexical items that match each representation, producing an utterance in a second language and simultaneously listening and initially processing the next unit. (p. 348)

Moreover, most of the information that human beings receive through their senses is received on an unconscious level. This second element of the model as regards memory is also quite important as it allows us to overcome the limits found in traditional HIP models where only observable memory phenomena are recognized and thought to be measurable. The attempt to explain the capacity of short term memory to hold more than the “seven plus-or-minus-two” theory through the “chunking” approach can be bypassed with this theory as memory is assumed to be limitless.

However, as regards memory, SHIP does recognize the traditional classification of knowledge as either procedural or declarative as we saw in the ACT model. It does include the concept of schema, and it recognizes how the memory or the brain organizes information into related domains or schema that are either activated or inhibited by certain external or internal stimuli. These schema are connected by associative links in this model, as they were in models that have already been described. Furthermore, the model accepts the view put forth by Loftus that memory is influenced by expectations, stereotypes, and other variables or conditions (Loftus et al., 1978; Loftus & Palmer 1974; Loftus, Schooler & Wagenaar 1985;
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**SHIP Model - knowledge modules**

**A**

Automatically Stimulated and Inhibited

**A**

Abstract Representation

**Linguistic**

Representation

**Associative**

Links

**Other Knowledge Modules**

**Knowledge Modules**

**Brain**

**Synaptic Conversion**

**Stimulus Perceived**

**Affirmation**

**Correct**

**Conversational**

**Right Hand Turn**

**Conversational**

**Write**

**Conversational**

**Constitutions**

**Brain**

**Correct Meaning**

Selected When Entire Proposition Comprehended; All Other Schemas Inhibited

**Correct**

**Affirmation**

**Spoken Stimulus:**

"It’s a right."

**Context:** Accident

**B**

Stimulated as Possible Selection; Rejected Given Other Contextual Cues
In order to understand this model completely, it is important to begin by studying its components. The graphic representations offered on the following pages are two-dimensional representations of what is in essence a three-dimensional model. The first is a “top-down” view of the model and the second is a cross-section of the model’s components. (See pp. 52-53)

SHIP is made up of internal and external components. The external components are:

a) The environmental stimulus plane: This refers to the outside world, to everything outside the body. All stimuli originate in this plane and enter our organism through the senses in order to be processed.

b) The physiological response: As the name states, this is the physical response made by the organism to the stimuli that it receives. This refers to the actual physical event of listening or speaking, for example, in the case of an interpreter. All responses can be evaluated, modified or acted upon. This gives the model interactive or recursive properties.

c) Conscious and unconscious properties: The SHIP model
The SHIP Model

Memory Modules:
- Widely Distributed throughout the model (PDP)
- Procedural and Declarative
- STM and LTM Variants

Global Features:
- Distraction
- Forgetting
- Conscious
- Subconscious
- Attention
- Memory
The SHIP Model - cross-section of cognitive hierarchy

- Operation
  - Pre-Operation Activities
  - Conservation
  - Abstraction

- Higher-Order Cognitive Functions
  - Linguistic
  - Sociolinguistic
  - Metalinguistic

- Comprehension
- Perception
- Cognition
- Affect
- Action

- Pre- and Post-Comprehension Activities

- Physiological Response

- Environmental Stimulus Plane
recognizes both conscious and unconscious processes but assumes that some cognitive processes that reside in the unconscious can be practiced and shaped through conscious effort. This speaks to the ability of the interpreter, long thought by many to be based on innate talent of some sort. According to SHIP, these skills, previously thought to be strictly in the domain of the unconscious, can be learned through the practicing of certain subskills. González et al. state that “simultaneous interpretation is an entirely unconscious process; nonetheless, the actual product (i.e., the TL version) can be analyzed by conscious processes, which means that the interpreter is aware of and can monitor his product (Krashen 1985) -- the interpretation.” (González et al., p. 343)

d) Procedural and declarative knowledge: These terms, taken from previous theory (ACT above), are a part of the SHIP model. Their definition in this model is relatively unchanged from the definition given in the ACT model. This model also classifies all information stored in the brain as either declarative or procedural and recognizes word association networks which bring forth related vocabulary and concepts when stimulated.

e) Memory and attention: SHIP’s approach to memory has already
been presented above. The concept of attention and more specifically, selective attention, has to do with the "cognitive process whereby the individual, either deliberately or in response to an environmental cue, focuses his or her perceptive capacities on a specific stimulus." (González et al., p. 343). This encompasses both the interpreter's ability to focus on in-coming speech to the exclusion of other stimuli, and his response to unexpected environmental cues such as a loud noise or other distracting background events, be they audio, visual or of some other type.

f) Distraction and forgetting: These are the opposite concepts that correspond to attention and memory. Distraction is caused by the shifting of one's attention from one stimulus to another. This brings about forgetting. Forgetting can also be selective if an individual chooses to ignore a certain stimulus which therefore cannot be coded for memory. These elements are included in the SHIP model because they explain an important part of observable phenomena.

In addition to these external features, there are two internal components that also contribute to the process. These are:

a) Pre- and post-comprehension activities: According to the SHIP
model, there are four activities that are prerequisite to comprehending any stimulus. These are perception, cognition, affect and action. Each of these can be analyzed separately.

Perception differs from what in the external components is called physiological response due to its intellectual or cognitive nature. It has to do with the difference between simply hearing a sound and being able to comprehend what that sound means. Cognition is the systematic organization of information or thought. Affect is the emotion attached to a word or a situation. It is believed that information is stored in memory along with an affective element of some sort. This element can influence the meaning of a word - how it is comprehended and for an interpreter, how it is reproduced in the target language. Action can be either internal or external. External action is simply behavior or procedure. Internal action is thinking about something that is not necessarily attached to a physical act of some kind.

b) Comprehension: This element is defined by González and her colleagues in a very concise manner. They state that stimuli cannot be consciously comprehended unless the individual can apply his or her prior knowledge of the world, of the language, and of the sociocultural context to a situation. Essentially, "comprehension is
the construction (encoding) and reconstruction of meaning (decoding) based upon such knowledge” (González et al., p. 345). The comprehension of stimuli depends on a series of competencies including linguistic, pragmatic, sociocultural and discourse competence. Comprehension takes place when communicative competencies act upon the stimulus while simultaneously activating background/contextual knowledge, thus allowing the listener to reconstruct the speaker’s meaning.

Other elements related to SHIP that merit mention are "routinization" which is described as "the rehearsal, practice and repetition of a complex skill until it becomes an unconscious response" (González et al., p. 352). Many of the subskills of consecutive and simultaneous interpretation can be routinized through training and practice. Training should parallel real conditions as closely as possible, and practice allows for the development of extensive schemata that can be drawn on almost unconsciously by the interpreter in response to stimuli. Once this routinization of certain subskills has been achieved by the interpreter, he can dedicate his limited conscious attention span to the peculiarities of the text he is interpreting such as tone, register, and style.

Another important feature of the SHIP model is its recursive nature. (See graphic representation, p. 58) The model allows for information to enter the processing stages and proceed through the entire process or reenter the model at
The recursive nature of the SHIP model

Processing Channel

Operation

Higher-Order Cognitive Functions

Comprehension

Pre- and Post-Comprehension Activities

Physiological Response

Environmental Stimulus Plane
some point for reprocessing or further processing when necessary. This is similar to the loop feature or the self-evaluation function found in other models. However, it is important to mention that in this model all components and functions take place simultaneously and recursively and all components and functions can be influenced by any other part of the process.

As was stated earlier, SHIP was designed to be powerful and flexible enough to explain and predict observable behavior. It attempts to define how the mind works in relation to interpreting and how it handles several tasks simultaneously (see model, p. 60). It contributes to an understanding of the vast capabilities of the mind and the complexity of transferring one language to another. Although the model needs testing and analysis, it helps us set criteria for measuring interpreter accuracy and skill levels. Applying SHIP to court interpreting shows us that

(...) it is important to consider that throughout the process distortions such as forgetting, distractions, and the emotional affect of the interpreter’s experience can bring about changes in meaning, comprehension, delay and hesitation. If a competent, trained court interpreter’s performance is affected by these phenomena, clearly an untrained, albeit highly proficient bilingual, would find it virtually impossible to produce a legal equivalent. (González et al., p. 358)
The SHIP Model - simultaneous functioning

Physiological Response (Hears /dag/)

Operation (Selects word DOG; on the way out of model all stages potentially recursive)

Comprehension (Understands the meaning that DOG represents a “Bow Wow,” the context, topic, and purpose of DOG perceived; decodes body language, tone of voice of speaker uttering DOG)

Pre- and Post-Comprehension Activities (Perceives sound units D-O-G and as a word for a living object that he loves and plays with)

Converts from semantic lexicon of English Dog to Spanish representation Perro

Higher-Order Cognitive Tasks (Abstracted to woof-woof conserved by making a sociolinguistic check on image because context cues match) Selects word DOG so chooses letters D-O-G

* One stimulus has entered SHIP, and is now simultaneously processing throughout the components.
Chapter Two. LEGAL LANGUAGE

A. Written legal language - general considerations

Linguists have often looked at legal language from an applied linguistics point of view as one of the many types of English for specific purposes. Glossaries and bilingual dictionaries dedicated specifically to the law or to areas of it have been prepared and published. This is because often times linguists consider legal language to be a professional jargon which, like others such as Business English or Technical English, differs from ordinary language mainly in the area of lexicon. However, a close look at both written legal language and the oral language used in courtrooms shows that there are clear syntactic, grammatical and structural differences as well as lexical specialization present. Legal language cannot really be considered a jargon, a dialect, or a register of ordinary language. It is used by only a small minority of the speakers of a given language, and it is not acquired naturally but rather through schooling or intense exposure to it.

A very interesting and important characteristic of legal language is the fact that in the legal arena, words have a performative function (Austin 1962) and are therefore powerful. For example, if a judge declares an individual guilty of a crime, he is given a sentence which he must serve and is, for all intents and purposes, guilty even if in reality he did not commit the crime. Marriages are proclaimed and
dissolved with legal language, and in some circumstances, a judge can even declare a person dead after a certain period of absence even though there is no physical evidence of that fact.

Clearly, a systematic description of legal language is needed to be able to understand the task of a legal translator or a court interpreter and to contemplate ways in which to evaluate competency in these areas. In this chapter a review of the work done in the area of defining the specific characteristics of legal language will be presented. Special consideration will be given to Spanish and English. Some elements of legal language will be common to both languages, while others will be more specific to one or the other.

1. English

Historically speaking, legal language developed in English alongside ordinary English and in some ways, independent of it. Some of the phenomena of ordinary language development, in other words, some of the changes that normally take place during linguistic evolution, are not evident in the development of legal language. Perhaps the most obvious difference has to do with the fact that ordinary language changes as the result of use. The meaning of words and even grammatical and syntactic structures change in response to the changing environment in which they are used and the changes in the users themselves. Legal language, on the other hand, is
not a commonly, popularly used subset of ordinary language. Its usage is limited for the most part to a specific context and to specific users. It is designed to permit one expert to scrutinize information given by another. Words often have a different meaning in the realm of legal language than they do in the realm of ordinary language, and change or development is often the result of litigation and legal interpretation of the law. In legal English, a term is often expanded as opposed to changed. For example, the word *void* was added to *null* to create the legal concept of *null and void* instead of the newer word simply replacing the older one. Many cases of this type of redundant usage can be found: *cease and desist, any and all, false and untrue.*

In some cases, however, the duplicity of seemingly similar terms is due to a bona fide difference in meaning according to how the law has been developed over time. An example of this would be the often cited phrase *give, devise and bequeath.* While these terms seem to have very similar meanings, jurisprudence has developed the term *bequeath* to be applicable to anything other than real property and *devise* as applicable to real property.¹⁰

This pairing of synonyms is also the result of the historical coexistence of French and English in Great Britain after the Norman Conquest. French became the language of the courts, but eventually gave way to English. As this process took place, an English language term would be added to the French one, as opposed to replacing it (*act and deed, acknowledge and confess*). This was often due to the fact

¹⁰ These examples are taken from Charrow, Charrow and Crandall, "Characteristics and Functions of Legal Language" in Richard Kittredge and John Lehrberger (eds), *Sublanguage Studies of Language in Restricted Semantic Domains*, N.Y. and Berlin, Gruyter, 1982.
that it was unclear if both the native English and the borrowed French term meant exactly the same thing, and so a tendency developed to include both and rely on inclusiveness to compensate for lack of precision. This phenomenon was also common in ordinary English, but while this practice eventually faded or died out in ordinary usage, it persisted in the language of the law. Finally, as Latin was the language of written legal documents well into the Renaissance, there remain many Latin terms in use today.

The formulaic and ritualistic nature of legal language is historically due to the fact that repetition and incantation of the law were techniques used to ensure a certain level of awareness of the law when the written word was not yet a viable means by which to inform the common man. Mellinkoff explains:

The early history of the language of the law was made rememberable by repetition, rhythm, rhyme, alliteration and an awestruck respect for the magic potency of certain words. Planned for that effect or willy-nilly, these features fastened upon the language of the law in a time of illiteracy when the very survival of law depended on mnemonic devices, and where the memory of man did not run -- there was no law. (p. 438)

Although this is certainly not the case today, legal language has, to a certain degree, retained this ritualistic quality.
Charrow, Crandall & Charrow (1982) have also described the political function of legal language. They state that due to this political function, the language of the law, especially legislative law, is sometimes intentionally vague or ambiguous to accommodate divergent opinions held by lawmakers. A broad wording of a law may be the only one agreed upon by representatives of different political parties and different ideologies working towards compromise. This vagueness in the letter of the law also allows some leeway in the interpretation of the law. Murray Edelman (1964), a political scientist, made the following comments on 20th century legal language and its ambiguity:

It is precisely its ambiguity that gives lawyers, judges and administrators a political and social function, for unambiguous rules would, by definition, call neither for interpretation nor for argument as to their meaning.

This contrasts, to a certain extent, with the specificity of the legal definition of certain words, that, as we mentioned earlier, often differs from the definition of the word in ordinary English. Legal language can use words to achieve either vagueness or extreme precision.

Having said the above, we can now proceed to a more detailed look at legal language in general and the spoken language of the court in particular as regards lexical, syntactic and discourse features.
a. Lexical and semantic characteristics

As stated above, perhaps the most obvious area of differentiation between ordinary language and legal language is in the area of lexicon. In his book *The Language of the Law*, Mellinkoff describes the lexical characteristics of American legal language:

1. Frequent use of common words with uncommon meanings (using *action* for *lawsuit*, *of course* for *as a matter of right*, etc.)

2. Frequent use of Old and Middle English words once in use but now rare (*aforesaid*, *whereas*, *said /such* as adjectives, etc.)

3. Frequent use of Latin words and phrases (*in propria persona*, *amicus curiae*, *mens rea*, etc.)

4. Use of French words not in the general vocabulary (*lien*, *easement*, *tort*, etc.)

5. Use of terms of art\(^\text{11}\) -- (*month-to-month tenancy*, *negotiable instrument*, *eminent domain*, etc.)

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\(^{11}\) Crystal and Davy define this term as "words and phrases about whose meaning lawyers have decided there can be no argument" (1969, p. 210).
6. Use of argot -- in-group communication or "professional language" -- (pierce the corporate veil, damages, due care)

7. Frequent use of formal words (Oyez, oyez, oyez which is used in convening the U.S. Supreme Court; I do solemnly swear, to tell the truth, the whole truth, and nothing but the truth, so help you God)

8. Deliberate use of words and expressions with flexible meanings (extraordinary compensation, reasonable man, undue influence)

9. Attempts at extreme precision (from a formbook):

   Know ye that I, ----, of ----, for an in consideration of ---- dollars, to me in hand paid by ----, do by these presents for myself, my heirs, executors, and administrators, of and from any and all manner of ----, his heirs, executors, and administrators, of and from any and all manner of action or actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialities, covenants, contracts, controversies, agreements, promises, trespasses, damages, judgments, executions, claims and demands whatsoever (...). (cited in Charrow, Crandall, Charrow, pp. 175-6)
Furthermore, Mellinkoff labels legal English as extraordinarily wordy, lacking in clarity, pompous and simply dull. (O'Barr 1982, p. 16).

Using Mellinkoff's categorization as a base, and studying the work done by Charrow and Crandall, Danet (1980) adds a few more characteristics to those cited by Mellinkoff. For example, she says that legal language contains an unusually high number of polysyllabic words, unusual prepositional phrases (in the event of meaning if), and doublets such as the ones cited earlier. She also cites the formality of legal language and, as was said earlier, the fact that legal language is at once vague and overprecise. Other authors cite the almost complete absence of intensifying adverbs such as very and rather and the relative frequency of certain adverbs that are found quite commonly in ordinary usage (cited in Crystal and Davy, p. 206).

Still in the area of lexical characteristics, we find that there exists a good deal of polysemy and synonymy in legal English. As Enrique Alcaraz (1994) states, polysemy, while perhaps not a desirable feature of legal language, is a relatively prevalent one. He cites several good examples such as the term sanction which has the double meaning of giving approval and punishing in both English and in its Spanish equivalent, sancionar (pp. 84-5). Other examples of polysemy in the legal arena in English are order, defense, consideration and issue. As regards synonymy, Alcaraz cites the term annul and lists as partial synonyms abolish, override, set aside, and quash (p. 84).

Crystal and Davy studied the structural and organizational features of legal texts and presented their findings in their book Investigating English Style (1969).
They concur with their American counterparts in many of the lexical, syntactic and discourse features of legal language calling it instrumental (similar to Austin’s term *performative*), lacking in cohesion, precise and unambiguous at times and just the opposite at others. They also identify some specific semantic principles found in legal language that are not normally found in ordinary English. Among these are:

a) *ejusdem generis*: general words following specific words apply only to things of the same classes already mentioned (for example, in the phrase *house, office, room, or other place*, the final item may not refer to an uncovered enclosure although it would be a "place" in ordinary English).

b) *expressio unius est exclusio alterius*: If a list of specific words is not followed by a general term, then all other things not mentioned are specifically excluded (for example, the phrase *house, office or room* allows no other places to be included if they do fit into one of these categories).

c) *noscitur sociis*: the context in which any word appears may enter into the definition of its meaning.

d) *The Golden Rule of Interpretation*: the ordinary sense of words is
to be used unless it would lead to some absurdity or inconsistency with the rest of the document.

Crystal and Davy feel that the semantic aspect of legal language is in many ways the most important when studying stylistic characteristics of language. This is due to the very high demands placed on the drafter of legal language as regards meaning. They recognize the fact that legal texts are going to be scrutinized closely, what they call "dissected and probed", often for destructive purposes or purposes opposed to those for which a document was prepared. According to them, the drafter of a legal document must be sure that his text "says exactly what he wants it to say, that it is precise or vague in just the right parts and just the right proportions, and that it contains nothing that will allow a hostile interpreter to find in it a meaning different form that intended" (p. 212). This explains some of the linguistic conservatism that exists in legal language. We find forms in legal language that have long outlived parallel forms in ordinary language. This is because lawyers tend to rely on language that has proven effective in achieving certain goals in the past, and they believe that changes in form may very well produce changes in content. Nevertheless, there are efforts being made to make legal language "simpler", but these are often the result of statutory provisions which clearly state that a shortened or "simplified" version of a legal form or standard document is legally acceptable and that lawyers will not be running any risks by not using the longer and more complicated traditional forms. As Crystal and Davy state:
[Legal language] is a form of language that must always behave in conformity with the body of rules -- the law -- of which it is the vehicle. Certain things must be said in certain ways for fear of seeming to misrepresent the law, and before they may be said differently, the law itself must often consent. (p.214)

b. Grammatical and syntactic characteristics

In addition to the clear distinctiveness of legal language as regards terminology, several studies show that there are also some very distinct grammatical and syntactic features that characterize American legal language (Charrow & Charrow 1979; Charrow & Crandall 1978; Danet 1976; Erickson et al. 1978; Charrow, Crandall & Charrow 1982). Danet's classification of eleven syntactic features is perhaps the most complete:

1. nominalizations, or the formation of nouns or noun phrases from verbs (*make assignment* instead of *assign*)

2. passive constructions (*may be provided by law*)

3. conditionals (*in the event of default*)

4. unusual anaphora, specifically referring back to previously
mentioned nouns by use of the same noun rather than a pronoun (the repetition of borrower in two consecutive phrases of a sentence, for example: "any obligation or any collateral on the borrower's part to be performed or observed; or the undersigned borrower shall die". In standard written English the subject of the second phrase would be he or she)

5. whiz deletion: the deletion of a relative pronoun such as who, which or that and a form of the verb be in a relative clause (all the rights and remedies [which are] available to a secured party)

6. high frequency of prepositional phrases and their unusual placement between the subject and predicate of a sentence (the prepositional phrase without demand or notice in the following excerpt: "a right ... (at its option) without demand or notice of any kind, to declare ..."; normally the phrase would go in a position following the verb, as in "a right to declare without demand or notice (at its option) ...")

7. lengthy sentences (Danet (1980) cites one example as 242 words long with five semicolons as compared to the 25 word mean length of sentences in government documents and business publications)
8. unique determiners: the use of *such* and *said* preceding nouns in phrases where normally other determiners (*this* and *that*) are used (*in any such event* instead of *in this event*)

9. impersonality: a preference for the third person over the first or second person (references to *the party, the borrower, and the lessee* as opposed to *I* or *you*)

10. a wide variety of semantically negative words, beyond the grammatical negative *not* (*never, unless, except* and words containing the prefix *un-*)

11. parallel structure in the linking of words and phrases by means of the conjunctions *or* and *and* (*now or hereafter, to be immediately due and payable*) (Danet, in Berk-Seligson 1990, pp. 16-7)

Legal language is replete with passives, nominalizations, multiple negatives, misplaced or intrusive phrases, unusual and complex embeddings and unusual prepositional phrases and clauses. Verbal groups are limited and there is a very marked preference for post-modification in the nominal groups. There are reasons for the use of some of these techniques. For example, by changing the verbs in
subordinate clauses into static, nominal phrases, lawyers and bureaucrats are able to make a sentence more remote and abstract and to avoid placing or taking responsibility.

c. Discourse Level

On the discourse level, legal language violates many rules of ordinary usage. For example, as was mentioned above, the use of pronouns is often avoided, which breaks some of the rules of anaphora in and between sentences. Information is often repeated with different structures and vocabulary, and it has been shown that this often confuses the reader of legal texts or the receiver of legal discourse who is not always aware that the information being given is basically the same (Charrow & Charrow 1976). Danet also considers written legal language to lack cohesion and to be overly compact, with each sentence containing a great deal of information. (Berk-Seligson 1990, p. 17)

Crystal and Davy, two British linguists who have studied the characteristics of legal language, concur and state that:

It is a characteristic legal habit to conflate, by means of an array of subordinating devices, sections of language which would elsewhere

Mellinkoff explains that historically speaking, much of the excessive wordiness of legal language comes from the fact that lawyers and clerks were paid according to the length of the documents they prepared and that they used several techniques to extend the length of their writings including repeating unnecessary parts and simply adding words to the document (Mellinkoff 1963, p. 22, in González et al., p. 261).
be much more likely to appear as separate sentences. As a result, legal sentences are usually self-contained units which convey all the sense that has to be conveyed at any particular point and do not need to be linked closely either to what follows or to what has gone before. (... many types of discourse (...).) prefer to convey connected information in a series of short sentences which need linking devices (...) while legal English (...) [puts] all such sequences into the form of very complex sentences capable of standing alone. (p. 201)

2. Spanish

In 1987, a seminar was sponsored by the Instituto Nacional de Administracion Pública dedicated to the topic “Administración y Lenguaje”. During this seminar, an in-depth discussion of legal and administrative language took place. The following value judgement was made at the conclusion of this session:

Durante las sesiones del Seminario se valoró generalmente de forma muy poco favorable la calidad lingüística y comunicativa del lenguaje jurídico-administrativo castellano de los últimos años, no sólo por su excesivo tecnicismo jurídico y por su inclinación a asimilar sin reservas otros lenguajes técnicos, sino también por su
Spanish legal language was described during these sessions as ambiguous and dark and replete with undefined legal concepts and technical terms, the use of which was not always clearly justified. However, it was described as being undeniably specific as well (Prieto de Pedro, p. 120). With this description, we see that, like its counterpart in English, Spanish legal language is both precise and ambiguous at the same time, and that this ambiguity, as in English, is sometimes calculated and intentional.

This is but one of the ways in which Spanish and English legal language are similar. Other shared characteristics include excessive nominalization, overuse of the passive voice, extremely long sentences with incorrect application of basic punctuation and mechanical devices, and related to this, an abuse of periphrasing and definitions instead of a correct use of terminology (reported more frequently in Spanish than in English). Also, it is true of Spanish as well that many terms commonly used in ordinary language take on a different meaning when used in a

"During this Seminar, the linguistic and communicative quality of Castillian legal-administrative language as it has been used over the last few years was found to be wanting. This is not only because it is excessively technical as regards legal terminology and tends to easily assimilate other technical languages, but also because it frequently lacks clarity and logic and transgresses grammatical rules and the basic tenets of communication." (Translation mine)
specifically legal context (examples are contribución, diligencia, artículo).

However, there are some language-specific characteristics of Spanish legal language. For example, formalisms such as Ilustrísimo, Magnífico or Excelentísimo (and sometimes even a combination of two of these) are very frequent. Luciana Calvo calls these forms "baroque and theatrical" (Duarte & Martínez, p. 93) but phrases such as "tengo el honor de proponer", "tenga a bien resolver", or "gracia que espera obtener del recto proceder de vuestra ilustrísima, cuya vida guarde Dios muchos años" used in conjunction with verbs such as suplicar and rogar serve to establish an "uncomfortably unequal relationship" between the two parties involved in a communicative exchange (Duarte & Martínez, p. 94). Some scholars find these forms humiliating in tone (Duarte and Martínez, p. 94), while others believe they should be eliminated from usage, along with sexist forms and other types of unacceptable language (Prieto de Pedro, p. 124).

Also related to the degree of formalism found in Spanish legal language, we find the use of "cultismos" or high register words rather than more colloquial or commonly used words. For example, solicitar is used for pedir, proceder a for ir a and efectuar for hacer (examples taken from Duarte & Martínez, p. 96). Furthermore, because of the degree of formalism found in legal language, all spontaneous expressions are excluded. Thus, it is rare to find an interjection, a direct question, the use of the second person singular, or an emphatic form in written legal language in Spanish. Finally, as regards the register or degree of formality of written legal language in Spanish, it is important to mention the frequency in usage of Latin
terms which is also evident in English legal language. In Spanish there are both words with a Latin origin (exacción, exención, evicción, prescripción) and terms taken directly from Latin (apud acta, ratione materiae, lex posterior derogat priori).

There are also one or two interesting grammatical uses found in legal language that are not as evident in other linguistic contexts. For example, the future subjunctive ending in -ere is much more frequently used in legal contexts than in ordinary discourse, as is a very specific use of the gerund form which has been rejected by the Real Academia Española de la Lengua (i.e. Orden nombrando a instead of Orden de nombramiento de) (Duarte & Martinez, p. 119). Also, the simple future tense is used regularly in legislative legal language. As the use of this tense can imply obligation, it therefore contributes to the ambiguity of some legal texts.

As regards syntax, we mentioned above that Spanish written legal language is characterized by unusually long sentences and poor punctuation. Syntactically, judicial texts are full of subordinate clauses in which secondary or appositive clauses are in turn embedded. This makes for unmanageably long sentences that are so complex that they are difficult to decipher.

All of these examples clearly illustrate the unique nature of legal language as regards the written mode. In the next section, characteristics of spoken legal language will be discussed.
B. Spoken legal language

Of particular interest to the court interpreter are the features of spoken discourse in legal settings and the language of the courtroom. However, if relatively little attention has been paid to the study of legal language in general, the amount specifically dedicated to analyzing and describing spoken legal language is even more limited. This is true in spite of the fact that most legal interactions include a significant spoken component.

1. Register

The seminal work in this area was done by O'Barr and his colleagues in the late 70's and early 80's. (O'Barr 1981, 1982; O'Barr and Conley 1976; O'Barr and Lind 1981; Conley, O'Barr and Lind 1978; Lind and O'Barr 1979)\(^4\). Recognizing that the spoken language of the court differed greatly from written legal discourse, O'Barr carried out a study of the spoken language of the court in a North Carolina courthouse and came up with the following schemata for the registers of spoken language in legal settings:

\(^{14}\) Other early research was done by Danet and several associates including Bogoch, Hoffman and Kermish. Their work is listed in the bibliography.
FORMAL LEGAL LANGUAGE: The variety of spoken language used in the courtroom that most closely parallels written legal language; used by the judge in instructing the jury, passing judgment, and "speaking to the record"; used by lawyers when addressing the court, making motions and requests, etc.; linguistically characterized by lengthy sentences containing much professional jargon and employing a complex syntax.

STANDARD ENGLISH: The variety of spoken language typically used in the courtroom by lawyers and most witnesses; generally labeled CORRECT English and closely paralleling that taught as the standard in American classrooms; characterized by a somewhat more formal lexicon than that used in everyday speech.

COLLOQUIAL ENGLISH: A variety of language spoken by some witnesses and a few lawyers in lieu of standard English; closer to everyday, ordinary English in lexicon and syntax; tends to lack many attributes of formality that characterize standard English; used by a few lawyers as their particular style or brand of courtroom demeanor.

SUBCULTURAL VARIETIES: Varieties of language spoken by segments of the society who differ in speech style and mannerisms.
from the larger community; in the case of the particular courts studied in North Carolina, these varieties include Black English and the dialect of English spoken by poorly educated whites. (O'Barr 1982, p. 25)

According to O'Barr, these four categories cover all of the registers of courtroom language. He also points out that the various participants in legal proceedings make use of several types at different times and for different purposes throughout the course of a trial. A judge's utterances in an American court of law are usually quite formal and consist of eliciting pleas, giving instructions, issuing decisions on motions and objections, and charging the jury. Many of these tasks are formulaic and have specific, pre-set language involved in them. Even jury instructions, while sometimes seemingly spontaneous, often are taken from formbooks and are based on already established formula (Charrow & Charrow, 1976).

In Spanish courtrooms, the judge plays an even more active role as he participates in the questioning of the witnesses including the defendant in criminal trials or the parties involved in civil cases.

In both systems, lawyers use formal legal language when they address the court, make motions or interact with the judge or other attorneys involved in the proceeding. However, when an attorney interacts with a witness, his choice of language can be intentional. For example, if a lawyer wishes to get cooperation from a witness, he may use a more colloquial, personal register in order to put himself on the same level as the witness and to establish a sort of rapport and sympathy. If on
the other hand, he wishes to set himself apart from the witness or perhaps make the witness seem less competent, he can intentionally use more formal legal language which might confuse and fluster the witness, which may in turn cause the jury or the judge to doubt his credibility, honesty or intelligence.

As regards witnesses, they are often coached by attorneys to limit their answers to yes or no responses, and to use as much standard language as possible. Many times, the framing of the questions themselves only allows for a yes/no response. Nevertheless, most witnesses usually use a colloquial speaking style in court, and many even use street slang, jargons and terminology specific to certain subcultures, such as the drug underground or gangs. These groups have their own terminology and speech patterns that frequently surface during testimony in criminal cases. At the other end of the scale, we have the testimony of expert witnesses such as physicians, pathologists or arms experts who also use specialized terminology or jargon with which the lay person may not be familiar.

In addition to the work done by O'Barr and his colleagues on spoken legal language, there was another important study being undertaken at the time by Dr. Roseann González of the University of Arizona. González's study (1980) had as its goal to determine the complexity of the speech of judges, attorneys, experts and witnesses in order to "empirically devise indices of complexity that could be used as

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15 For a very interesting treatment of how language affects impression formation in courtrooms, see Erickson, Lind, Johnson and O'Barr (1978) "Speech style and impression formation in a court setting: the effects of "powerful" and "powerless" speech" in the Journal of Experimental Social Psychology 14, pp. 226-79.
a set of constructs for a test of functional English proficiency" (González et al., p. 265). Her study responded to a request made by the courts in Arizona to develop a tool which could be used by the judicial system to determine who was in need of or entitled to the services of a court interpreter. The results of her study were later used as the standards for complexity and register performance of the United States Federal Court Interpreter Certification Examination. González based her study on the Firthian concept of register as the relationship of language to social context, and on the Hallidayan concept of language variety according to use (González et al., p. 266). She used three main dimensions to study register: field, manner and mode of discourse. Field of discourse refers to the purpose for which a speaker uses language, manner to the relations among the participants in language intercourse, and mode to the medium of communication (written or spoken).

Field of discourse is strongly related to lexical variation in relation to the purpose of the discourse (persuasive, interrogational, instructive or informative). The judge(s) and attorneys in a given case can have each of these purposes at some point during the proceedings. Lexical variety was included in the complexity study. An evaluation of over 10,000 words of court testimony produced by all of the participants in legal proceedings including judges, attorneys, and expert and ordinary witnesses was carried out. Words were identified as specific to the register of the courtroom if they had a higher frequency of occurrence in the courtroom than in the common core of the language. Computerized lists of over a million words used in natural language texts representing some fifteen different genres were used as the
basis for what González called "common core" language. She found 210 terms that, according to her criteria, were specific to the courtroom register. She also took note of words that have special meanings in legal contexts (for example, accessory which in the common core list of English words would probably refer to a hat or glove or a radio in a car, and in a court of law refers to an accomplice to a crime).

Another component of the complexity study done by González was the study of selected structures. Frequency of verbs and verb phrases was examined as a technique for defining specific registers, as was embedding and the frequency of finite verbs versus non-finite verbs. One hundred verb forms were identified and analyzed and it was found that courtroom language differs most significantly from common core language in that in courtroom language, many more verb strings are used and many fewer simple verb forms. González found that legal language has more verbs per sentence, a greater number of complex and causative verbs, and more syntactical and semantic relationships to follow. It can therefore be considered denser and more convoluted.

As regards manner of discourse, González used Joos's categorization of discourse styles and found all types were regularly used during spoken discourse in courtrooms and other legal settings. An analysis of these categories shows that, to some extent, they parallel the varieties proposed by O'Barr and his colleagues, although Joos has five categories where O'Barr and his colleagues have four. Joos's categories can be defined as follows:
FROZEN SPEECH: (roughly equivalent to O'Barr's FORMAL spoken legal language) which refers to the formulaic utterances of the judge when carrying out the rituals of the courtroom and when giving formal instructions that are almost immutable. It is the most formal of the styles and contains the most complex grammatical sentence structure and most formal vocabulary. Listeners can recognize the larger speech event in which it is embedded (for example, marriage vows or judicial sentencing).

FORMAL SPEECH: (similar to O'Barr's formal legal language) which refers to the language used by the judge or by attorneys in matters of court etiquette, when addressing the judge or the jury, and in many of their dealings with opposing attorneys or witnesses. According to González, this formal type of courtroom language is also used to "preserve the accuracy in matters of procedural techniques and announcements, and in matters of concretized phraseology which are generally standardized ways of avoiding verbal traps such as double meanings and misunderstandings" (González et al., p. 267). Its defining features are detachment and cohesion, and the absence of participation of the interlocutor. Sentence structure is planned and elaborate. Its purpose is to inform.
CONSULTATIVE SPEECH: (no equivalent in the O'Barr categorization, but utterances in this category would be considered by O'Barr to be either formal or colloquial, depending upon their nature.) Joos defines this type of speech as the normal style for speaking to strangers. The defining features of consultative style are "1) the speaker supplies background information -- he does not assume that he will be understood without it ..., and 2) the addressee participates continuously" (Joos 1967, p. 23). This is unprepared, spontaneous speech, the type that is used in exchanges among people who do not know each other. It contains contractions, hedges, and hesitations. Joos considers it the baseline mode from which the other modes are measured or defined. In a court of law, this mode is used by attorneys to inform or give legal definitions of an issue brought up in a case or explain the object or purpose of a line of questioning. An expert witness would also be considered to give consultative testimony.

CASUAL SPEECH: (roughly equivalent to O'Barr's COLLOQUIAL SPEECH) is generally used among friends and acquaintances. It contains ellipsis, slang and idiomatic usage, and creates a kind of complicity between the parties to the exchange based on the assumption of underlying shared information. In a courtroom, this style is most frequently used by witnesses.
INTIMATE SPEECH: (parallel to O'Barr's SUBCULTURAL varieties although not based exclusively on cultural groups or identities) refers to non-referential speech which is sometimes quite difficult to understand. It is idiosyncratic lexically and even structurally at times. It might be used in a court of law by certain witnesses, or among jurors during deliberations.

González concurs with O'Barr in that participants in court proceedings make use of several of these categories of speech in their courtroom discourse. For example, a judge can mix speech varieties in the same utterance:

Counselor, I'll entertain your motion and take judicial notice of the information you requested, but I'll tell you right now, you need to get your ducks in a row and get this matter settled before much longer.

Or an attorney in his closing statement:

Ladies and gentlemen of the jury, through the evidence presented in this trial, we have shown that the defendant is guilty beyond a reasonable doubt, and that the defense has done nothing but put up a smoke screen and set out rabbit tracks to try to distract you from the truth. (examples taken from González et al., pp. 267-8)
In these examples we can clearly find evidence of frozen speech ("I'll entertain your motion", "the defendant is guilty beyond a reasonable doubt"); formal speech ("to take judicial notice of the information you requested", "ladies and gentlemen of the jury, through the evidence presented in this trial we have shown...") and casual speech ("you need to get your ducks in a row", "put up a smoke screen" and "set out rabbit tracks").

2. Speech styles

"With this repertoire of speech styles, speakers can manipulate the impression that others in the courtroom have of them and of their interlocutors" (Berk-Seligson 1990, p. 20). This statement by Susan Berk-Seligson brings a new and very important dimension to the discussion of spoken legal language. With this affirmation we move into the realm of intentional language usage to bring about certain results.

Many studies have been done that show the effects of certain types of language usage in the courts. Different questioning styles and testimony styles have been shown to affect the kinds of responses elicited and the impression judges and juries have of a particular witness. The style of spoken language used can even affect the content of the testimony given and a witness's recollection of the facts. This issue is of great importance to the court interpreter because a misinterpretation or simply a change in speech style can alter the original utterance in significant ways and bring
about unexpected results.

Sociolinguists have long known that style and register are important parameters of speech variety along with language itself and dialect. Studies show that listeners react subjectively to many aspects of a person's speech including accent, delivery styles, voice quality and degree of fluency. These subjective reactions often include value judgements on a speaker's credibility and trustworthiness. Several studies have been done that show preferences for one type of speech over another within the same language group. For example, a study done by Tucker and Lambert (1969) showed a preference for speakers of standard English over Black Vernacular English in the United States, and a similar study by Ryan and Carranza (1975) showed that the same preference exists for standard English over Mexican American accented English. In Canada, speakers of European French are considered more highly than those who speak Canadian French (Lambert et al. 1960; d'Anglejan and Tucker 1973). In Great Britain, more positive responses as regards attractiveness and credibility were obtained for individuals using received pronunciation than those having regional or foreign accents or those whose speech style was viewed as lower class (Giles 1971; Bourhis et al. 1975), and a study done by Berk-Seligson (1984)...

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indicates that Spanish speakers also judge personality from dialect. In addition to this, higher ratings on attributes such as competence, dominance and dynamism and sometimes, although to a lesser degree, on trustworthiness, likability and benevolence have been positively correlated to dynamic delivery, fast speech rate, relative lack of nonfluencies such as pauses and repetitions and "normal" voice quality\textsuperscript{17} (Berk Seligson 1990, p. 147). Scholars have also studied the effect of what they have called "vocal cues" on jurors' perceptions. These vocal cues include the length and frequency of pauses, rate of speech, slips of the tongue, omissions, sentence incompletions, repetitions and other speech disturbances\textsuperscript{18} (Berk-Seligson, p. 147).


While a person's accent or dialect cannot be easily manipulated by the participants in a legal case, there are other elements that can be used to affect the perception a juror or judge has of a witness or to elicit the type of testimony desired. For example, lexical choices made by attorneys can "lead" witnesses to give the type of testimony a lawyer is seeking. For example, in a study done by Loftus and Zanni (1975), it was shown that subjects asked if they had "seen the broken headlight" in a filmed version of an automobile accident were much more likely to respond in the affirmative than when asked "Did you see a broken headlight?" Likewise, it was shown that when witnesses were asked about their perception of the speed of a vehicle involved in an automobile accident, they responded with much higher velocities when asked "About how fast were the cars going when they smashed into each other?" than when they were asked "About how fast were the cars going when they hit each other?" (Examples from Berk-Seligson 1990, p. 25). Thus we can see that lexical choice can play a major role in controlling testimony and eliciting information.

In order to examine just how speech style affects perception of personality or personal traits, O'Barr and his colleagues (1982) designed a study to examine the effects of a relatively subtle dimension of style variation on perceptions of the attractiveness and credibility of a communicator and on acceptance of the communication itself. After observing some 150 hours of speech in a trial courtroom, these authors identified some linguistic characteristics that they associated with individuals who had low social power or status vis-a-vis the court and some
associated with individuals who had relatively high social power in court (doctors, parole officers and other professional people). They identified characteristics prevalent in two styles of speech which they called "powerless" and "powerful". They postulated that the use of these styles might affect both the perceptions of the speaker and the influence of his or her communication to the court. Powerless speech tended to include many intensifiers (so, very, surely), hedges (kinda, I think, I guess), hesitations (uh, well, you know) and empty adjectives (those used to express speaker's feelings more than to convey substantive information, i.e. divine, charming, cute, sweet, etc). Grammatically this type of speech was especially formal and included many polite forms (frequent use of please, thank you) and tag questions. Speakers using this style also frequently made use of gestures and expressions such as over there while speaking.

Speakers deemed to be “powerful” did not make use of these elements and their language was usually succinct and free of hedges and hesitations. It was postulated that the powerful speech style would cause listeners to believe that the communicator was confident about the facts stated in his communication to the court, and that perception of both the communicator and the content of the communication itself would be more positive than when elements of the powerless style were evident.

Participants in the study were asked to listen to testimony given in the two styles. The content of each rendition as regards the facts and circumstances was exactly the same. Participants were asked to rate the "witnesses" on credibility and attractiveness, and to assign guilt and damages based on the testimony they heard.
While the results were somewhat complicated, they generally showed that powerful vs. powerless speech did have an impact on perceptions of credibility and attractiveness and on the amount of damages awarded. Witnesses using the powerful speech style were rated higher for credibility and attractiveness and were awarded more damages than those using the powerless speech style.

O'Barr and his colleagues then went on to study the effects of what they termed "narrative" and "fragmented" style. Narrative style is characterized by relatively long answers, while fragmented style is made up of brief, unelaborated responses. The following example illustrates the distinction between the two:

Narrative:

Q. Now, calling your attention to the twenty-first day of November, a Saturday, what were your working hours that day?
A. Well, I was working from, uh, 7 a.m. to 3 p.m. I arrived at the store at 6:30 and opened the store at 7.

Fragmented:

Q. Now, calling your attention to the twenty-first day of November, a Saturday, what were your working hours that day?
A. Well, I was working from 7 to 3.
Q. Was that 7 a.m.?
A. Yes.
Q. And what time that day did you arrive at the store?
A. 6:30.
Q. 6:30. An did, uh, you open the store at 7 o'clock?
A. Yes, it has to be opened by then. (fragment from Berk-Seligson 1990, p. 21)

It is usually the attorney who controls which style will be used by a witness. Attorneys often allow their own witnesses to answer in narrative style while limiting hostile witnesses to the fragmented, short answer. O'Barr's research has shown that witnesses testifying in narrative style were considered to be more competent and socially dynamic than those who testified in fragmented style.

Questioning style is another control technique that can be used in a courtroom to elicit the kinds of responses and produce the kinds of impressions desired by the attorneys involved. Linguistic analyses of question/answer sequences show that questions can be used to test or challenge claims and to make accusations (Atkinson & Drew 1979). Questions in a courtroom are actually more of a summons or order to produce the information requested, and their degree of coerciveness varies.

Danet and Kermish (1978) devised a set of criteria by which to determine the degree of coerciveness of a question. In their classification, declarative questions are the most coercive, followed by yes/no questions and then wh-questions.
"Requests", or the type that simply politely request information in a somewhat indirect way, are considered the least coercive. The study showed that coercive questions tend to elicit shorter answers, and shorter answers, as we saw above in terms of fragmented vs. narrative speech, are more negatively perceived by jurors than are longer, more narrative responses.

Basing the design of her study on the ones described above by O'Barr and his associates, Berk-Seligson added the element of interpreted testimony. She postulated that register, defined as "a variety that is not typically identified with any particular speech community but is tied to the communicative occasion" (Bolinger 1975, p. 358), would also influence a jury's perception of witnesses. Berk-Seligson added one more category to O'Barr's schemata of legal language. She called this additional register "hyperformal speech". This "hyperformal" style is characterized by a lack of ellipsis or syntactic deletions (for example, answering "I am 21 years old" to the question "How old are you?" instead of simply "21") and a lack of contracted forms that are quite common in consultative style ("is not" instead of "isn't"). As a result, this speech sounds bookish and stilted. Research shows that often times court interpreters systematically render the Spanish testimony of witnesses in hyperformal style English, even though the original Spanish is given in consultative style (Berk-Seligson 1987). Berk-Seligson offers an example of this taken from testimony given in an illegal entry case in the United States:

Prosecuting attorney: And how old are you?
Interpreter: ¿Qué edad tiene usted?

Witness: Veinte años.

Interpreter: I am twenty years old.

Prosecuting attorney: And what is your occupation?

Interpreter: ¿Y cuál es su oficio de usted?

Witness: Trabajar en el campo.

Interpreter: I am a laborer in the fields.

Prosecuting attorney: Of what country are you a citizen?

Interpreter: ¿De qué país es usted ciudadano?

Witness: De Michoacan.

Interpreter: I am from the state of Michoacan. (1987, p. 81)

In each rendering by the interpreter, the more casual consultative style response given by the witness was upgraded to the hyperformal style, characterized by a complete, grammatical phrase instead of the clipped prepositional or verbal phrase given by the witness.

O'Barr's research had shown that witnesses who testified in formal style were considered to be more intelligent, competent and qualified than those testifying in hypercorrect style, which was considered to be phoney and affected. Berk-Seligson postulated that the same would be found for interpreted testimony. However, her study showed just the opposite. In each of the categories measured (convincingness, competence, intelligence, trustworthiness), there was a more positive evaluation of
these attributes for the hyperformal rendition. In spite of these conflicting results, what is quite clear is that speech style does affect a judge's or a jury's perception of a witness and of his testimony, and this demonstrates the very decisive role an interpreter can have in creating impressions about a witness or a defendant whose utterances cannot be understood by other players in the courtroom.

2. Pragmatic aspects

As has been clearly shown in the previous section, intentional manipulation of the language is an important strategic tool used by attorneys and sometimes even by witnesses and other players during a trial. Therefore, it is quite easy to see that unintentional manipulation of the language can bring about the same results. This unintentional linguistic manipulation in the courtroom is one of the most important issues of oral interpretation. There are many elements of linguistic utterances that are altered in the interpreting process, and some of these alterations are significant. Some are due to the lack of exact equivalency between terms in the source language and in the target language, others are due to the reasonable limits on interpreter performance in a high stress, demanding situation or on poor interpreter preparation or ability, and some are brought about by other players (judges, lawyers, jurors or the witnesses themselves) not knowing how to properly or effectively interact with the interpreter. Some of the alterations are intentional on the part of the interpreter reacting to a
specific circumstance, but most are inadvertent and simply part of the language mediation function. In this section we will examine some of the common types of interpreter induced change and the impact they have on the communication process.

a. Lexical choice

Examples have already been cited that have to do with the effects of lexical choice on witness recollection and testimony (Loftus studies, smash vs. hit, and the use of a definite instead of an indefinite article). In interpreted testimony, this is an obvious area of concern. Given the great scope of registers used in a court of law, an interpreter must have an excellent command of both of the languages in use in the courtroom. Also, given that certain languages such as Spanish, are spoken in many countries and that regional variations exist within many of these countries, the variety of usages and connotative meanings for specific lexical items is immense. Normally context clues help in identifying regional-, country- or culturally-bound terms, but in a court of law a guess or approximation is not adequate. If testimony is given that "pare a tomar una caguama con los chavos" the interpreter must know the meaning of the word "caguama" and the lexical gloss for "chavos" and reproduce those terms in the target language. "I stopped to have a drink with my friends" would not maintain the register of the original which would be better translated as "I stopped to have a beer with the guys."

Maintaining register is an important element in oral interpreting. Rendering the underlying meaning of an utterance is not sufficient. The tone, intention, style and
register must also be transferred. If testimony is given that says "He tipped off the cops", on strictly semantic grounds an acceptable translation might be "Informó a la policía", but this rendition does not maintain the tone and register of the original, and these elements are important in evaluating the testimony being given.

There are also instances in which there are two glosses in the target language for one term in the source language. If the interpreter includes both, it can create an impression that the witness is uncertain or doubtful about his answer instead of simply reflecting the fact that the interpreter is aware of the two glosses, because the monolingual judge or jurors cannot possibly be aware of the double gloss. Therefore, in an attempt to be accurate and complete, the interpreter has unintentionally contributed to creating an impression of the witness in the judge or jury's mind that would not be the impression they formed if the exchange had been in a language both sides understood.

b. Grammatical case and blame avoidance/attribution techniques

There are also linguistic techniques that contribute to the attribution or avoidance of blame, perhaps the most common intent of legal speech in courtroom situations. Shifts in grammatical case from active to passive or vice-versa are discourse strategies that are effectively used to place certain actors in the foreground or background of an activity that is being described, or to highlight or diminish the responsibility of certain actors in relation to certain deeds. Blame allocation, accusations, denials, and so on are managed in legal situations through question and
answer exchanges in the courtroom. When responsibility is being attributed, an active
voice construction is generally used with the blamed party placed in the subject
position. Blame avoidance, on the other hand, is usually achieved by using a passive
voice construction where the emphasis is on the event or action, and not on the actor,
who is often times not even mentioned (Berk-Seligson 1990, p.99). Studies have
shown that this choice of case used to create varying degrees of distance between
actors and actions is a cross-cultural universal that exists in many languages.
However, this is a particularly interesting issue for interpreting in the Spanish-English
language pair as it is a well-documented fact that the passive voice is used very
frequently in legal English, and there are several ways to translate a true passive from
English into Spanish, including a variety of passivelike and impersonal constructions
which can be exploited pragmatically in discourse for specific purposes such as blame
avoidance. For example, the reflexive passive (*se cayó el plato, se quemó la tarta*)
which uses the reflexive particle *se* and which can be used instead of a true passive,
is often used to indirectly criticize the behavior of the actor and serves to defocus the
agent (Haverkate 1985, p. 17). The “dative of interest”, or "reflexive passive for
accidental occurrences" as it is sometimes called, is used to refer to accidental,
unintentional, unplanned or unexpected events which the speaker is somehow

Berg-Seligson (1990, pp. 99-100) reports that Japanese, for example, has something that has
been called the “adversative passive” construction which is used to show that an individual was
unwillingly subjected to something unpleasant (Niyekawa-Howard 1968). Italian has a *si*
construction similar to the dative of interest and reflexive passive in Spanish which functions
in virtually the same manner (Costa 1975), and Dutch has what Kirsner (1976) calls the
“pseudo-passive” construction which serves to distance the agent of an action from the action
itself.
involved in but which places him as an observer or spectator (*se me cayó el plato, se me quemó la tarta*). This usage makes the speaker even less responsible for the action, almost a victim of it.

The use of either of these two options is more effective in producing an "agentless" act than is the true passive, even when in the true passive the agent is not mentioned. It is significant to mention here that for the interpreter, this is a very sticklish problem as the use of the true passive (*la tarta fue quemada [por mí]*) is extremely infrequent in Spanish, especially on the spoken level, and so using the other options produces Spanish language utterances that are more acceptable as regards usage but that do carry with them the added element of blame avoidance/attribution (Berk-Seligson 1990).

There are yet other options available for the translation of passive forms from English into Spanish which also achieve a certain degree of distancing of the actor from the action. These are impersonal expressions (*han roto un plato, han quemado la tarta, hablan francés en Francia*). In reality, in this usage the actor is implicit and impersonal. He does exist but he is simply unknown. There is a good equivalent form in English for this option: “They speak French in France”, “You (or “one” in a more formal register) shouldn’t smoke”.

The pragmatic effect achieved by using the techniques or strategies mentioned above is one of backgrounding. Backgrounding is achieved through low transitivity and foregrounding through high transitivity (Hopper and Thompson 1980, in Berk-Seligson 1990, p. 105), and backgrounding and passive voice are effective tools for
achieving blame avoidance which are frequently used by attorneys in courts of law. When an interpreter alters the manner in which a question has been posed by an attorney in his translated rendition to the witness, attribution of blame can be affected. Berk-Seligston provides the following example, taken from real testimony in a case regarding a brawl in which the defendant threw a bottle:

Attorney: As that bottle was thrown, Mr. Jiménez saw it, and tried to get a hand on it.

Interpreter: Cuando tiró la botella, el señor Jiménez la vió y trató de agarrarla. (p.115)

By changing the passive "bottle was thrown" to an active "he (referring to the defendant) threw the bottle", the interpreter is putting the defendant in a more responsible and thus blameworthy position. This is something an interpreter must be very aware of in order to make every effort to maintain the intent and tone of the original utterance.

c. Length of testimony and paralinguistic elements

As we saw earlier, one of the elements that affects the perception that judges and jurors have of a witness is fragmented or narrative speech style, which as was explained, is basically an issue of length of response. Longer or more narrative
answers tend to be viewed more negatively than shorter more fragmented answers and longer responses generally contain more of the elements of "powerless" speech as defined by O'Barr. In this section we will show how the interpreter is often the agent who lengthens witness responses during the interpreting process, and adds some of the elements of "powerless" speech to the target language rendition that were not in the original source language version.

It is well known that in written translation, most scholars believe that the Spanish language version of a text will generally be slightly longer than the English language version\(^2\). Many structures in English are regularly expanded -- or to use Vázquez Ayora’s term “amplified” -- in Spanish through prepositional or periphrastic constructions and so on. This fact would logically lead us to believe that the same phenomenon occurs in orally interpreted texts. In other words, it would be reasonable to think that when testimony is interpreted from Spanish to English, the interpreted English-language version would be shorter than the original Spanish-language version. Conversely, when interpretation takes place in the other direction, i.e. from English to Spanish, the interpreted version would be longer. In her observation of courtroom testimony, Berk Seligson had the impression that this was not the case and so decided to carry out a study to see if the hypothesis held true. What she found, surprisingly, was that out of a total of 2,470 answers that she analyzed that had been interpreted from Spanish into English, 86% of the English-

\(^2\) For example, Vazquez-Ayora (1977) says that "all those who have practiced English/Spanish translating have the experience of the Spanish version tending to be much longer" due to the "great economy of the English language" (p. 336).
language interpreted responses were longer than their Spanish-language original counterparts (1990, p. 124) As these findings showed exactly the opposite of what had been hypothesized, careful analysis was done to find out just why this was the case. The results of this analysis show us several ways in which an interpreter can intentionally or unintentionally manipulate or alter the form and content of an utterance during the interpreting process. We will now discuss some of these and their effect on legal proceedings.

i. Omissions/repetitions

One of the common problems that interpreters have while working is retaining all of the information given in a sometimes lengthy question or response. Although court interpreters take notes during testimony, it is quite difficult to retain all of the details as well as the tone, style and paralinguistic elements of a lengthy utterance (more than 30 - 35 words). Omitting some of the content of the testimony is quite frequent, but omitting some of the other elements of speech can be equally as important. Take, for example, the situation cited by Berk-Seligson (1990). An elderly gentleman had been mugged and the thief took everything he had in his wallet including his social security pension check, his immigration papers and another check. The gentleman was understandably agitated and upset. When asked what had been taken from him, he gave the following response:

Pues todo. Todo se llevaron con mi car- ... El pasaporte, este.
Everything, my passport, important cards, important cards that I have. 
I've just, uh, I've just applied for immigration and this is it, because they took everything from me.

An analysis of this rendition shows that there are several important omissions. The introductory hedge "pues" was omitted as was the entire second phrase "Todo se llevaron con mi car-". Even though this phrase was not completed, it was part of the testimony and should therefore have been included in the translation. The phrase "Una prueba, más prueba voy a darle, mire" was also left out, and the command "mire" compelling the court to look into his empty wallet was also not included. The effect of leaving out many of these elements was to forfeit some of the indignation that was expressed by the witness and to weaken his sincerity. The witness appeared much more convincing in the Spanish version of the testimony than in the translated English language version.
One method for dealing with long testimony that an interpreter does not feel he can retain is to interrupt the witness during the testimony to ask for repetitions or clarification. This brings about repetition on the witness's part, some backtracking and may even produce some alteration in the content of the testimony provoked by having one's train of thought interrupted and having to restate something which had already been stated. Much of the original utterance in these cases is lost and the second, repeated version, after backtracking or restatement is the only one that is translated. In uninterpreted testimony, the judge or jury would have the benefit of having heard any backtracking or changes in testimony, but in interpreted testimony, while they are obviously aware of the fact that an exchange is taking place between the witness and the interpreter, they do not know exactly what that exchange is all about.

Now backtracking, rephrasing, and repetition take place in witness testimony spontaneously as well, not just as a result of interpreter interruption. Frequently, the interpreted version of this type of testimony does not reproduce all of the hesitations and repetitions and therefore the interpreted response seems smoother and more coherent than the original utterance. If, for example, a witness is asked to tell the court where he was at the point in time that a crime was allegedly committed and his answer is:

\[ A \text{ ver ... el martes por la tarde, estuve ... uh, bueno, no me acuerdo} \]
\[ bien si estuve en casa -- ah, si, ya me acuerdo, estuve en casa de mi madre. \]
and the interpreter's rendition is:

Well, Tuesday evening ..., oh yes, I was at my mother's house.

(Example mine)

we can see that the core information -- that he was at his mother's house -- is retained in the interpreted version, but all of the hesitation and uncertainty found in the original answer that would make a judge or jury question how well the witness really remembered his whereabouts on that particular evening is lost. Therefore the interpreted version gives the impression that the witness is much more certain about that evening than he really is.

A related phenomenon is when interpreters insert repetitions into their renditions that are not in the original utterance. This is often an unconscious act that is a cognitive mechanism which allows the interpreter a moment to formulate the target language version of the next piece of information or to correct an utterance made previously in an attempt to be more accurate and faithful to the original. This last instance often comes about when there is a complicated or difficult grammatical or syntactic structure which may produce a misinterpretation. While these occurrences are understandable, they do have an impact on judge and juror perception of testimony. Studies show that repetitions in a person's speech are associated with a lack of persuasiveness (London, 1973).
ii. Hedges

Hedges are defined by Brown and Levinson (1978) as:

(...) a particle, word, or phrase that modifies the degree of membership of a predicate or noun phrase in a set; it says of that membership that it is partial, or true only in certain respects, or that it is more true and complete than perhaps might be expected. (p. 150)

Examples of hedges in English are phrases such as "sort of", "kinda", "I guess", "you mean", "you know". In Spanish they might include "bueno", "sabe", "pues" and so on. Adding or omitting hedges from original testimony during the interpreting process also changes the impact of that testimony. Take the following response given by a witness to a question asking him to describe the airplane that brought him illegally into the United States:

Witness: *Una avioneta pequeña blanca con rayitos azules.*

This response is quite definite, does not include any hedges and gives the impression that the witness is quite certain about his recollection of the aircraft in question. Let's see what effect the interpreted version might have created:

Interpreter: *It was a small airplane, white, with a sort of, a sort of*
blue lines, blue stripes. (Example from Berk-Seligson 1990, p. 132)

This version adds a sense of vagueness and uncertainty to the response. The hedge "sort of", repeated twice in this short response, makes the witness sound doubtful, and the repetition of "blue lines, blue stripes" lends to an overall impression that the witness may not recall what the plane looked like as well as he obviously does given his response in Spanish.

Hedges can be construed in a court of law as an attempt on the witness's part to deceive the court or to evade answering specific questions. Therefore, careful reproduction of those that are included in witness testimony is necessary while avoidance of inserting hedges that are not in the original is equally important.

iii. Hesitation forms

Hesitation forms are somewhat similar to hedges but are often unconsciously introduced or omitted by the interpreter and do not serve a discourse function as hedges sometimes do. Hesitation forms such as "uh" in English, and "ah" or "pues" in Spanish are often seen as relatively unimportant speech elements by the interpreter and so are unconsciously deleted when possible during the interpreting process. By the same token, they are sometimes unknowingly inserted by the interpreter during the interpreting process even when they are not present in the original utterance. This is usually the result of the great mental concentration and effort that must be made by interpreters while they are working. This is yet another important issue in terms of
the pragmatic effects of language usage. As Berk-Seligson (1990) states:

Interpreters are supposed to sound in the target language the way the speaker for whom they are interpreting sounded in the source language. Thus, if the Spanish speaker sounds hesitant and unsure, the interpreter should sound equally as hesitant and unsure in her English interpretation. Conversely, if the Spanish speaker is not hesitant sounding, then neither should the interpreter be. (p. 140)

iv. Insertions

Another way in which interpreters affect the length of questions or responses is by inserting information considered to be understood in utterances produced by a witness on the witness stand. In translations from Spanish to English, this is often manifested in responses that in "normal" everyday English would be unmarked and would make use of an auxiliary verb for a short response and in the translated version use the longer, full-verb response. Let's look at some examples. When asked if she remembered if the person in question had a beard, the witness simply replied "Sí, tenía." However, the interpreter's rendition was "He did have a beard." When then asked if he had a mustache, the witness replied "No me fijé si tenía bigote pero barba sí tenía". The interpreter's version of this response was "I did not, I did not notice if he had a mustache, but I noticed though that he had a beard". (examples from Berk-Seligson, pp. 132-3). Both of the renditions given by the interpreter alter the tone
and pragmatic effect of the original utterances. The interpreted versions seem much more emphatic and sure-sounding. The interpreter's repetition of "I noticed" in the second clause of the second response reiterated the fact that the witness had specifically taken note of this aspect of the appearance of the person in question. A truer rendition would simply have stated "I did not notice if he had a mustache, but he did have a beard." While this may seem to be a minor deviation, the pragmatic effect can be significant, especially if an interpreter regularly alters testimony in these ways.

By adding all of the instances explained above to what has already been shown about the impact of hyperformal speech and politeness, we can see that the paralinguistic elements of speech are equally as important to effective communication as the content elements themselves. Berk-Seligson (1990) explains their relative importance in the following way:

Perhaps because these elements seem extraneous to the "meat and potatoes" of the sentence -- that is, the subject and predicate -- for they do not refer to who did what to whom, they are not perceived as being sufficiently important for attention to be paid to them. Nevertheless, their presence of absence in the answer to a question in court can make the difference between a witness appearing hesitant, unsure, unwilling to commit himself fully to the assertion he is making, and obsequious to the examining attorney, as opposed to

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appearing to be just the contrary. (p. 143)

It is quite obvious from the discussion of these elements, that the interpreter plays a very important role in the courtroom to the point that he usurps some of the control of the proceedings that normally belongs to the attorneys and affects the impression the witness makes on the judge or the jury. If in addition to all of these linguistic and para-linguistic elements, we add the dimension of non-verbal communication -- gestures, body position, eye contact, etc. -- to the list of elements that affects a judge's or jury's perception of the credibility of a particular witness, we can see that any language mediator trying to conserve the true meaning of an utterance produced in a legal setting is faced with quite a formidable task. Therefore, there can be no doubt that an adequate system should be in place to evaluate an individual's knowledge of the role of an interpreter in a court of law and in other legal settings, his knowledge of the languages he will be working with both in terms of the purely linguistic (specialized terminology, register, etc.) and the paralinguistic elements involved in courtroom testimony and the pragmatic effects of his interpretation, and his ability to perform oral interpretation skills correctly.
Chapter Three. **LEGAL FOUNDATIONS**

A. General considerations

In order to examine the issues related to certifying court interpreters and ensuring their proper use in the legal system, we must first identify the legal foundations which mandate the provision of court interpreters, specify the legal settings in which interpreting services would be required to assure that individuals’ rights are being respected, and define the proper use of interpreting services within a judicial system. Many countries recognize the need for interpreting services in their courts whether it be due to large numbers of interactions with foreigners or to the linguistic diversity found within their borders. Some have constitutional or legislative requirements or provisions for court interpreters, while others recognize this need only indirectly. In this section we will examine the legal foundations mandating the use of court interpreters in the judicial systems of several countries with special attention given to Spain and the United States.

The emergence of the figure of the court interpreter was the result of the realization that failure to provide adequate language mediation services for language handicapped individuals in legal situations allowed language barriers to exist which prevented individuals from fully participating in their own legal defense and was, according to some definitions, a clearly discriminatory act. The failure to provide
these services violated basic human rights and many of the specific rights guaranteed to individuals in the constitutions of the states in which they were involved in legal matters. Clear human rights and legal foundations do exist for the creation of this legal figure who in many countries is considered a sworn officer of the court. Perhaps the broadest but most convincing statement of each individual's right to have a linguistic identity and communicate in the language most comfortable to him is the one found in the Universal Declaration of Human Rights. This document, first promulgated in 1948, states in its preamble the philosophy that "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world." It further states in article 2 that:

"Everyone is entitled to all the rights and freedoms set forth in this Declaration without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

Language is clearly listed among the elements which this declaration protects from any type of harm, and it is recognized as an identifying element of peoples and cultures.

Article 5.2 of the European Convention for the Protection of Human Rights and Basic Freedoms (1950) stipulates that:
(...) anyone who is detained should be informed as soon as possible and in a language that he understands, of the reasons for his detention and of any charges made against him. (Unofficial translation from the Spanish version)

Moreover, article 6.3.e of the Convention explicitly mandates interpreting services for defendants who do not speak the language of the Court:

(...) all defendants have the right to be assisted by an interpreter free of charge if he does not understand or speak the language used in the proceedings.

At the national level, several countries have explicit or implicit mandates for interpreting or language mediation services in their constitutions or codes of law. The cases of Spain and the United States provide excellent examples of the lawmaker’s awareness of the need for adequate language services in legal settings.

B. Spain

In the Spanish Constitution of 1978, while no specific mention is made of language, a philosophical statement similar to the one found in the Universal
Declaration of Human Rights cited above, is put forward as a foundation of public order and social well-being:

La dignidad de la persona, los derechos inviolables que le son inherentes, el libre desarrollo de la personalidad, el respeto a la ley y a los derechos de los demás son fundamento del orden político y de la paz social.” (Art. 10)

A person's dignity, the inalienable rights that are inherent to him, the unrestricted development of his personality, and respect for the law and for the rights of others are the foundation of public order and social well-being.

These general and sweeping statements of the inherent rights of man can be considered indirect sources of support for the figure of the court interpreter. However, there do exist more specific references to this figure in the Spanish legal system. One legal mandate for the use of interpreters in the courtroom in Spain can be found in Section 2 of Article 520 of the Ley de Enjuiciamiento Criminal (Criminal Procedures Act). This article states that:

Toda persona detenida o presa será informada, de modo que le sea comprensible y de forma inmediata, de los hechos que se le imputan
y las razones motivadoras de su privación de libertad, así como de los derechos que le asisten y especialmente de los siguientes: (...) E)

Derecho a ser asistido gratuitamente por un intérprete, cuando se trate de extranjero que no comprenda o no hable el castellano.

Any individual who is arrested or detained will be informed immediately and in a manner that is understandable to him, of the charges brought against him and the reasons he has been deprived of his freedom and of the rights to which he is entitled, especially the following: (...) E) the right to be assisted by an interpreter free of charge when a foreign individual does not understand or speak Spanish.

The constitutionality of this article was questioned because its wording limited the application of this right to foreigners. A judgement issued by the Constitutional Court of Spain on the 25th of May 1987, clarified that the right to an interpreter applied to Spanish citizens as well. The decision\(^\text{21}\) stated that this section was indeed constitutional if it is...

\[... \textit{interpretado en el sentido que no priva del derecho a ser asistido}\]

\(^{21}\) Decision 74/1987, 25 May, of the full Constitutional Court ruling on appeal 194/1984 which claimed the article was unconstitutional. Supplement to the BOE #137, 9 June 1987.
por intérprete a los ciudadanos españoles que no comprendan y no hablen el castellano.

interpreted in a way that does not prevent Spanish citizens who do not understand or speak Spanish from benefiting from the right to be assisted by an interpreter.

In articles 440 and 441 of this law, providing an interpreter for language handicapped individuals is once again guaranteed, and those who can serve as interpreters are defined:

Art. 440: Si el testigo no entendiere o no hablare el idioma español, se nombrara un intérprete, que prestará a su presencia juramento de conducirse bien y fielmente en el desempleo de su cargo. Por este medio se harán al testigo las preguntas y se recibirán sus contestaciones, que éste podrá dictar por su conducto. En este caso, la declaración deberá consignarse en el proceso en el idioma empleado por el testigo y traducido a continuación al español.

Art. 440: If a witness does not understand or speak the Spanish language, an interpreter will be appointed who will take an oath to carry out his duties well and faithfully. In this way, questions will be
asked of the witness and answers will be received, which [the interpreter] will relay to the court. In this situation, declarations should be conveyed during the proceedings in the language used by the witness and translated thereafter into Spanish.

(art. 441) “El intérprete será elegido entre los que tengan títulos de tales, si los hubiere en el pueblo. En su defecto, será nombrado un maestro del correspondiente idioma, y si tampoco lo hubiere, cualquier persona que lo sepa.

Si ni aun de esta manera pudiera obtenerse la traducción, y las revelaciones que se esperasen del testigo fueran importantes, se redactará el pliego de preguntas que hayan de dirigirsele y se remitirá a la oficina de Interpretación de Lenguas del Ministerio del Estado, para que con preferencia a todo otro trabajo, sean traducidas al idioma que hable el testigo.

El interrogatorio ya traducido se entregará al testigo para que, a presencia del Juez, se entere de su contenido y redacte por escrito en su idioma, las oportunas contestaciones, las cuales se remitirán del mismo modo que las preguntas a la Interpretación de Lenguas.

Art. 441: The interpreter will be chosen from among those individuals who are certified as such, if there are any available. In the absence of
this, a teacher of the language in question will be appointed, and if no such person is available, any person who knows [the language].

If the translation cannot be obtained by any of these means, and the testimony that is expected from the witness is considered important, questions to be asked of [the witness] will be prepared in writing and sent to the Office of Language Interpretation of the Ministry of State, so that with priority over all other tasks, [these questions] can be translated into the language spoken by the witness.

The translated questions will be given to the witness so that he, in the presence of the Judge, can read them and answer them in writing. These answers will be sent, as were the questions, to the Office of Language Interpretation.

The wording of these articles clearly shows the lawmaker’s understanding of the importance of interpreting in the courts. The detail with which the articles are developed as regards the process by which the testimony of an individual who does not speak the language of the court can be obtained attests to the lawmaker’s desire to foresee all possible situations. While these articles do not go as far as the United States’ Court Interpreters Act in stipulating that certified and qualified court interpreters be used in all legal proceedings in which there is a language handicapped individual, it does show the lawmakers’ intent to provide the same type of services and his awareness of the many situations that may arise in which an interpreter might
be needed.

In both Spain and the U.S., it is recognized that there cannot be a certified interpreter for every language pair, every circumstance and every locality in which a legal matter may arise. However, the Spanish lawmaker has tried to specify as carefully as possible the steps to be taken to ensure that important testimony be received by the court in order to guarantee justice.

It is important to point out that Spain is a linguistically diverse nation. While all Spaniards are technically required to address the national courts in Castillian Spanish, they are allowed to address regional courts in a regional language, and there are occasions in which these cases are carried over into the sphere of the national courts. There is a law that recognizes the legitimacy of this language use at the regional level and addresses the issue of language mediation when decisions made in these courts or some part of the proceedings have legal effects outside of the realm of the regional language. Both written and oral language are dealt with in this law.

In Title III, Chapter I, art. 231, sections 4 and 5 of the *Ley Orgánica del Poder Judicial* (Organic Law of Judicial Power) we find the following:

*Las actuaciones judiciales realizados y los documentos presentados en el idioma oficial de una Comunidad Autónoma tendrán, sin necesidad de traducir al castellano, plena validez y eficacia. De oficio se procederá a su traducción cuando deben surtir efectos fuera de la jurisdicción de los órganos judiciales sitos en la Comunidad*
Autónoma, salvo, en este último caso, si se trata de CCAA con lengua oficial propia coincidente, o por mandato del juez o a instancia de parte que alegue indefensión. 5. En las actuaciones orales, el Juez o Tribunal podrá habilitar como intérprete a cualquier persona conocedora de la lengua empleada, previo juramento o promesa de aquella.

Judicial proceedings carried out in the official language of an Autonomous Community and any document presented [in that language] will be considered fully valid and effective without having to be translated to Castillian Spanish. A translation will be prepared ex officio when [documents] must produce effects outside of the jurisdiction of the judicial organs located in the Autonomous Community except, in this last case, when the official language of the Autonomous Community is also Castillian Spanish, when the judge does so mandate, or when one of the parties alleges defenselessness.

5. In oral proceedings, the Judge or the Court can appoint as the interpreter any individual who knows the language in question, a fact which he must swear or promise to be true.

The wording of the final section of the law just transcribed is typical of the attitude taken towards court interpreting in many countries for many years, especially
as regards oral interpreting. While the need for language mediation in the courtroom is recognized, no clear standard of quality is stipulated nor is any method for determining if an individual is qualified to serve as an interpreter. A statement such as “cualquier persona conocedora de la lengua empleada” (any person who knows the language) is, at best, an imprecise standard. The consequences of such an approach often include miscarriages of justice due to either the poor quality of interpreting or a lack of impartiality on the part of the interpreter when family members, friends or acquaintances are pressed into service. Using family members, court employees, or even detainees awaiting trial is an all too common method used by courts to quickly solve a “problem” that was not foreseen and for which there is no regular protocol in place to handle. Because of its ease and immediacy, this option is often employed before any attempt is made by the Court to procure the services of an interpreter with some type of credential that would attest to his ability to carry out the tasks assigned to him.

C. The United States

In the United States, the right to a certified and qualified court interpreter is guaranteed in federal courts by Public Law 95-539, also known as the Court Interpreters Act. This law, which was passed in October of 1978, mandates the use of qualified interpreters in criminal or civil cases brought by the United States
government in which a defendant or a witness "... speaks only or primarily a language other than the English language". The Act mandates that a court-appointed interpreter be provided:

In any criminal or civil action initiated by the United States in a United States district court (including a petition for a writ of habeas corpus initiated in the name of the United States by a relator), if the presiding judicial officer determines on such officer's own motion or on the motion of a party that such party (including a defendant in a criminal case), or a witness who may present testimony in such action --

(1) speaks only or primarily a language other than the English language, or
(2) suffers from a hearing impairment (whether or not suffering also from a speech impairment) so as to inhibit such party's comprehension of the proceedings or communication with counsel or the presiding judicial officer, or so as to inhibit such witness' comprehension of questions and the presentation of such testimony." (Court Interpreters Act, 1978, 1877 (d)1-2).

The legal foundations for this act can be found in the fifth, sixth and fourteenth amendments to the Constitution of the United States. The fifth and sixth amendments were part of the original Bill of Rights, formulated in 1789, two years after the writing of the original Constitution in 1787. The Bill of Rights provides constitutional protection for human rights and basic freedoms. Amendment 14 was
passed in 1868 and further enforced the concept of due process. Part of each amendment provides legal support for language mediation in the courts. For example, the fifth amendment guarantees due process of law to all citizens:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury (...), nor be deprived of life, liberty, or property, without due process of law;

(...) 

The sixth amendment guarantees individuals the right to be informed of the nature and cause of a criminal accusation, to confront state witnesses, and to have the assistance of counsel:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defense.

The fourteenth amendment extends due process and equal protection under
the law to all citizens of the United States. It reads as follows:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within each jurisdiction the equal protections of the law.

As mentioned above, these amendments speak indirectly to the issue of communicative competence. The fifth and fourteenth guarantee due process and equal protection under the law, which means the application of a fair legal procedure. If an individual needs the services of an interpreter during a legal proceeding and does not get them, he would be considered to be deprived of his liberty without the benefits of due process of the law. The Sixth speaks of all people’s right to be informed of the type of crime of which they are being accused, their right to confront witnesses brought to testify against them, and their right to have the assistance of an attorney. Of course, none of these rights can be guaranteed to an individual who is not adequately proficient in the language of the court. What this in essence guarantees is that all defendants are able to confer with the attorneys charged with their defense before and during the trial in a natural and non-obtrusive manner, and that, through
counsel, they can question and cross-examine all of the witnesses brought against
them. These guarantees can only be respected if a defendant understands the content
of the witnesses’ testimony and the evidence presented by State counsel against him.

Finally, these amendments guarantee that the defendant has the right to be
present at all critical stages of the legal proceedings including arrest, interrogation,
preliminary hearings, arraignments, other pre-trial proceedings, the trial itself and
sentencing. “Being present” entails more than simply being physically present at a
legal proceeding. It entails being linguistically present and being able to understand
and participate in those proceedings to the extent the law allows. Providing a court
interpreter to “language handicapped” individuals helps ensure that these rights are
respected.

At other levels of the judicial system in the United States, there also exist
provisions for the use of interpreters. In two states, New Mexico and California,
there are provisions in the state constitutions that clearly guarantee a non-English
speaking defendant’s right to adequate interpreting services. The New Mexico
Constitution states that a defendant in a criminal case has the right "to have charge
and testimony interpreted to him in a language he understands" (Art 2) while the
constitution of the state of California states that "a person unable to understand
English who is charged with a crime has a right to an interpreter throughout the
proceedings" (Art. 1) (Berk-Seligson 1990, pp. 26-7). Of course, a constitutional
provision is the strongest means by which to state and guarantee a right, but in the
absence of such a provision, there are several other types which serve the same
purpose. Some states establish this right through a statutory provision while others have administrative or judicial regulations which stipulate their use. The wording and specificity of the different provisions varies greatly as can be seen by comparing the relatively vague provision found in an Illinois statute which states "interpreters may be sworn in when necessary" and the more developed and specific stipulations of the Michigan Statutes which state that

If any person is accused of any crime or misdemeanor and is about to be examined or tried before any justice of the peace, magistrate or judge of a court of record, and it appears to the (...) judge that such a person is incapable of adequately understanding the charge or presenting his defense thereto because of lack of ability to understand or speak the English language (...) the (...) judge shall appoint a qualified person to act as an interpreter. (Michigan Statutes Annotated 928,1256[1] and the Michigan Compiled Laws Annotated (775.192,[2]) (Berk-Seligson 1990, p. 27)

California is perhaps the state within the United States that has the most developed position on the use of court interpreters at the state level. This may very well be due to the fact that it is one of the most populated states in the union (35 million inhabitants) and the one with the most linguistic and cultural diversity. The California Evidence Code (section 752 [a]) states that
(...) when a witness is incapable of hearing or understanding the English language or is incapable of expressing himself in the English language so as to be understood directly by counsel, court and jury, an interpreter whom he can understand and who can understand him shall be sworn to interpret for him. (Berk-Seligson 1990, p. 27)

California even has a law (A.B. 2400, enacted in 1978) which mandates a training program for court interpreters and stipulates testing for certification. This law establishes the areas of expertise which an individual must have to be able to work in California courts, and calls for the collection of data on the use of court interpreters throughout the state for planning purposes, the establishment of criteria for the development and evaluation of a court interpreter exam, the publication of lists of individuals who are qualified to work as interpreters in the courts and what their language pairs are, and the preparation of an "Annual Report of the Administrative Office of the California Courts" which addresses all of the issues concerned with court interpreting including the establishment of standards and the determination of need in specific courts for specific languages.

In California there also exists a relatively large corpus of both criminal and civil case law that traces the history of the development of the right to interpreting services and shows some of the areas of controversy involved in this issue.

In 1967, a case called People v. Annett, in which a judge decided that a defendant did not need an interpreter, was overturned on appeal, thereby establishing
the right to an interpreter for non-English speaking defendants. The decision states:

Failure of a trial court to appoint an interpreter for a defendant who has requested one, or whose conduct has made it obvious to the court that he is unable because of linguistic difficulties knowingly to participate in waiving his rights, is "fundamentally unfair" and requires reversal of a conviction. (1967:251 Cal. App. 2d 858, 59 Cal. Rep. 888) (Berk-Seligson 1990, p. 28)

This case addressed the issue of who determines if a defendant is in need of an interpreter. In most states this decision is left to the discretion of the presiding judge. This is a complex and often imprecise area, and there is often dissention among jurists themselves as to just when to provide the services of an interpreter. It is important to remember here that in Arizona back in the 1970s, the judiciary itself tried to tackle the problem of when it was necessary to provide interpreting services by commissioning a study on the language of the courts in order to develop some criteria by which to measure a defendant's or a witness's competence in the language of the court to thereby resolve this issue.

Another issue addressed in case law is when the state is required to provide interpreting services at state expense. This issue is related to the concept of providing services for indigents who are entitled to free counsel in the American legal system and whether or not this right to free counsel can be extended to interpreting services.
at state expense. In California, case law (Gardiana v. Small Claims Court In and For San Leandro-Hay 1976:59 Cal. App. 3d 412, 130 Cal. Rptr. 675) upheld the court's responsibility to appoint and pay for interpreting services in a case in small claim's court in which neither of the parties spoke or understood English. The reasoning behind this decision was that as no attorneys are used in small claim's court, the court had the power to appoint and pay for an interpreter for the defendants and for witnesses as a means by which to guarantee their right to a fair trial. However, in another case (Jara v. Municipal Court 1978:21 Cal. 3d 181, 578 P.2d 94, 145 Cal. Rptr. 847), the California Supreme Court ruled that the state was not required to pay for interpreting services when a defendant had the services of counsel who was there to represent him. Part of this case was based on the issue of witness interpreters versus party interpreters and at this point in time, the court decided that an interpreter for a witness was always necessary for the correct functioning of the judicial process, but that an interpreter for the defendant when counsel was available to him was not. However, when this decision was issued, there was one dissenting vote which subsequently served as the basis for the development of new regulations and practices on the use of court interpreters and as a foundation for the Federal Court Interpreters Act. In his dissenting opinion, this California jurist used very strong language to state his point of view:

I cannot agree with the majority's assessment of the confusion, the despair, and cynicism suffered by those who in intellectual isolation
must stand by as their possessions and dignity are stripped from them by a Kafka-esque ritual deemed by the majority to constitute, nonetheless, a fair trial. (Berk-Seligson 1990, p. 30)

The issue of whether an interpreter should be provided to meet the court's needs or to meet the defendant's needs has been one of the most controversial and difficult to resolve. A double standard existed for many years which stated that a court interpreter should be provided on every occasion in which the court could not function due to the limited English language proficiency of a witness or a defendant giving testimony to the court, but not for a defendant who could not understand all of the proceedings going on around him in the courtroom. We can find rulings in both state and federal case law that support both positions on this issue. In U.S. v. Desist (384 F.2d 888, 891-92, 2d Cir. [1967]), the court ruled that the defendant, a non-proficient speaker of English, did indeed need the services of an interpreter to convey his ideas and testimony clearly to the court, but that he was not entitled to simultaneous interpretation of the entire proceedings. In other cases (Tapia-Corona v. U.S. and Markiewicz v. State) the rulings stated that as long as there was an interpreter seated at counsel table and available for consultation by the defendant or between the defendant and his attorney, that there was no need for the entire proceeding to be interpreted verbatim.

In their study of California state case law, Frankenthaler and McCarter (1978) found evidence of this "double standard". Frankenthaler (1980) explains the
controversy in the following way:

Since a witness interpreter is appointed so that witnesses can communicate with the court in a manner which as closely as possible approximates the communication of English-speaking witnesses, one might assume that this type of logic is also carried over to the appointment of party interpreters, i.e., so that the non-English speaking defendant can understand all testimony and communicate with his attorney in a manner which as closely as possible puts him in the same position as an English-speaking defendant. However, if we bear in mind that the benefit of the party interpreter is primarily personal to the party, while the benefit of the witness interpreter is primarily for the court as a whole, we may find it more comprehensible to deal with the "double standard" whereby the same party may have better interpreter services as a witness than when exercising his right of confrontation as a party. (p. 52, cited in Berk-Seligson 1990, p. 31)

The basic conflict underlying this issue is whether an interpreter's function is to assist in ensuring the "smooth and orderly sequence of trial" as Frankenthaler calls it, or to fulfill the personal needs of a party who does not speak the language of the courts. Given that the only information that is entered into the record and therefore
can form the basis for an appeal or any kind of further legal action is that information
given in the language of the court, this conflict takes on much greater significance.

This conflict has been resolved at the federal level where the double standard
has been abolished in federal district courts. An individual's right to be totally present
at legal proceedings and to assist in his own defense by confronting witnesses brought
against him has been deemed as important as the smooth functioning of the judicial
process. Therefore, party interpreters are provided in federal legal proceedings.

The issues related to the use of court interpreters have clearly been present in
the mind of legislators and jurists for several decades now in the United States. The
deliberations and debates that have taken place at both the state and national level
have culminated in a plethora of attempts to address the underlying issues and ensure
rights. The enactment of the Court Interpreters Act at the federal level provides firm
legal support for court interpreting services. It recognizes the needs of defendants,
mandates the use of certified or qualified interpreters, addresses the issue of quality
in interpreting, and serves as a paradigm which other jurisdictions can use.

D. Other useful examples

There are several other situations worth citing. Each contributes something
unique to the understanding of the current situation of the field and as regards the
practice of court interpreting: Canada is an officially bilingual country with minority
languages as well, Poland takes the sworn interpreter approach, Australia has well-developed community interpreting services and a high level of awareness but no legislation, Papua New Guinea is an example of a country with a great deal of linguistic diversity due to historical groupings of native peoples coupled with a colonial presence, and Great Britain is an example of what happens in many developed countries that have no systematic approach to court interpreting.

1. Canada

One country that has addressed the issue of providing interpreting services for its citizens is Canada. Canada is a particularly interesting case due to the fact that it is a bilingual country with two officially recognized languages. However, Canada’s linguistic diversity is also enriched by the many Native American tribes that have maintained their languages and culture. Furthermore, in some provinces there is a significant number of individuals who speak neither French nor English and form ethnic and linguistic subgroups in the population. The Japanese and Chinese communities in Canada serve as a good example.

The Canadian Charter of Rights and Freedoms (1982) reads as follows:

“(…) a party or witness in any proceeding who does not understand or speak the language in which the proceedings are conducted or who
is deaf has the right of the assistance of an interpreter. (Cited in González et al., p. 83)

While Canada recognizes the need for court interpreters, certification requirements are still irregular. This is because in Canada, professions are a provincial responsibility. Therefore, while there is no uniform nationwide certification process, there are some good regional efforts and there is cooperation between provincial and national associations. For example, there is a court interpreter examination in place in British Columbia that is the result of efforts made by both Vancouver Community College and the Society of Translators and Interpreters of British Columbia. All applicants must be members of the Society of Translators and Interpreters, and only applicants with prior experience and/or training are encouraged to take the exam. The first exercise given to applicants is considered a pre-screening device and consists of a two-directional written language proficiency exam made up of a translation of texts related to legal proceedings. Concurrent to this exam, candidates are administered an exam on principles of law and legal procedures. The final exercise in the exam is a mock trial in which candidates must show their competence to interpret accurately and their ability to perform in courtroom situations.

The group of scholars and professional interpreters who developed and promoted the British Columbia exam, known as the Vancouver group, were also commissioned to prepare training materials and examination guidelines for the
Ministry of the Attorney General of Ontario. A training program is offered through the University of Ottawa and as of 1991, more then 500 interpreters had been examined and accredited in what Jindra Repa (1991), a member of the Vancouver group, called a "rudimentary fashion" for work in Ontario courts.

There is also a national translators exam which was developed by the founding members of the Canadian Council of Translators and Interpreters and is used in New Brunswick, Ontario, Manitoba, Saskatchewan, Alberta and British Columbia. However, this exam is not specifically a tool for evaluating competence to perform in a court of law.

One interesting aspect of court interpreting in Canada in that in 1983, the Supreme Court of Canada did recognize an accused individual's right to have the proceedings interpreted, and this cleared up the controversy as to whether a witness or party approach should be used. Given this fact, it is surprising that no national standard for court interpreters has yet been set that would ensure adequate provision of the services needed to guarantee rights recognized in the law of the land and upheld when legally challenged by the Supreme Court itself.

2. Poland

The situation in Poland is representative of the approach taken in many countries. There is a category of professional who is deemed competent to carry out
legal or official translations, but the question of ascertaining the competence of these professionals still needs development.

Poland has had "sworn translators" since 1928 when a decree issued by the Minister of Justice created this figure. While Polish, like some other languages, does not make a distinction between a translator and interpreter, having only one word — tlumacz — to denote both occupations (Kierzkowska, p. 87), the term used by translators and interpreters in English in Poland is "sworn translator". This is because the individuals who carry out this task must be sworn before the appropriate authority and because their duties require them to translate written documents much more frequently than interpret in a court of law. The figure of the sworn translator in Poland has been altered on three occasions since its creation (by decrees dated 1953, 1968, and 1987). The 1987 decree is the one that is currently in force.

The Association of Polish Translators and Interpreters pressured the government to include some conditions for obtaining the title of sworn translator in the 1987 decree. These conditions basically were that candidates have university degrees in philology or applied linguistics and that they prove their ability to translate. At the time the decree was passed, the Ministry of Justice readily accepted the qualification condition but was reticent to accept the proof of ability condition. It seems that the prevailing attitude was that anyone who was a competent bilingual was

Interestingly enough, a clear parallel can be drawn with the Spanish system as regards the functions of this figure. Nevertheless, in spite of this preponderance of written translation as compared to oral interpreting, the official title in Spain is "sworn interpreter" (intérprete jurado) as opposed to "sworn translator" (traductor jurado).
able to carry out the tasks of a sworn translator. As Danuta Kierzkowska stated, the officials at the Ministry of Justice "would not admit that command of a foreign language does not necessarily imply the ability to translate" (p. 88). Eventually, translators were able to win this concession and have it written into the decree, but even this stipulation did not bring about the implementation of an obligatory exam to prove ability. The goal at the time 23 was to establish that in the near future, candidates for the title of sworn translator would have to produce a certificate of postgraduate training in document translation and court interpreting in addition to their undergraduate degree in philology or applied linguistics. A professional association does exist in Poland to promote higher qualifications, recognition of the profession and better working conditions for sworn translators. This association is called the Polish Society of Economic, Legal and Court Translators (TEPIS) and grew out of the recognition of Poland's new status in the world and an ever-increasing need for the unification of text elements and the methodology of document translation. The efforts of this association closely parallel those made by its counterparts in other countries faced with the same issues.

3. Australia

Another interesting case is Australia. There is a strong tradition in Australia

23 Efforts made to update this information were unfruitful.
of providing interpreting services in the social services area, but while the problems of linguistic minorities and their needs are quite similar to those of other countries -- the United States for example -- and although studies have been carried out, no statutory or constitutional provisions have been made to mandate the use of interpreters in the courts (González et al., p. 87). In Australia, a court may grant a witness the use of an interpreter, but this is not a right nor an obligation. Use of an interpreter is really at the discretion of the court although recommendations for change have been made. On the other hand, language mediation services are often available at some levels of the judicial system in Australia such as when dealing with the police or probation and parole officers and in the prison system.

4. Papua New Guinea

Previously under Australian rule, Papua New Guinea provides a very interesting example of the approach taken in an extremely linguistically and culturally diverse situation. Perhaps surprisingly, a detailed description of legal interpreting services in Papua New Guinea was published by Ranier Lang in the 70s. It describes the historical development of the use of interpreters for all types of interactions between the colonial powers and the peoples of the country who speak a total of some 700 languages. It is an interesting example of the practices used in a less developed but highly multilingual setting.
Interpreters have been used by the government in Papua New Guinea since the mid-1880's when the position of station interpreter was created. This profession was considered quite prestigious, and by the mid-1900's, there was a growing tendency for interpreters to become indigenous members of the House of Assembly (Lang, p. 331). An annual report issued by Australia to the United Nations in 1971 included a statement regarding the official language of the courts in Papua New Guinea and the use of court interpreters. The statement read:

English is the official language of the Courts. However, evidence, etc., may be given in another language, in which case it is translated into English for the Court. Court interpreters are employed as necessary to assist the Presiding Judge or Magistrate. While no statutory qualifications are prescribed, considerable experience, a good educational background and competence in the relevant languages are sought in interpreters. (Commonwealth of Australia 1972, p. 51)

As regards the selection of interpreters, it is stated that they should be chosen "carefully, having regard to ability, honesty and loyalty" (Territory of Papua and New Guinea 1970: 30) and that the Magistrate must "make sure that the defendant understands the language of any witness who gives evidence and that, if the defendant does not understand it, this evidence is interpreted to him; the defendant is entitled..."
to hear every word which is said in court" (Ibid, p. 115).

As is the case in many other countries, interpreters in this system must swear an oath when they are employed to work in the courts, and when an individual is used on a free lance basis, he must swear that "he can understand the language of the accused person and of the witness, and that he is competent to interpret it. He must also swear that he will interpret truly and correctly" (Ibid, p. 115). This, of course, is not really any guarantee that accurate interpretation will take place, and with such a plethora of languages involved, there is no way to verify if the interpreted version is a true rendition of the original utterance. As a matter of fact, cases of accidental misinterpretation, willful distortion and bribery have been reported. Nevertheless, it is clear that the figure of the court interpreter is relatively well-defined and broadly accepted in this complex, multilingual society.

5. Great Britain

The case of Great Britain is representative of many European countries. While there is no official certification procedure in place for court interpreters, the field is recognized in professional circles and is of interest to the interpreting community and academics alike.

Barristers report that subjective criteria, such as personal recommendations, are used to choose language mediators when they are needed in court, and facial expressions and physical reactions are often used to gauge accuracy during the
translation of court proceedings.

In spite of this lack of structure and objectivity in the selection procedure, the right to the services of an interpreter is clearly recognized. In a recent case (*Kunnath v. The State* [1993] *W.L.R., 315. P.C.*), an Indian national was found by Customs agents to be carrying heroin and was charged with a drug offense. An interpreter was provided as the defendant did not speak English, which was the language of the court. The defendant declared that he had no knowledge of the evidence to be presented against him, and neither he nor his attorney waived his right to an interpreter. Nevertheless, the judge instructed the interpreter to translate only certain parts of the court proceedings. The defendant was convicted. In his appeal, he claimed that he had not understood the testimony given by prosecution witnesses. The defendant won his case on appeal based on the following reasoning as stated in the judicial decision:

1) the principle that a criminal trial should be conducted in the presence of the defendant required not only his corporeal presence but that, by reason of his presence, he should be able to understand the proceedings and decide what witnesses to call and whether to give evidence; 2) a defendant who had not understood the conduct of proceedings could not, in the absence of express consent, be said to have had a fair trial; 3) the judge had a duty to ensure, in the interests of a fair trial, that effective use was made of the interpreter provided
for his assistance; and 4) since the judge had so failed and had not
ordered a retrial after D's statement from the dock indicating his
incomprehension, D had been deprived of a fair trial and a miscarriage
of justice had occurred (dicta of Lord Reading, C.U. in R. V. Lee Kun
(1916) 1 K. B. 337 and Lawrence v. The King (1933) A.C. 699
distinguished).

This very clear defense of a defendant's right to adequate interpreting services
if he is not proficient in the language of the court is a solid foundation for the next
step, which is assuring that the individuals called on to ensure those rights in the
courtroom are known to be capable of fulfilling the requirements of the task they are
charged with.

In spite of the legal mandates in some countries for the use of court
interpreters, there still remains the issue of the quality. It is one thing to recognize the
need for language mediation in order to guarantee human and constitutional rights to
all people, and quite another to monitor and control those services. Steps must be
taken to provide adequate procedures by which to evaluate ability and qualify
competent practitioners. In order to do this, a clear understanding of how an
interpreter performs in a court of law is needed. The next section of this thesis will
be dedicated to this topic.
Chapter Four.

THE ROLE OF THE INTERPRETER IN THE JUDICIAL SYSTEM

A. General considerations

After having examined the legal foundations for the use of interpreters in the courts, a related issue is exactly what role the interpreter plays in a legal proceeding and what a particular interpreter's understanding of his or her role is. The definition of the duties assigned to a court interpreter should be clearly understood by everyone involved in the proceeding, from the judge on down to the witnesses, including the attorneys and the defendants themselves. This issue can be divided into two areas of concern. The first has to do with how the court defines the interpreter's role in a given proceeding, and the second has to do with the ethics of court interpreting and the boundaries of the interpreter's interaction with the participants in the trial.

One of the most controversial issues related to the role of the court interpreter has to do with whether an interpreter is sought out for the benefit of the court or for the benefit of the defendant in the case. These two positions are legitimate but provide vastly different solutions to the question of guaranteeing rights to an accused party.

The first of the two takes the position that an interpreter is employed basically to serve the needs of the court. That is to say, the main purpose of the interpreter's
participation is to facilitate linguistic mediation for the judge and, when a jury is involved, for that jury. In this situation, an interpreter would be used strictly to interpret the testimony of witnesses or defendants who are not proficient in the language of the court to the satisfaction of the judge or presiding officials. The interpreting mode that would be used is consecutive, with questions being posed and interpreted into the language of the witness, and answers being given and then rendered into the language of the court. The court record would reflect only the version given in the language of the court. This mode is legitimate in cases in which the defendants do speak the language of the court and are linguistically present at their own trial. If an expert or eye-witness whose primary language is not the language of the court were to be called to testify, an interpreter could be used strictly for that witness’s testimony. However, when the defendant’s native language is not the official language of the court -- and this is more often the case than the situation described above -- many would argue that in order to provide adequate and complete services to the defendant, thereby guaranteeing his constitutional rights, a complete interpretation of all of the proceedings must be provided.

When an interpreter is sought out to guarantee the rights of the defendant, he must be able to carry out the consecutive interpretation described above in situations in which testimony is given to the full court, but he must also be capable of rendering correct and complete simultaneous interpretation of all that takes place during the proceedings in the language of the court. This means that during much of the trial the interpreter is interpreting exclusively for the defendant in the simultaneous mode.
Another issue related to the extent or type of interpreting services that should be provided is to define exactly what stages of the proceedings require the services of an interpreter, and if interpreting services should be provided by the court or retained privately by the parties involved. For example, as regards the first point, a decision must be made as to whether or not a court-appointed interpreter should be provided for interactions such as arrests and police interrogations or for client-attorney consultations. While it is obviously unrealistic to expect an interpreter to be available at the time of arrest, it is feasible to have interpreters available for the formal booking at the police station and in all subsequent interactions between representatives of the judicial system and a language handicapped detainee. As for the second point, if an indigent defendant is provided the services of a court-appointed attorney at no cost, the services of an interpreter may also have to be provided by the court for attorney-client consultations. In cases in which a defendant retains an attorney of choice and is not eligible for court supported assistance, the cost of the services of an interpreter for attorney-client consultations will most likely be borne by that defendant. However, regardless of the source of compensation for these types of services, the interpreter used during the actual proceedings should always be appointed or at least approved by the court as an interpreter retained by one of the parties cannot be considered impartial.

Once a decision has been made as to whether to provide a witness interpreter or a party interpreter and at which stages of the judicial process, the next issue that must be addressed is the ethics of court interpreting. This has to do with the
boundaries set on the role of the interpreter and with making sure that these boundaries are understood clearly by all parties involved. The interpreter wields a great deal of power in the courtroom as the only individual who understands all of the proceedings completely. The entire judicial system is placing its trust in the ability of the interpreter to carry out this task correctly and with a high level of professionalism.

One of the cardinal rules of interpreting is for an interpreter to be able to admit when a specific assignment is beyond his abilities. He should only accept assignments that he is confident he can perform satisfactorily. He should feel no compunction about withdrawing from a case in which he feels he will be unable to function effectively, due to lack of proficiency, preparation or difficulty in understanding a witness or defendant.

In many legal systems throughout the world, an interpreter in a court of law is sworn in and his oath includes a pledge to carry out his duties correctly. The judge and the jury must rely on the interpreter’s rendition of testimony to decide the facts of the case, and they depend almost exclusively on that rendition to formulate opinions as to the credibility and trustworthiness of language handicapped witnesses and defendants. Another important fact to bear in mind is that appeals are often based on the written record of a case which reflects only the interpreted version of the testimony. Tayler (1988) reminds us that

(...), in a court proceeding where the interpreter may be the only bilingual individual present, errors by the interpreter may never be discovered, leaving no basis for appeal on the grounds of inaccurate interpretation. (p. 57)

This attests to the power of the interpreter in a legal case but also squarely places the responsibility for evaluating his own ability to fulfill his duties on his shoulders.

B. Ethical issues

The role of the interpreter in legal proceedings is often misunderstood. In many cases, good-will on the part of the interpreter and a natural empathy with the plight of the defendant or the situation in which a nervous witness finds himself, leads to unintentional yet inappropriate contact. The interpreter’s role as a sworn officer of the court is to serve as a language mediator and to render an accurate and complete interpretation of proceedings in an unobtrusive manner. It is not within the bounds of his legal and professional obligations to give advice, inform the defendant or a witness of procedural rules, or in any way assist the persons for whom he is interpreting in complying with the rules of the court. It is the duty of other actors in the system to provide any information a defendant or witness may request or require,
even though interpreters are often asked and tempted to do so.

For example, it is the attorney’s responsibility to make sure that his client or any of the witnesses that are going to testify on his client’s behalf, are aware of the functioning of the court and how to behave in a given situation. The interpreter may be called upon to interpret the attorney’s words, but never to supplant him. An attorney should not ask an interpreter to explain the nature of a proceeding, even if the attorney is aware that the interpreter understands that proceeding completely. Likewise, the judge will instruct all witnesses and participants in a case on protocol when he deems it necessary; once again, the interpreter should limit himself to interpreting the judge’s words, in no way adding to them or deleting any of their content. If the interpreter has any comments in this regard, they should be addressed to the court, and permission should be received from the judge or other presiding officials to clarify any point which concerns the interpreter. It is important to bear in mind that the interpreter’s task is limited to “transfer[ring] the message into the other language exactly, or as close to exactly, as originally spoken” (González et al., p. 475). The interpreter is not employed to instruct speakers of other languages or provide them with any kind of information above and beyond an understanding of the verbal interaction taking place in the court. It is important to realize that many individuals who share a common language with the court also lack specific knowledge about legal proceedings and the functioning of the judicial system, and the court does not provide them with special assistance in understanding the mechanisms and functioning of the system.
When an interpreter assumes this responsibility, he is taking on what Astiz (1986) calls the “adaptation role”. He cautions against the interpreter giving a non-English speaking defendant in a trial any unwarranted advantage, even unintentionally. He says:

If the criminal justice system interpreter is successful in the “adaptation role”, he or she would provide the non-English speaking individuals with services not available to English speaking defendants and witnesses of equivalent intelligence and education. (in González et al., p. 95)

In other words, the interpreter’s task is to put a language handicapped individual on equal footing with a language capable individual, not to enhance or diminish his position in any way.

An interpreter should never express a personal opinion about any individual or any aspect of the proceedings to others, regardless of whether they are involved in the case or not. He should also not share any information that he has acquired while carrying out his professional duties with any other party to the litigation or any other concerned individual. Discretion is of utmost importance. This is true of information the interpreter acquires during the course of oral proceedings or through access to written documents during the commission of his duties. Any documents entrusted to an interpreter for use in the case, be it for preparation for courtroom
interpreting, or for sight or written translation should be protected from unwarranted exposure during the time that the documents are in the possession of the interpreter/translator. Confidentiality is a basic concept in legal proceedings that should always be respected.

There have been several attempts made by different organisms and professional associations to define exactly what the role of the interpreter is in a court of law and what professional standards should be followed. One concise statement of generally accepted standards is the “Code of Professional Responsibility of the Official Interpreters of the United States Courts”, developed by the U.S. Federal Court Interpreters Advisory Board. The code is comprised of 14 canons and has served as a model for other systems seeking to establish guidelines for ethical and professional conduct for interpreters. The essential points of ethical court interpreter conduct according to this code are:

Canon 1. Official court interpreters act strictly in the interests of the court they serve.

Canon 2. Official court interpreters reflect proper court decorum and act with dignity and respect to the officials and staff of the court.

Canon 3. Official court interpreters avoid professional or personal conduct which could discredit the court.
Canon 4. Official court interpreters, except upon court order, shall not disclose any information of a confidential nature about court cases obtained while performing interpreting duties.

Canon 5. Official court interpreters respect the restraints imposed by the need for confidentiality and secrecy as protected under applicable federal and state law. Interpreters shall disclose to the court, and to the parties in a case, any prior involvement with that case, or private involvement with the parties or others significantly involved in the case.

Canon 6. Official court interpreters undertake to inform the court of any impediment in the observance of this Code or of any effort by another to cause this Code to be violated.

Canon 7. Official court interpreters work unobtrusively with full awareness of the nature of the proceedings.

Canon 8. Official court interpreters fulfill a special duty to interpret accurately and faithfully without indicating any personal bias, avoiding even the appearance of partiality.
Canon 9. Official court interpreters maintain impartiality by avoiding undue contact with witnesses, attorneys, and defendants and their families, and any contact with jurors. This should not limit, however, those appropriate contacts necessary to prepare adequately for their assignment.

Canon 10. Official court interpreters refrain from giving advice of any kind to any party or individual and from expressing personal opinion in a matter before the court.

Canon 11. Official court interpreters perform to the best of their ability to assure due process for the parties, accurately state their professional qualifications and refuse any assignment for which they are not qualified or under conditions which substantially impair their effectiveness. They preserve the level of language used, and the ambiguities and nuances of the speaker, without any editing. Implicit in the knowledge of their limitations is the duty to correct any error of interpretation, and demonstrate their professionalism by requesting clarification of ambiguous statements or unfamiliar vocabulary and to analyze objectively any challenge to their performance. Interpreters have the duty to call to the attention of the court any factors or conditions which adversely affect their ability to perform adequately.
Canon 12. Official court interpreters accept no remuneration, gifts, gratuities, or valuable consideration in excess of their authorized compensation in the performance of their official interpreting duties. Additionally, they avoid conflict or interest or even the appearance thereof.

Canon 13. Official court interpreters support other official court interpreters by sharing knowledge and expertise with them to the extent practicable in the interests of the court, and by never taking advantage of knowledge obtained in the performance of official duties, or by their access to court records, facilities, or privileges, for their own or another’s personal gain.

Canon 14. Official court interpreters of the United States courts willingly accept and agree to be bound by this code, and understand that appropriate sanctions may be imposed by the court for willful violations.

C. Functions

Individuals who are called upon to provide language mediation services for
the system of justice are required to do several types of interpreting and are often charged with written translation and transcription tasks as well. In addition to these performance tasks, interpreters are sometimes called into court as expert witnesses to attest to the accuracy of documents that have been translated by someone else or to testify to the meaning of words in specific contexts. Sometimes they are required to take the stand and give testimony about written translations and transcriptions that they themselves have prepared. The ratio of oral interpreting to written translation and other kinds of services varies according to the functioning of the particular court in question and the legal traditions and practices of a specific country.

Depending upon the court's view of the interpreter's role during legal proceedings as regards the party-oriented or witness-oriented approach, the tasks assigned to an interpreter may vary greatly. The physical lay-out and technical equipment available in a particular courtroom will also dictate to a certain extent, what type of interpreting will be done by the interpreter. In this section, the different interpreting modes will be discussed as will other types of professional tasks that could reasonably be charged to an interpreter. There will also be a brief discussion of how the court interpreter's purpose differs from that of a conference or escort interpreter and how this purpose affects the type of interpreting carried out.

There are three types of oral interpreting that are generally used in courts of law: consecutive, simultaneous, and sight interpreting. Each is used in specific situations and for different purposes. There is a fourth mode that was used in the past in American courts but is used only infrequently now. However, it still seems to be
used quite regularly in some instances within the Spanish system of justice. This mode is known as summary interpretation.

1. Consecutive interpreting

The consecutive mode is used in a courtroom to interpret witness testimony. Basically the interpreter listens for a question to be posed by an attorney or a judge and then renders that question exactly as stated into the target language, i.e., the language of the witness on the stand. The witness then responds, and his or her answer is rendered back into the language of the court by the interpreter. The interpreter can take notes if necessary, especially if there is a significant amount of specific information such as numbers, dates, proper names, and so on. He normally does not interrupt testimony as it is being given, but he may request a repetition of part or all of the question or the response if he is not certain that he can render the entire utterance completely and accurately.

When addressing the court, the interpreter makes it clear that it is he, not the witness, who does not understand part of the utterance, so that the judge or the jury does not get the impression that the witness is uncertain of what he is saying.25

It is absolutely necessary that the interpreter render an exact interpretation of the utterances made by either side so as not to change or color the original renditions.

25 In the United States, an interpreter generally speaks about himself in the third person when addressing the court. Therefore, instead of "Your honor, I did not understand part of the response," the interpreter would say "Your honor, the interpreter did not understand part of the response and would like to request a repetition."
in any way. This is extremely important because a witness who does not speak the language of the court should be able to understand the question in the same way that a witness who does speak the language of the court would. Likewise, the court should hear the answer given by a witness with all of its linguistic and paralinguistic elements (hedges, hesitations, false starts and so on) because, as we've seen, all of these contribute to a complete understanding of the meaning and intent of the witness.

This is true when, as in the Spanish system, there is a judge or a panel of judges hearing the cases, but it takes on even greater significance when there is a jury present charged with deciding the merits of the case as in the American judicial system.

Another interesting and important issue in consecutive interpreting for witnesses in the courtroom is the positioning of the interpreter. The interpreter should be positioned to facilitate audition so that he is able to clearly hear all that is going on in the courtroom. However, it is equally important that the positioning of the interpreter not obstruct the judge's, jury's or attorney's view of the witness or the defendant's or other important participants' view of the proceedings of the court. The interpreter should not be a focus of attention but rather a facilitator of communication between the participants in a legal proceeding.

Ruth Morris presents an opposing view on the virtues of verbatim renditions of witness testimony and opts for a more active role of the language mediator in actually interpreting (in the broader sense of the word) utterances according to his understanding of the cultural implications. For a full explanation of this perspective, see her article entitled "The Moral Dilemmas of Court Interpreting", The Translator, 1:1, 1995, pp. 25-46.

Article 125 of the Spanish Constitution of 1978 does provide for popular juries to decide certain types of cases, and the jury system is currently being gradually introduced. However, the vast majority of cases heard are still decided by a single judge or a panel of judges.
Another consideration in terms of positioning is security. In some cases, the officials of the court may need to ensure the safety of both witnesses and defendants alike or even take into consideration the safety of other participants in the proceeding or those who are simply in the courtroom as observers. The comfort of the interpreter should be taken into account so that discomfort or positioning that would require straining to hear or see -- or to be heard or seen -- does not contribute to the stress and fatigue of the interpreter who is already engaged in a very fatiguing task.

The technical equipment available in a courtroom will dictate to some extent the positioning of the participants, especially the positioning of a language mediator. However, it is important to stress that careful consideration should be given to this issue and decisions as to the best positioning of the interpreter should be made jointly by the judge, the security officers of the court and other involved court personnel. Adjustments should be made if the originally designated positioning of the interpreter does not facilitate smooth language mediation for all parties involved throughout the proceedings.

There are several other points of a legal case in which consecutive interpreting would be used. As was mentioned earlier in the section on the role of the court interpreter in the judicial system, each jurisdiction or judicial system must make a decision as to what purpose is assigned to an interpreter in that particular system. If, as was mentioned earlier, an interpreter is called by the court simply to facilitate the court's understanding of testimony, an interpreter would most likely be limited to the services mentioned in the previous paragraphs. However, if the court system deemed
it appropriate for interpreters to be available to limited language proficient individuals throughout the legal process in order to ensure due process and protect constitutional rights, then a court interpreter would be made available at booking, during any police interrogation, during oral deposition taking and perhaps even during client-attorney interviews. In all of these situations, the type of interpreting to be done would be consecutive.

Consecutive interpreting is considered by many professional interpreters to be the most difficult of the modes of interpretation. Danica Seleskovitch says that "few activities require such concentration or cause such fatigue." (Seleskovitch, 1978a, p. 31). The skills involved in consecutive interpreting include language perception, storage, retrieval and generation (González et al., p. 379).

Listening comprehension skills are central to initiating the process of consecutive interpreting. An interpreter must be able to listen and comprehend meaning completely and accurately. This is done by using all of the listening skills available such as prediction, inference, deduction, the identification of key words, and so on. (Richards, 1983).

Retention is the next important part of the process, as once the information is comprehended, it must be retained for reconstruction in the target language. As we saw in the section on the theoretical constructs of interpreting, memory is a vital part of human information processing and is particularly important in the mode of interpreting we are discussing here. The "chunking" of information as mentioned in this section is one of the tools interpreters have at their disposal for the management
and retention of information. Creating schemata and making use of different methods by which to access the information that is stored in long term memory also aid in retention.

Another important element in successful consecutive interpretation is the time-lag involved between receiving the input and producing the target language output. Consecutive interpreters in conference situations often listen and receive input for up to 15 or 20 minutes before rendering their TL version. In these situations, effective note-taking is not only an effective tool but an absolutely necessary one as the human brain cannot retain in short term memory the amount of information provided in 15 minutes of discourse. However, the conference interpreter working in the consecutive mode is also allowed to paraphrase to a greater extent than is the court interpreter, and is even expected to smooth out discourse by eliminating hedges, false starts, hesitations, and so on, something which the court interpreter should not do. While the court interpreter is rarely asked to attend to 15 minutes of discourse before interpreting, he is asked to maintain a higher degree of equivalency than the conference interpreter. He too uses note-taking for content, but is also expected to retain specific elements of the delivery of the source language utterance as well as its content.

2. Simultaneous interpreting

The second mode of translation used by a court interpreter is simultaneous interpretation. This type of interpretation would be used principally in situations in
which the court's attitude towards the use of interpreters is party oriented and not witness oriented. In other words, simultaneous interpretation is used in a court to apprise a defendant who is not proficient in the language of the court of all of the proceedings that take place in the courtroom in the language of the court. In this case, consecutive interpreting would not be feasible as it would be extremely costly and time-consuming to have an interpreter transfer all utterances in the court to one individual in the consecutive mode. However, if a defendant cannot understand court instructions, or the testimony of witnesses brought by the prosecution in the case against him, he cannot be considered to be present at his own trial, and in some judicial systems, this would be considered a violation of his due process or procedural rights. Therefore, simultaneous interpretation also has its place in the court of law.

In American courtrooms, this mode of interpretation is used to render the reading of the charges, opening and closing statements, all witness testimony given in the language of the court, motions and the argumentation related to them, instructions given by the judge to other participants in the proceedings and so on.

Simultaneous interpretation can be rendered in two ways depending upon the technical equipment available in the courtroom. Nowadays there is small, portable equipment available that allows the court interpreter to be seated in any location in the courtroom in relation to the defendant. In other words, it is not necessary for the interpreter to be seated next to the person for whom he is interpreting. This is an extremely efficient and unobtrusive means of providing this service to a language handicapped defendant. An additional advantage of this method is that it limits
contact between the interpreter and the defendant and maintains the original purpose of the interpreting.

When this kind of equipment is not available, the interpreter is usually seated slightly behind the defendant to one side and whispers the interpreted version of the court proceedings to him or her. The shortcomings of this technique are quite obvious as there is always an underlying murmur of conversation going on in the courtroom which can distract other participants, and it is quite usual for the defendant to turn to the interpreter for clarifications and explanations about court proceedings and terminology which are not in the interpreter's charge to provide. Also, many times content is lost as attending to whispered language when full-voice communication is taking place in the room is often difficult. In some cases, the interpreter translates only part of the court proceedings or makes clarifications when the defendant, who may have knowledge of the language of the court, requests them.

3. Sight translation

The third type of oral interpretation that takes place in legal settings is called sight translation. This mode refers to the oral rendition of written discourse with minimal preparation time. It is described by the New Jersey Supreme Court Task Force on Interpreter and Translation Services (1992) in the following way:

Here the court interpreter must bring to bear the requisite knowledge of the written word which characterizes the work of the legal
translator, but must carry out the translation with the same rapidity of response which is required of court interpretation. (p. 64)

González and her colleagues compare sight translation to sight reading music (1990, p. 401). Like musicians who pick up a piece of music they have never seen before and play it effortlessly, the sight translator must pick up a document and draw on experience and training to carry out this task correctly.

In an American court of law, interpreters are asked to perform sight translations quite frequently. All written legal documents and forms that the defendant or court must be apprised of must be read into the record and translated to the parties. These might include affidavits, police reports, claim forms, civil record documents such as birth certificates, marriage licenses, adoption decrees, or certificates of death, as well as many other types of written documents.

During sight translation, the interpreter usually takes a short time to scan the document and get a sense of its purpose and perhaps take note of any strategy he might have to use to translate certain parts of the document. Given the differences that exist between spoken and written language, transferring written text to a comfortable spoken mode presents difficulties when time is limited and transfer must be immediate. In addition to this, the legal documentation in a given case will frequently span all registers, from the highly technical and specialized language of the law to personal letters or witness testimony included in police reports which can often be quite colloquial or even reflect the idiosyncracies of certain speech groups in a

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larger language community. Register, tone, and lexical choice of the original must be maintained in the target language rendition of the text. Therefore, the sight translator must have full command of both the source and target language involved in the translating situation. He must also be able to pace his rendition adequately so that the listener can understand the contents of the document. A choppy, repetitive rendition replete with false starts, hedges and hesitations seriously impairs comprehension of the text.

When doing a sight translation, the interpreter must make quick structural and syntactic accommodations of the written language of the text. He must constantly look ahead and evaluate the semantic units to be processed while at the same time render the units of meaning he has already processed. If after scanning a document for translation, the interpreter feels he is not able to render it accurately into the target language, he must notify the court and ask for a period of time in which to prepare.

4. Summary Interpreting

The last mode of oral interpreting that we mentioned in the introduction to this section is the mode known as summary interpreting. In American courtrooms, this mode is generally only used when there is no alternative, such as in situations in which there is a very rapid exchange outside of official testimony. In these situations, an interpreter might be called upon to give a general summary of the exchange to the defendant or to any individual who has a right or a need to comprehend it. In Spanish courtrooms, however, this technique is still often used as opposed to simultaneous
interpreting when an intermediate position is taken as regard the witness-oriented versus party-oriented dilemma.

In order to effectively carry out summary interpretation, the interpreter must be able to fully comprehend the discourse being produced and then effectively choose the most salient points to render in the target language. Unlike the other modes of court interpreting, in this mode the interpreter does not have to respect the verbatim rule and is not expected to reproduce hedges, hesitations, false starts, and so on. As this mode is really only used to provide information to a defendant or a witness, and not to the court, issues of credibility and trustworthiness do not come into play.

5. Other functions

Court interpreters are frequently asked to do transcription/translations. Tapes and videos are becoming increasingly frequent in legal cases as modern surveillance techniques such as wire-tapping and hidden camera recordings of conversations and events are employed by law enforcement agencies. If a recorded or filmed exchange that is important evidence in a case includes segments of language that the court cannot understand, the interpreter is called upon to transcribe the spoken language on the tape or film and then provide a written translation of the exchange in the language of the court. This transcription/translation is considered a legal document and usually becomes part of the official case record. Likewise, a court interpreter is also frequently called upon to do written translations of documents that are presented as evidence if the original document is not in the language of the court.
PART TWO

THE CERTIFICATION OF COURT INTERPRETERS
Chapter Five. TESTING THEORY

A. General considerations

If we accept that the only way to guarantee a linguistically handicapped individuals' constitutional and human rights is by providing adequate interpreting services in the courts, we must also accept that the only way to ensure the quality of these services is to develop a reliable and valid testing instrument which can be used to certify individuals as competent to carry out the tasks and duties required by the courts. In many countries, any individual who appears to possess the language skills needed by the court can be pressed into service. Friends or relatives of one of the parties, court officials such as the clerk of the court or the bailiff, other justice administration personnel such as secretaries or janitorial staff, and policemen and bilingual attorneys have been called upon in certain instances to serve as interpreters. There have even been circumstances in which individuals being held in the local jail on other charges have been asked to provide interpreting services. These practices

In the United States, for example, there was a case reported in which an inmate was required to interpret for the courts for Spanish speaking individuals more than twenty times in a six month period. He was even asked to interpret for a Laotion robbery suspect after mentioning that he had picked up some of that language from a fellow inmate. (Hewitt, p. 13). Hassan Sahuari, head staff interpreter at the Juzgados Centrales in Madrid, reports that using individuals being held in the courtroom holding tanks is a relatively common occurrence.
can in no way guarantee quality interpreting. Therefore, those individuals and institutions responsible for the administration of justice should be diligently involved in developing protocols and certification instruments to remedy this situation.

In order to construct a valid and reliable certification instrument, it is necessary to understand the foundations of testing theory and the steps that are involved in the actual elaboration of the instrument. Many issues are involved in testing instrument design and development including what type of instrument is the most appropriate for a particular situation, how to write and test specific test items once the type of exam has been determined, what type of assessment method or scoring system should be used, who should be selected as raters and what type of training they should receive, what conditions are needed for administration of the exam, and how practical issues such as cost, administration sites, time concerns, and so on affect the testing process. All of these issues will be discussed in this section.

When developing a testing instrument for court interpreting, many areas of testing theory and research contribute to the conceptualization of the instrument format. Perhaps the most obvious point of departure is the fact that language proficiency must be measured as this is an essential prerequisite for the other skill areas in interpreting that must be measured and quantified. This, of course, entails careful testing all of the language pairs for which a court interpreter is seeking certification.

(interview, January 1996).
Language testing is not a new practice. Anthony Kunnan (1996, p. 116) talks of the “first modern language test” being the Shibboleth test which is recorded in the Book of Judges of the Bible. It is described as a “single item, objective, oral, phonological test, individually administered”. Those who failed it -- about 42,000 according to Kunnan -- were slaughtered on the spot. Fortunately, language testing has progressed a great deal since then and consequences for poor performance are not so drastic.

Language use is a behavior which has sometimes been compared to musical performance or sports ability (Davies 1990, pp. 9-10). Content is not as easily quantifiable and obvious as is the case with other areas of knowledge such as chemistry or math. In addition to this, the concept of the "native speaker" who has an almost "perfect" or "complete" mastery of the field which can serve as the benchmark or gold standard for measuring other individuals' levels of proficiency, is also an element that is unique to language.

Language proficiency is at once a part of normal human development and a skill that can be acquired. Given that language proficiency is related to human behavior, language testing is based as much on measurement theory and practice in psychology and psychometrics as it is on purely educational testing. Many principles...

“Shibboleth” was the password used by the conquering Gileadite sentries of Jephthah at the fords of the Jordan to detect enemy Ephraimites. As the Ephraimites could not correctly pronounce the initial sound of the password, they were immediately identified and slain on the spot.
of language test construction derive from psychological testing and some consider language testing no more than psychological testing with specialist content (Davies 1990, pp. 11-2). Elicitation methods used in language testing can be compared in some ways to sociological and anthropological fieldwork methods. Therefore, language test constructors need to know about testing theory in addition to knowing about languages or linguistics per se.

Certain characteristics are common to all valid testing or evaluation instruments. For example, in general terms all tests should have clearly stated performance objectives, accurate condition specifications and precisely stated standards for assessment or scoring (Swezey, pp. 24-9). Nevo and Shohamy mark four specific criteria as basic standards for general test elaboration:

1) accuracy - related to test reliability and validity

2) utility - related to whether a test serves the practical information needs of a given audience and addresses issues related to the best way to train test administrators and raters and to assess scoring

3) feasibility - related to whether tests can be administered in certain contexts, i.e. if they are supported politically, if their results justify the costs involved, and if it is practical to train people to administer them
4) fairness - related to the legal and ethical administration of the exam, i.e. respect for the candidates, consideration of the test-takers'attitude towards the test, evaluation of if the test is based on what candidates can be expected to know, and so on. (pp. 119-20)

Given these criteria, the stages involved in general test elaboration as described by Anstey (Davies 1990, p. 12) provide a roadmap for test writing. The first stage, called the planning stage, consists of deciding on the type of test item to be used, the length and time limit for the test in its final form, the instructions to be given and the method for scoring. The second stage, known as the prepilot stage, consists of writing approximately three times as many items as will be needed on the final draft of the exam in order to prepare at least one draft version, or perhaps two parallel versions, to be tested on a select group of interested people to get feedback on the test items, especially as regards unsatisfactory items. Once this is completed, the next stage, called the pilot stage, consists of the administration of the exam to a large number of candidates similar to those for whom the exam is actually intended so that administration issues can be ironed out and sufficient material collected for a thorough item analysis to be done and the final revision of the draft test carried out. Finally, in the validation stage, the test in its final format is administered and tested to obtain material for the final evaluation of its usefulness and validity.

As regards a certification instrument for a specific purpose such as an occupation-
related exam, two key concepts are of special importance: "performance-based exams" and "criterion-referencing", also known as competency testing. These two concepts are directly related and together they define the underlying principles of the development of the type of testing instrument most useful for measuring the knowledge and specific skills needed for professional practice.

Performance-based exams are ones which determine performance objectives during the elaboration process and employ simulation techniques in test administration. This type of exam requires a candidate to be able to "perform" in a situation that reproduces, as closely as is possible in an exam setting, a real-life situation and asks candidates to perform tasks or carry out functions related to a specific profession. For example, in court interpreting, candidates might be required to do a sight translation of an authentic legal document typical of the type court interpreters regularly encounter in a court of law. Mock testimony might be given which the candidate would have to interpret in consecutive mode in the same way an interpreter would do so in a real courtroom.

In order to design a performance-based instrument, test developers must have a clear and complete understanding of the skills professionals in a particular field are expected to master based on an equally clear and complete understanding of the profession itself. This is why it is extremely important that the test-writing team be made up of not only experienced and expert exam developers and linguists, but also of practicing professionals and others who play an important role in a profession or
are directly affected by it. For example, in order to design an adequate certification tool for court interpreters, judges, attorneys and perhaps representatives of the police department as well as linguists and test writers should be involved in the design and development process. Once the team of experts is assembled, a thorough needs assessment process must be carried out with input from all facets of the field. During this process, specific function or "performance" criteria are determined and methods for best assessing or measuring a candidate's mastery are described. This is known as domain-referenced measurement, which is described by Sanders and Murray in the following way:

Domain-referenced measurement is a test in which performance on a task is interpreted by referencing a well-defined set of tasks (a domain). This emphasizes the creation of pools of test items, or of generalized item forms, that are presumed to be representative of a universe of all test items for a well-defined content area. (Swezey, page 7)

Once the domain is determined, objectives are set which are also incorporated into the test design. Sanders and Murray call this step in the process "objectives referencing" and describe this type of measurement as when "performance is interpreted by referencing the specific behavioral objective(s) for which a test item [is]
written" (Swezey, p. 7).

Now, domain and objectives refer to the content a test is developed to assess. Once these are determined and built into a test design, decisions must be made as to the way in which a test score will be interpreted. There are two principle approaches to test score interpretation: criterion-referencing and norm-referencing. Criterion-referencing is an absolute measurement technique while norm-referencing is a relative measurement technique. Stated in another way, criterion-referencing is a method by which the score referent is a specific standard and norm-referencing is a method by which the score referent is the distribution of scores. Criterion-referenced information is designed to evaluate mastery of a given skill or acquisition of a corpus of knowledge (performance objectives) while norm-referenced information provides the tester with information about a particular candidate's abilities in relation to other candidates who take the test. Criterion-referencing is considered especially valid for screening and as regards purpose specific exams such as profession-related testing, particularly when training or formal study of a subject or skill area is not required for taking the exam. Criterion-referencing shows that an individual has achieved mastery, even if he has not done or completed training in the field. This type of instrument measures

(...) what an individual knows or can do, compared to what he must be able to know or to do, in order to successfully perform a task. An
individual's performance thus is compared (or referenced) to an external criterion or performance standard. Such standards are derived directly from an analysis of performances known to be necessary to complete a particular task successfully. In criterion-referenced measurement, an individual's performance is interpreted against an absolute standard, or criterion, without regard to the distribution of scores achieved by other individuals. (Swezey, p. 5)

While there are clear distinctions between criterion-based and norm-based referencing, in reality the two methods are interrelated and somewhat dependant on each other. Norm referencing uses criterion referencing to determine cut-off points, and criterion referencing needs norm referencing to establish what a learner is capable of, what he can do in a given amount of time, and so on.

So, in summary, a criterion-referenced test bases scores on absolute rather than relative standards, measures mastery, and is based on pre-determined, well-defined performance objectives that are related to the tasks that must actually be performed. Thus this type of test is the most appropriate for profession-specific skills assessment such as that needed for the field of court interpreting.
B. Test elaboration

Once the issues discussed above have been clarified, test preparation can begin. It is important to remember that, as stated above, the make-up of the test-writing team is of extreme importance. But once an expert group of writers and related professionals is assembled, the steps involved in CR test development generally have to do with domain specification, item development, item review for validity and reliability and final test development. While quite detailed, the following 12-point process for the development and validation of a criterion referenced test, developed by Ronald Hambleton, gives a clear idea of the specific steps involved from initiation to final completion of the test elaboration process:

1. Objectives or domain specifications must be prepared or selected before the test development process can begin.

2. Test specifications are needed to clarify the test's purposes, desirable test item formats, number of test items, instructions to item writers, etc.

3. Test items are written to measure the objectives included in a test (or tests, if parallel forms are required).
4. Initial editing of test items is completed by the individuals writing them.

5. A systematic assessment of items prepared in steps 2 and 3 is conducted to determine their match to the objectives they were written to measure and to determine their "representativeness."

6. Based on the data from step 5, additional item editing is done. Also, test items are discarded that do not at least adequately measure the objectives they were written to measure.

7. The test(s) is assembled.

8. A method for setting standards to interpret examinee performance is selected and implemented.

9. The test(s) is administered.

10. Data addressing reliability, validity, and norms are collected and analyzed.
11. A user's manual and technical manual are prepared.

12. A final step is included to reinforce the point that it is necessary, in an on-going way, to be compiling technical data on the test items and tests as they are used in different situations with different examinee populations. (Hambleton cited in Berk, pp. 81-2)

The first several steps in this process have to do with determining the domain and writing test items. Good test items should be able to discriminate between those who have mastered a skill as required by the objectives from those who have not, should not confuse examiners and should cover the necessary content domain (Swezey, p. 97). The actual format of the items must be decided and a single or combined approach can be used. For example, simulated performances are appropriate for profession-specific, performance-based exams, but they may be used in conjunction with other formats such as objective tests for the evaluation of certain skills or certain types of content domain. Many considerations must be taken into account when deciding on format, including not only the most appropriate way to measure a specific skill or corpus of knowledge, but also time constraints, equipment and space available, the number of candidates for a particular exam, cost effectiveness, the number of examiners available, and so on.

Sweezy identifies three categories of “considerations”, or what he calls
“components” of the objectives that have been identified as elements to be measured by the criterion-referenced test. These components are:

1) **Performance** - what an objective requires the examinee to know and/or to do

2) **Conditions** - the situations under which an examinee’s performance is evaluated

3) **Standards** - the level of performance required in order to demonstrate satisfactory achievement of an objective (p. 16)

Another issue involved at this stage is how to establish the number of items to include in an exam. The rule of thumb is that enough items must be included to ensure that all standards stipulated have been met, but that test items should not be too numerous and should not test extremely rare performances under difficult conditions. It is important for motivational and fatigue factors to be taken into account. For example, in the case of interpreting, using a text at a very high rate of speed of delivery or one which is unusually dense linguistically might not be representative of the domain and skills to be tested. Candidates must be given the opportunity to actually show what they know and what skills they have mastered, and inadequate testing conditions or inappropriate items prevent this objective from being met. Therefore, the next step in this process is to do a careful item analysis prior to
administration, although this is an on-going process throughout writing, field testing and revision of the instrument. Reynolds et al. remind us that

(...) an integral part of [test] construction is the close examination of individual items that constitute the test (...) to identify malfunctioning or misfitting items so that they can be eliminated or revised. (Reynolds et al., p. 1)

Item adequacy is a basic requirement of test item elaboration. Sweezy lists several important points to keep in mind as regards item adequacy which merit mentioning:

1) Test items should be clear and unambiguous so that there is not confusion or uncertainty as to the correct interpretation of the item by either the administrator of the exam or the examinees.

2) Test items should be designed in such a way as to facilitate easy administration to the extent this is possible without in any way compromising the objective of the item. The more difficult it is to administer a particular item on a performance exam, the greater the possibility of measurement error and of a loss in item validity.
3) The level of item fidelity must be appropriate for the objectives that have been established. Fidelity has to do with the degree of realism achieved by the evaluation tool and can be applied to specific items within a tool.

4) A revision process must be incorporated to ensure standardization in item design and test administration. It is also important to revise the instructions prepared for exam administration. (pp. 88-9)

The testing of test items can be carried out in a variety of ways, and often more than one method is used concurrently. A rather obvious way of testing test items is to administer the exam to known experts in a field and at the same time to those known to be novices. An analysis of each groups' performance on specific test items would provide some basis on which to evaluate if a test item is actually meeting the goal stated above of discriminating between those who have mastered a skill or achieved a level of proficiency and those who have not. Similar to this approach would be the submission of test items to test evaluation and subject matter experts for their objective comments as to form and content before administering the exam to the pilot group. At later stages in the process, such as during the pilot testing period and certainly during the post-administration process once the exam has been administered.
to large numbers of real candidates, the more empirical, statistical methods of item
response analysis can be used. Statistical analysis can also be used for overall test
validation and rater validation and therefore, given the complexity and training needed
to do accurate statistical analyses, a statistician is an excellent addition to any test-
development team.

In addition to specific item analysis, the testing instrument itself must be
evaluated for validity and reliability, the two cornerstones of the usefulness of a test.
Reliability refers to the consistency of test results and validity to the instruments'
ability to truly measure what it is intended to measure.

As regards reliability, three correlation methods and an internal consistency
method are frequently used for testing the consistency of test results. The correlation
methods most commonly used are parallel forms, test/retest, and split-half approaches
and internal consistency methods.

The first correlation method (parallel forms or versions) is based on preparing
two or more versions of the same test and administering the exam to groups of
candidates. The more agreement there is as regards the results of the tests, the more
reliable the test is considered to be30.

30 The problem with this method lies in devising two or more truly parallel versions of a test. In
language testing, developing items that can be considered to test exactly the same skill or to be
equivalent is quite difficult. Parallel questions or equivalents may be possible to achieve in very
basic language skills questions (When did you last visit Madrid? vs. When did you last visit
Barcelona?) but the more complex the information or skill being tested is, the more difficult it
is to achieve true parity.
The next method used to test reliability is the text/retest method. With this method, the same test is administered twice to a group of subjects with the assumption that subjects will do better on the exam the second time around given that they are familiar with the exam after the first testing session. The assumption is that if all subjects do equally better in the second round, the test is reliable.

The third technique that has been used is the split-half technique which is a system by which one exam is given as though it were really two versions. The exam is split in half, the two halves are correlated and then the reliability that is found for one half should be able to predict reliability for the whole exam.

The final method used is based on the concept of "rational equivalence" and has to do with internal consistency. This system is based on the number of items and standard deviation and is basically an averaging out of all possible split halves. 31

Testing reliability is not easy to do a priori. Continued evaluation of test results over several administrations should provide material for on-going reliability studies. Nevertheless, care must be taken during the elaboration process to ensure the reliability of an instrument as best as possible.

The other issue involved in testing the test instrument is the issue of validity. Validity, as was stated above, has to do with evaluating whether a test truly measures what it is meant to measure. However, there are several types of validity, each one

31 With this statistical method, reliability can be increased and improved by extending the length of a test, a fact which weakens this method somewhat.
representing one aspect of the overall testing process. All must be evaluated separately in order to achieve a sense of overall validity of a test. The five basic types of validity are face validity, content validity, construct validity, predictive validity and concurrent validity.

The concept of face validity has to do with how the test is viewed by the candidates themselves and by other members of society at large who are interested in the exam as a measurement tool. Testing instruments should be perceived as an adequate and appropriate means of assessing the skills and knowledge being tested. Of course not all members of society at large are qualified to express an opinion or make a value judgement on the validity of an exam, and some would argue that face validity is perhaps the most expendable of the five validities (Davies, p. 23), but given that posts such as court interpreters or civil servant positions directly affect the public, general acceptance of the testing procedure is highly desirable.

Content validity has to do with how well the items or tasks in the test match what the test as a whole is supposed to assess. Often experts in the field are asked for an opinion about how well this goal is accomplished and they compare the exam items to the stated goals and objectives of the test. These individuals have the education and practical experience to look at an instrument and evaluate how well the instrument represents the corpus of knowledge or set of skills involved.

Content validity overlaps somewhat with construct validity since construct validity has to do with how well an exam reflects the theoretical underpinnings that
form its foundation. Construct validity was once considered to be strictly hypothesis testing, but research in the last decade has broadened the base of this concept to include both construct representation -- defined as the theoretical constructs that explain responses to items -- and nomothetic representation -- regarding the utility of the test for measuring individual differences (Kunnan 1994, p. 226).

Likewise, predictive and concurrent validity are also closely related. Concurrent validity has to do with how well candidates' scores compare with their scores on other tests which has already been independently validated. This comparison establishes a correlation coefficient which shows to what extent the tests are measuring the same thing. Concurrent validity also depends to some extent on test format. One would logically not expect oral test scores to correlate well with a multiple choice exam even though some of the content domains were the same. In addition to this, correlation validity depends to a great extent on the size and variety of the subject groups taking the exams being compared and on test-takers, markers and administrators' attitudes to the tests themselves.

Predictive validity, as the name states, has to do with how well a particular evaluation tool can predict the success of test takers in the future. In other words, test scores would be compared at some point in the future with a test-taker's actual

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performance on some important task. Thus, in court interpreting for example, how well interpreters who have taken and passed a certification exam actually perform in a real courtroom situation would be measured against their performance on the test to determine the test's predictive value. This is quite complicated to do as measurement of actual performance in a scientific and empirical way is even more difficult than trying to control all of the variables present in a performance-based test.

One final issue that should not be forgotten in test instrument design and development is the elaboration of adequate instructions. Clear and concise instructions for test administrators to follow in giving the exam and for examinees to follow in taking the exam are essential. If a test administrator appears to be confused about the procedures to follow in an exam, that sense of confusion often seems to be transmitted to the examinees. In a performance-based exam, conditions for the performance should be uniform and clearly specified and understood by all of those participating in the administration of the exam. Candidates should not encounter significant variance in the procedures used when discussing their test experience with other examinees. This greatly affects the face validity of the exam. Providing written instructions to the administrators or testers that can be read verbatim to the candidates is one good option. If given the circumstances of the exam, a more relaxed approach is advisable, standards should be clearly stated and specific behaviors to avoid stipulated ahead of time. For example, in an oral interview or oral performance of some kind, if standard written instructions would only serve to make
an examinee more nervous, certain guidelines might be given as to acceptable
techniques for putting a candidate at ease. Likewise, instructions might be given to
avoid certain types of utterances such as “Good” or “That’s right” in response to an
examinee’s performance that might be misconstrued by the candidate as a comment
on the quality of his or her exam as opposed to simply a reference to the candidate’s
ability to comply with the format of the exam.

As regards instructions, it is generally recommended that the purpose of the
exam or test be clearly stated, that test conditions be described carefully, that any time
limits be specified at the outset of the exam and repeated at the beginning of any
timed section of the exam, and that standards be set and made known to candidates
prior to their sitting for the exam. These standards might include information such
as whether or not missed items on an objective test would be subtracted from the
number of items answered correctly or what degree of accuracy in a response is
required for credit to be given. Even general standards such as stating the fact that
clarity and neatness will be considered along with content if that is the case, are
helpful to the examinee. Instructions as to how to mark an answer or how to process
a certain type of test item must be included although this may seem quite obvious.

In the case of court interpreter’s exams, given that it is likely that candidates
from many nations and cultures will be sitting for the exam, each with different
experiences and backgrounds in exam taking, no assumptions can be made about the
general understanding of how to tackle a specific type of exam format. Including an
example of text items in the instructions of the exam is a commonly used technique nowadays, and some testing experts even advocate including an example of an acceptable answer and the reasoning behind the mark or score given a certain response.

Finally, general test regulations should not be overlooked. This category might include basic items such as what materials can be used by the examinees, what to do if an examinee needs assistance (“raise your hand” or “approach the desk”) or any other issue that would apply to all candidates.

C. Scoring keys and protocols

Although it may seem paradoxical, an integral part of the preparatory stage of an exam is deciding how the exam will be marked and by whom. The marking

33 Scott, Stansfield and Kenyon, Examining validity in a performance test: the listening summary translation exam (LSTE) - Spanish version.” Language Testing, v. 13, no.1, 1996  In the test given to candidates applying for positions as tape transcribers for the FBI (a position which requires them to listen to taped conversations in Spanish and then write a written summary of those conversations in English), the test booklet includes instructions for carrying out the task, space for taking notes and writing a summary of an example conversation during the testing session itself just prior to taking the real exam, and then a sample response with observations and explanations. The authors of the exam thereby provide some very limited “training” on how to write a summary in accordance with FBI guidelines during the exam session itself. These authors say that this contributes to the “interactional authenticity” of an exam, which they describe as “a function of the extent and type of involvement of task taker’s language ability in accomplishing a test task.” See this article for further discussion of this concept.
system is a vital part of an oral test. It must be integrated into the whole process of test design from the beginning; it is too important to be left to the end, as an afterthought (Underhill, p. 88).

It makes little sense to invest in a serious effort to formulate valid and reliable test items and pilot test them on selected subjects, and then leave the marking of the items up to individual raters using idiosyncratic evaluation criteria, even if the raters are recognized experts in a specific professional field, in languages or in testing.

The protocol or key for evaluating responses in an exam should be an integral part of the design and development process. It is just as important as the actual test in determining what has been tested. The design of the marking system must reflect the aims of the test, and this is why this task must be included in the very early stages of test elaboration. Furthermore, profession-related exams or exams for special purposes often require special marking categories which should be developed by the markers themselves or in consultation with them. At the very least, all raters should have a thorough understanding of the marking categories, the breadth of acceptable responses and the system used to assign points, to weight certain items or to classify responses. A detailed guide should be prepared for raters which includes specific guidelines on how each question or task should be marked. Underhill sets three main goals for all comprehensive marking keys or protocols:

1. Anticipate problems that the marker is likely to face, and suggest
how to cope with them.

2. Maintain the aims of the test by directing the marker's attention to the language areas that are most important, and by giving general guidelines for dealing with unusual responses.

3. Describe the purpose of each question/task. The marking key should be written by the person or people who set the tasks. The more clearly the marker understands the test designer's intention, the better she will be able to deal with unexpected answers. (p.95)

Underhill also emphasizes that marking keys, like test items, should be pre-tested or piloted and that when enough experience has been gained using the key, it should be discussed thoroughly and revised if necessary. Also, any changes made in the test procedure itself must, of course, be reflected by corresponding changes in the key. In performance-based language exams, especially those designed for a specific profession or purpose, additional elements come into play. Performance-based exams require marking criteria that measure the speaker, the context and the purpose. In most cases, performance-based language exams are oral exams (although some types of written language production can be considered to be based on performance as well) and the evaluation of spoken language as compared to written language presents
some special problems. In performance-based language exams in general, and in profession-specific language exams in particular, there are two general categories of assessment criteria. The first is related to linguistic skills and measures elements such as grammatical correctness, fluency, pronunciation, lexical density, content and comprehension. The second general category has to do with task fulfillment and measures the quality of candidates' communication skills for a particular task.

As regards the first -- the measurement of strictly language-based skills -- some modernization of the evaluation criteria for oral exams has taken place in the last several years. Underhill describes some of the newer descriptors for evaluating oral language production which he labels "performance criteria". In chapter 4 of his book *Testing Spoken Language: A handbook of oral testing techniques*, he lists some of these newer criteria:

- Size (how long are the utterances produced?)
- Complexity (how much does the speaker attempt complex language)
- Speed (how fast does he speak?)
- Flexibility (can the speaker adapt quickly to changes in the topic or task?)
- Accuracy (is it correct English?)
- Appropriacy (is the style or register appropriate?)
- Independence (does the speaker rely on a question or stimulus, or can he initiate speech on his own?)
- Repetition (how often does the question or stimulus have to be repeated?)
- Hesitation (how much does the speaker hesitate before and while speaking?) (p. 96)

Underhill explains that some of these criteria can be measured quite objectively (speed and size for example), while others are more difficult to judge (appropriacy and flexibility), and also points out that a live assessor of an oral performance cannot really be expected to keep track of more than three or four of these criteria at a time.

In this category other language related elements should be evaluated including communicative strategies or competence evidenced by hesitation, self-correction, paraphrasing, code-switching, etc. and discourse features such as lexical density, register, and prosodic features.

As regards the second category, which has to do with task fulfillment, raters or evaluators will try to assess how well a candidate meets certain criteria related to the specific purpose of the exam. A different type of evaluation question or category must be developed to measure this aspect. For example, in a study done on a language exam designed for the tourism industry in Australia in which the language
involved was Japanese and the special purpose was adequately handling situations related to working as a tour guide, raters were given specific questions to answer to help them evaluate task fulfillment. Candidates were given simulated situations in which they had to give advice, reassure clients, give information and so on. The rater played the role of the client. Each task had a specific task-related question the rater was to consider in marking. So when the simulation asked for the candidate to give advice, questions such as "Is the advice helpful?", "Does the guide help me to decide?", "Did the guide ensure that I had understood?" were the guidelines by which the raters were to give marks in the task fulfillment category (Brown 1995, p. 5).

Unfortunately, little research has been done on the trialing and refinement of simulation tasks for oral assessment. Kenyon and Stansfield (1991) remind us that it "is not enough to design oral tasks; the test writer should also ascertain their appropriateness in terms of whether they give candidates a chance to demonstrate their ability and the evaluators to assess performances" (p. 20, cited in Brown 1993). The issue of developing an instrument that allows candidates to really show what they can do is one that should be ever-present during the elaboration process of a performance-based, task-simulation type exam.

Also in relation to the development of task-simulation exams such as the one that would be appropriate for a court interpreter's certification exam, the key is to try to design tasks for the simulation that have the same critical features as the tasks in that domain (Bachman, p. 85). This has to do with what Scott, Stansfield and Kenyon
call “situational authenticity” (p. 36). In preparing tapes for an FBI exam, actors were hired to imitate real speech on topics that frequently came up on FBI tapes. The actors were encouraged to use slang, regionalisms, vulgarities if appropriate to a situation and not to worry about hesitations, false starts, repetitions, interruptions, overlapping of speakers, misunderstandings or requests for clarifications. Actors were encouraged to give full range to the emotions that they felt were appropriate for the situations including anger, frustration, fear or confusion. These were the “critical features” that they had identified from listening to many hours of tapes and the ones they therefore wanted to maintain in their prepared test simulation materials in order to achieve the “situational authenticity” they were seeking.

The marking system adopted for a specific exam can vary according to the philosophy of the test developers. For example, a “positive” or “negative” approach can be used; that is an original numerical benchmark is set to which points are either added for responses considered acceptable or subtracted for responses considered unacceptable. This is known as an incremental mark system. It is also wise to remember that it is quite difficult at times to rank and quantify many types of language performance. For example, in trying to evaluate grammatical structures, one of the difficulties is simply identifying where the boundaries of that structure are as unlike words, a constituent boundary in structure is not always obvious. But even in evaluating lexical items, especially as regards language tests for translating or interpreting, ranking a word as difficult or easy to translate is a very challenging task.
Finally, we should mention that related to the concept of ranking of tasks and abilities on a test, “weighting” is a commonly used marking technique that allows for certain skill areas or parts of an exam to be given more consideration than others. When a straight one point per item approach is used, the assumption is made that all marking categories and all test items are equally important. Test developers would agree that this is not the case in most testing situations. However, it is quite difficult for a rater to keep relative score importance in mind as he is monitoring a live performance. As Underhill points out, it is

(...) mentally easier for the assessor to mark all the categories out of the same total initially, and then multiply up the marks to produce a weighted score, than it is to mark one category out of ten, a second out of twenty, and a third out of thirty, at the same time. (p. 98)

He goes on to affirm that “it is certainly difficult in a live assessment to maintain a strict sense of the relative values of marks out of different totals” (p. 98). Therefore, a predetermined weighting system allows for a relatively simple mathematical equation to be applied to test scores results in order to obtain the desired scale of importance for the different sections or items on the exam. It is important to point out that this issue is not related to particular examinee performance. It is not the performance of a candidate that is weighted, but rather the
item or section of the exam itself. As for variance in the performance on an oral exam of a particular examinee, a rater must try to look for patterns, not for exceptions:

Occasional flashes of brilliance which are not sustained should be ignored, as should a single serious error; only patterns of strength and weakness should be compared against the rating scale to produce an assessment. (Underhill, pp. 98–9)

D. Raters and reliability

As stated above, when an exam includes an oral proficiency component, special efforts must be made to clearly define marking categories and rating standards as the marking of spoken language entails certain difficulties that the marking of written language or more traditional grammar and vocabulary, objective type tests do not. When considering spoken language, a decision must be made as to whether to use direct or indirect testing methods. In other words, a decision must be made as to whether to evaluate spoken language exclusively as it is produced, or to tape spoken language for subsequent evaluation. Some of the dangers of "impressionistic assessment", or immediate grade assignment upon completion of a direct oral exam, is that the rater's impression of a performance immediately afterward would probably
be based on the parts of the performance the rater remembered as opposed to the whole performance. It is also possible that certain idiosyncracies of a candidate might also take on undue and overweighted importance. A third option is to combine the two, with an evaluator present at the exam session giving marks on task fulfillment, for example, and a tape of the interview or exam session available for further evaluation of elements that were more specifically linguistic (word order, tenses, verb structure, pronoun usage, lexical accuracy, etc.) Taped oral exams, especially videotaped exam sessions, also allow for the evaluation of communicative strategies such as self-correction and paraphrasing, and give the rater a better sense of the frequency of extra-linguistic elements such as hesitations, hedges and false starts. Finally, discourse features such as lexical density, register, and prosodic features can also be evaluated. As we have seen in other sections of this thesis, these discourse and extra-linguistic elements are very important in the court interpreter's performance as a faulty rendering of any of the elements that fall into these categories can affect the judge's or the jury's perception of the credibility of a witness.

Using more than one rater for each exam is a highly recommended practice for oral exams. Having two or more raters evaluate oral exams contributes significantly to offsetting rater subjectivity although some research has shown that there is a "numbers paradox" (Underhill, pp. 89-90) which shows that at some point the more assessors involved in a testing program, the more difficult it is to ensure inter-rater reliability. Nevertheless, having two raters is commonly considered
adequate with a third called in when there is substantial discrepancy between the two principals.

The issue of inter-rater reliability, and by the same token intra-rater reliability, is one that plagues all test designers and administrators. High inter-rater reliability would mean all raters give the same results or marks for a specific performance. High intra-rater reliability would mean that the same rater would rate different performances with the same characteristics in the same way or would be able to mark the same performance the same way on different occasions.

E. Test administration

The actual administration of profession-specific exams, especially those that include a significant performance component, presents a series of difficulties that other types of paper-based, objective exams do not. Serious thought must be given to the logistics of exam administration, starting with costs and personnel as performance based exams usually require several staff persons just to give the exam. In a court interpreter’s exam such as the one given in Canada, for example, a mock trial is included as one of the exercises. This entails having at least two individuals available in each exam session -- one to take the role of the lawyer and the other to take the role of the witness. Any additional judicial participants would, of course,
increase the number of staff required and, consequently, the cost of administering the exam. Add to this the fact that two raters are usually present at performance-based, oral exams and we find that for each session, at least four individuals are involved. Furthermore, this type of exam is based on individual performance and therefore, unlike group exams where fewer administrators are needed because many candidates can be tested at the same time, the process is quite time consuming as a whole team of test givers is needed for each candidate throughout the entire exam session.

Attention must be paid to other elements such as site characteristics and selection, and the preparation of exam materials. Decisions must be made as to how many sites should be provided in accordance with the geographical scope of the exam. Issues that influence this decision include how far a candidate is expected to travel and what facilities are available at different sites. Also, qualified testing staff must be available at these sites or sent there specifically for the exam, with the logistical and cost issues the latter implies. Likewise, if the test requires special equipment or materials of any sort, such as audio- or video-taped materials and the equipment necessary to use them, advanced preparation of the special materials must be arranged and the availability of equipment at each site for the correct use of the material prepared must be verified.

"Advertising" or methods for getting the word out about the exam and registration procedures must also be established, and the infrastructure for registration, including the handling of fee payment, must be put into place. The
handling of monies always adds an element of concern to test administration, especially if monies are collected on site or through regional offices as opposed to a centralized accounting system. Finally, contingency plans and back-up systems for unexpected or unforeseen circumstances must be developed and made available to site administrators.

Each of these areas merits careful consideration because any exam, even the most carefully and conscientiously elaborated one, is only valid and useful if it is properly and successfully administered.
Chapter Six. CURRENT PRACTICES IN SPAIN

A. General considerations

The court system in any country is a basic institution whose purpose is to provide a way for the citizens of that country to resolve disputes among themselves and with others from outside their borders in an equitable and peaceful manner. Courts are charged with deciding what really happened when there are two or more versions of a certain event or circumstance. Courts also have the responsibility of deciding what measures will be taken to rectify any wrong that may have been done and to determine punishment, if appropriate, for the perpetrators of the wrong. Entrusting our courts systems with this responsibility creates a sense of security and confidence among people that they will have a fair forum in which to present their views and be heard by an impartial person or panel.

There are three types of legal systems recognized in comparative law. They are civil law (also called Romano-Germanic law), common law (also called Anglo-American law), and socialist law (González et al., p.143). These distinctions are important because the type of legal system that exists and the procedures used in each system for hearing cases, dictates to a certain extent what role the interpreter plays.
Civil law systems are characterized by the fact that enacted laws in the form of legal codes form the primary source used by judges to decide cases. Custom is also considered a primary source but one with relatively less weight than enacted law. Authorities can be called but the information they provide is considered a secondary source of law and is not "binding, necessary or sufficient as a basis for a judicial decision" (González et al., p. 146). Judgments handed down by a judge are only applicable to one specific case and do not create binding precedent for future cases or have specific implications beyond that case. In common law systems, precedent is extremely important and case law, in other words, the rulings made in previous cases dealing with similar legal issues, is a principal source of law for deciding subsequent cases. Also, a legal decision may have effect on the general population or some segment of it, in addition to being binding on the parties involved in a specific case.

This is not to say that either system is exclusive of the procedures or practices of the other. Prior decisions and rulings are studied and taken into account in civil law countries, and the letter of the law is extremely important in common law.
countries. González and her colleagues state that "both the civil and common law systems are beginning to resemble each other and have interesting interrelationships in the sources and construction of basic law" (p. 146).

Of most interest to the discussion of court interpreting are the procedural implications of each system. In civil law systems, such as the Spanish one, the written record including instruction and decisions at all levels of the court system, prevail over oral testimony, while in American courts, an example of a common law system, just the opposite is true. Oral testimony is taken down verbatim and forms the official record for the case which is used as the basis of appeals to higher courts. This affects the work an interpreter is asked to do in each system.

B. The Spanish judicial system

The Spanish judiciary is a complex system of courts, based on both regional and functional divisions. The highest court of the land is the Constitutional Court which was created by Title IX of the Spanish Constitution of 1978. It is an independent organ which does not form part of the judicial power of the state, but rather is only subject to the constitution itself and to the law that regulates it.

\[\text{Ley Orgánica del Tribunal Constitucional 2/1979, October 3, 1979.}\]

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The Constitutional Court is charged with deciding cases which include a question of constitutionality, and its rulings are final and binding.

The rest of the Spanish judicial system is established by art. 26 of the *Ley Orgánica del Poder Judicial* 1/1985 (July 1) which provides for the following hierarchy for the judicial system:

- **Juzgados de Paz** (Justices of the Peace)
- **Juzgados de Primera Instancia e Instrucción**
  (Courts of First Instance and Instruction)
- **Audiencias Provinciales** (Provincial Courts)
- **Tribunales Superiores de Justicia** (Superior Courts)
- **Audiencia Nacional** (National Court)
- **Tribunal Supremo** (Supreme Court)

The Supreme Court is the highest court of the land for cases that do not involve questions of constitutionality. There are five divisions at this level of the judicial system, each with a specific area of law to deal with (Civil, Criminal,

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36 Translations are mine and are literal. The denominations in English are in no way meant to imply any equivalency in the functions or purview of any of these courts when the translation of a Spanish court coincides with the actual name of a court in the British or American judicial system.
Contentious-Administrative, Labor, Military). At the *Audiencia Nacional* level, there are three divisions (Criminal, Contentious-Administrative and Labor). The *Tribunales Superiores de Justicia* function at the regional level (*Comunidades Autónomas*) and have civil, criminal, contentious-administrative and labor divisions.

Provincial courts hear appeals of cases that arise in trial courts and cases which carry possible sentences of more than 6 years and a day. Courts of First Instance are trial courts which hear cases with possible sentences up to the limit mentioned above and appeals of rulings issued by Justices of the Peace. Courts of Instruction hear *habeas corpus* cases and do the preliminary investigation\(^\text{38}\) of cases which will be heard in national courts. And finally, Justices of the Peace are found in localities where there is no Court of First Instance.

C. Procedures and the role of the court interpreter

Within the court system itself, different procedures are used at different stages of a court case and to some extent for different types of cases. Depositions and preliminary testimony is often taken outside of the courtroom in more informal settings such as interrogation or conference rooms in jails or in a secretary's or clerk's

\(^{38}\) These functions of this court are the responsibility of the district attorney’s office and of grand juries in the United States.
workspace in the courthouse. Even final testimony in some civil cases is taken outside of the courtroom itself.

It is worthwhile to distinguish between civil and criminal court cases as regards procedures, especially in relation to interpreter services. In civil cases, interpreting services, when necessary, are usually contracted by a party to the suit or by one of the attorneys. The court does not usually assign a court-paid interpreter for civil cases. An interpreter might then be present at client-attorney consultations, but on a strictly private basis. In a civil proceeding, much of the preliminary legal work is done on the written level, so if documents written in a language other than Spanish are presented in a case, a translation must be prepared. According to Spanish custom, written documents presented as evidence which are to be entered onto the record must be translated by a certified translator, known in Spain as an "intérprete jurado", although courts are not required to use a certified interpreter for oral hearings.

In civil cases in the Spanish system, oral hearings are quite structured. Questions for witnesses testifying in a legal case must be presented to the judge prior to the hearing for approval. At this point the judge may disqualify any question he feels does not meet proper legal and procedural criteria. In the hearing itself, it is usually the judge who poses the questions to the witness, not the attorneys involved in the case. Most questions are formulated in such a way that the individual testifying has to do no more than answer yes or no, although technically speaking there is no limit or restriction on the type of answer which can be given.
Implications of this system for the interpreter are quite clear. First of all, the question itself is the part of the testimony or examination that is most charged with content and linguistic complexity. Furthermore, due to the fact that questions are formulated and presented to the judge in written form prior to the oral hearing, their structure is more representative of written language than of spontaneous oral discourse, especially the type we might expect in a question and answer situation. According to the classification of speech varieties presented in the section on characteristics of legal language, this type of questioning would probably fall into O'Barr's and Joos' formal category.

For the interpreter, the language mediation task then becomes one of either excellent recall of often dense and formally structured language spoken by the judge to the witness, or a task in sight translation if the judge should make a copy of the questions available to the interpreter prior to or during the proceeding. Providing the interpreter with the questions prior to the hearing makes his task somewhat easier to perform and aids in ensuring that good quality language mediation is taking place.

Another type of oral hearing an interpreter is often called to assist with is the giving of depositions or preliminary testimony which sets the basis for a case. This type of proceeding occurs in both civil and criminal cases. In these situations, the accused in a criminal case, or the defendant in a civil case, is called in to answer charges. This individual is usually asked to respond in a more open-ended manner to a series of questions or to simply state his version of the circumstances or events that
form the grounds for the court case. This open-ended testimony is usually given before a judge, outside of the courtroom, with a court clerk or secretary present. The judge listens to the testimony given and then dictates a summary of that testimony on the spot to the clerk or secretary who types the summary as it is being dictated. The summarized, written version of the testimony given is then read back to the individual concerned who is asked to sign the written document to indicate his conformity with the contents thereof. If the individual feels that the written version does not accurately reflect his testimony, he may ask for a rectification to be made before signing the document.

In these situations, an interpreter uses two types of interpreting. Consecutive interpreting is used during questioning and then sight translation of the written document is done for the benefit of the person testifying. The signed written document becomes part of the record of the case and is used at subsequent stages of the proceedings as a legal and binding document. Therefore, an accurate rendition of these summarized versions of testimony is of utmost importance.

This type of procedure occurs in both civil and criminal cases. It is quite frequently used for minor cases in courthouses where the workload is quite high, the docket is full, and not all proceedings can be scheduled into one of the courtrooms.

For example, in the Juzgados Centrales (Central Courts) in Madrid where there are 180 courtrooms and a high number of cases are heard every day, these kinds of proceedings are often carried out in conference rooms in the basement where the calabozos (lockup areas for individuals awaiting trials or hearings) are located.
In criminal cases that do take place in a courtroom, examination and cross-examination of defendants and witnesses is somewhat more spontaneous, although lines of questioning and specific questions may be fixed in advance. Any of the judges hearing a case and both attorneys have an opportunity to question witnesses.

In a criminal case, the witness usually sits or stands in front of the judge or judges hearing the case and the attorneys are seated on either side. The configuration of the courtroom is a modified U-shape, with the judges seated along the longer middle section of the U and the attorneys on the shorter lateral sides. Also seated in the same area as the judge are the clerk and stenographer. Testimony is not taken down verbatim, but rather in the summary mode explained above. The clerk or secretary of the court dictates a summarized and paraphrased version of the questions being posed and the answers being given which the stenographer types on an ongoing basis throughout the proceeding. The judge takes notes as testimony is given, but does not intervene in the preparation of the version being recorded by the stenographer. The judge or judges usually make their rulings based on their own recall and on the notes they have taken without referring to those taken by the clerk.

The number of judges hearing a case in the Spanish system varies from one to three depending on the court and the nature of the case. Although the jury system is contemplated in the 1978 Spanish Constitution, it is only now being very slowly phased into the overall system.

The secretario (in some ways equivalent to the clerk of the court in the American system) is a highly qualified professional, usually only one step below a judge. Candidates must pass a very demanding exam to obtain this position of great responsibility in the Spanish judicial system.
and stenographer. However, the written version of the testimony as taken by the clerk and stenographer becomes the official record of the case, along with the ruling and its reasoning as prepared by the judge(s). This system makes it possible for there to be discrepancies between what the judge has in his notes and what becomes the court record. Also, in this type of proceeding, the written version of testimony is not read back to the witnesses to ascertain accuracy or obtain conformity.

Often times when an interpreter is needed for a proceeding, the judge is not fully aware of the challenges involved or cognizant of ways in which to facilitate the interpreter's role. Sometimes no indication is even made of where the interpreter should situate himself to best aid in achieving communication between the court and a witness. Interpreters are often expected to stand next to the witness, who is seated, during long and fatiguing examination sessions. Other times, both the witness and the interpreter are expected to stand. The constant undercurrent of noise produced by the clerk whispering or dictating in a low voice to the stenographer and the typewriter going constantly constitutes a serious impediment to good interpreting as noise is a distraction and the concentration needed to ignore it adds to the already long list of cognitive functions an interpreter is carrying out simultaneously as part of the oral interpreting process.

In addition to these problems, more often than not, an interpreter has little or no information about a case prior to entering the courtroom. This gives him no opportunity to familiarize himself with even the most basic information related to the
case such as names, dates, charges or other specifics of this nature, much less specific content items that might present a challenge and that could be prepared ahead of time if the interpreter had some access to case records or any kind of information about the case at hand.

Another concern is that witnesses many times have no experience whatsoever in a court of law and do not know what to expect. When interpreters are involved, it is usually because an individual from another country and therefore another legal culture is somehow party to the proceeding. This individual may not only lack information about how the legal system works in Spain, but may also logically bring false assumptions about the legal system based on practices he is familiar with in his own country. Most people involved in any way in legal proceedings are nervous and anxious about the whole situation. A defendant is obviously under additional stress because of the possible consequences he may have to suffer, while a victim would be understandably upset by having to confront the perpetrator of some sort of wrongdoing and of having to relive unpleasant situations. Even witnesses who may not be directly affected by the outcome of the case, be they eye-witnesses to an alleged crime or expert witnesses brought to shed light on some aspect of the case, often suffer from anxiety. Simply entering a courthouse and having to speak in front of not only the judge and the attorneys - often perceived of as persons meriting great respect -- as well as in front of the public who may be present in the courtroom, can be quite intimidating.
For any individual who comes before the court without sufficient knowledge of the language of the court, the interpreter becomes the key to understanding and the one contact he has among the large number of participants and observers surrounding him. An understandable sense of kinship or unity often springs up between the two. Even veteran interpreters often have trouble distancing themselves and remaining neutral when faced with a distraught and confused defendant or a scared or nervous witness.

It is quite common for witnesses and especially for defendants to rely too heavily upon the interpreter for clarifications of procedures and instructions about how to behave, and even for reassurance and moral support. As was explained in the section on interpreter ethics, the first of these responsibilities falls to other players in the legal system. The attorney or another court official is usually charged with providing information about the legal system and procedural concerns to any defendant or witness who needs clarification and when necessary, this information can be conveyed through the interpreter as a language mediator, but not as the primary source of information. As regards reassurance and moral support, the concept of legal fair play requires an interpreter to remain impartial and professional without intentionally adding in any way to the stress being experienced by the individuals who require his assistance. An interpreter’s role is to provide linguistic, not legal or emotional, assistance.

In the Spanish court system, there seems to be a lack of uniform rules about
interpreter use. It is required by law that interpreters present some kind of identification to the Court at the outset of the hearing and that that information be included in the record. From that point on, interpreters are expected to follow the indications of the judge as regards their participation in the proceedings. Some judges do ask the interpreter to provide an on-going simultaneous interpretation of the entire proceeding for the defendant if he is not proficient in Spanish (party-oriented approach). This is usually effected by the interpreter being seated directly behind or next to the defendant and whispering testimony and other discourse taking place in the courtroom to him. Sometimes a summary approach is used with the interpreter asked to give a summarized version of what a witness says so that the defendant can at least be aware of the most salient points of the testimony offered on his behalf or against him. However, in many courtrooms the judges use only a witness-oriented approach to interpreting services and once the testimony by a non-Spanish speaking witness is made available to the Court through the interpreter, the interpreter is dismissed. It is important to point out that the workload of most staff interpreters in the Spanish judicial system is such that there is often simply not enough time for the interpreter to remain in the courtroom to keep a defendant abreast of what is transpiring because his services are needed in another division of the court system.
D. Providing interpreting services to the courts

In this section a description will be given of the two main mechanisms that exist within the Spanish system for providing and qualifying individuals for work as oral interpreters in the courts. A discussion will be given of the Ministry of Justice civil service exams for staff positions as court interpreters and of the Ministry of Foreign Affairs sworn interpreter exam which is currently the only certification program that exists in the Spanish system.

1. Ministry of Justice staff interpreters

The Ministry of Justice, through its personnel department, is responsible for filling the positions of staff interpreters/translators for the national court system. There are currently approximately 50 staff interpreters in the Spanish court system including permanent staff interpreters and temporary, interim positions. New positions are rarely created, and then only when the courts request additional staff through the Consejo General de Poder Judicial. When a formal request is made by

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41 This number was provided by the head of the Office of Interpretation of the Juzgados Centrales, Mr. Hassan Sahauri. Attempts to obtain an exact number from the Ministry of Justice proved unfruitful.

42 This is a national regulatory agency for the entire judicial system made up of twenty experienced jurists and attorneys appointed by the two chambers of Parliament. The Consejo is presided over by the President of the Tribunal Supremo.
a court, the Consejo carries out a study of the situation and prepares a report of its findings with recommendations for action which it passes along to the Ministry for final decisions\textsuperscript{43}.

When a staff position does becomes vacant or when a new position is created, the personnel department of the Ministry of Justice publishes the vacancy in the Boletín Oficial del Estado\textsuperscript{44} along with the requirements for the post and information about the application procedure and deadlines. Definitions, requirements and other particulars are set out in Titles I and III of Real Decreto 2223/1984 (December 19th). In this decree, the figure of translator/interpreter is defined as follows\textsuperscript{45}:

This is a worker who holds a secondary school degree or its equivalent, who under the auspices of the service to which he is assigned, carries out translating and interpreting functions from foreign or vernacular languages to Spanish and vice-versa.\textsuperscript{46}

\textsuperscript{43} Telephone conversation with the office of the Secretario General Técnico of the Consejo General de Poder Judicial on February 5, 1996.

\textsuperscript{44} The official record of all governmental activities published on a daily basis.

\textsuperscript{45} In this section of the thesis, only the English translations of passages quoted will be provided in the main body of the text. When considered necessary, the original Spanish version will be included in footnotes for purposes of verification and consultation.

\textsuperscript{46} Es el trabajador que con titulación de Bachillerato Unificado Polivalente o equivalente, bajo la dependencia funcional del órgano al que esté adscrito, realiza funciones de traducción en interpretación de un idioma extranjero o lengua vernácula al español o viceversa.
a. **The exam**

Because positions as staff interpreters are contracted civil service positions, a competitive exam is required. The Ministry appoints an examining board called the *tribunal calificador* which is charged with convening to make any and all decisions that are needed to correctly carry out the selection and testing procedure. This includes the elaboration of the exam instrument itself (based on the stipulations of the published announcement for the post) and evaluation criteria and procedures.

The members of the examining board are published in the public announcement of the posts and must meet certain previously established criteria. A president is named who must convene the board within 30 days, but no later than at least ten days before the first part of the exam is given, and a majority of board members must be present at any given session in order for the board to act. The board is charged with resolving any unexpected situations that may arise during the

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47 According to the wording of section 7.3 of the most recent job announcement for a staff interpreter position: “acordar[[ todas las decisiones que le correspondan en orden al correcto desarrollo de las pruebas selectivas.”

48 According to the wording of sections 7.1 and 7.2 of the most recent job announcement for a staff interpreter: 7.1 *El Tribunal Calificador de estas pruebas es el que figura en el Anexo IV de estas bases, constituido de acuerdo con lo previsto en el art. 20.2 del Convenio Colectivo de Personal Laboral de la Administración de Justicia. 7.2 Los miembros del Tribunal deberán abstenerse de intervenir en los supuestos previstos en el artículo 28 de la Ley de Régimen Jurídico de las Administraciones Públicas y del Procedimiento Administrativo Común.*
administration of the exams in accordance with the appropriate law (*Ley de Régimen Jurídico de las Administraciones Públicas y del Procedimiento Administrativo Común*)\(^{49}\).

Expert consultants can be called by the examining board if deemed necessary or desirable. These experts can collaborate with the board on issues related specifically to their area of expertise, but cannot vote or directly participate in the ranking of candidates.\(^{50}\)

Finally, the Tribunal is charged with assuring that blind correction of the exams will take place. In other words, steps are taken to make sure that the exam raters do not know the identity of the examinees whose exercises they are evaluating\(^{51}\). Test results can be challenged by following established legal precepts.

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49 Sections 7.3, 7.4 and 7.5 of the announcement stipulate: 7.3 - *Previa convocatoria del presidente, se constituirá el Tribunal, con asistencia, al menos, de la mayoría de sus miembros* (Art. 27 de la Ley 30/92, del 26 de noviembre.) *Celebrará sus sesión de constitución en el plazo máximo de 30 días a partir de su designación y mínimo de 10 días antes de la realización del 1º ejercicio.* 7.4 - *A partir de su constitución, el Tribunal, para actuar válidamente, requerirá la presencia de la mayoría de sus miembros.* 7.5 - *Durante el desarrollo de las pruebas selectivas, el Tribunal resolverá todas las dudas que pudieran surgir en la aplicación de estas bases, así como lo que se deba hacer en los casos no previstos.*

50 Section 7.6 of the announcement reads: *El tribunal podrá disponer la incorporación a sus trabajos de asesores especialistas en las funciones de las plazas convocadas. Los asesores se limitarán, sin voto, al ejercicio de sus especialidades técnicas, exclusivamente, colaborando con el Tribunal.*

51 Section 7.8 of the announcement states: *El Presidente del Tribunal adoptará las medidas oportunas para garantizar que los ejercicios de la fase de oposición sean corregidos sin que
The format of the exam itself is set out in the public announcement of the posts to be filled. A recent announcement for traductores/intérpretes\textsuperscript{52} stipulated a two-part exam, with the first part being eliminatory. The first section of the exam consisted of the translation of two texts, one from language A to language B, and the second one the other way round. Time allotted for both translations was one hour\textsuperscript{53}. No other stipulations were made, although candidates were not allowed to use dictionaries\textsuperscript{54}.

As mentioned above, this exercise was eliminatory. According to the stipulations of the examining board, a score of 25 out of 50 possible points was needed for a candidate to be able to proceed to the second part of the exam. Raters had a minimum of 48 hours and a maximum of 20 days in which to mark the first exercise as those were the minimum and maximum time limits marked in the announcement between the first and second parts of the exam\textsuperscript{55}.

\begin{flushright}
se conozca la identidad de los aspirantes.
\end{flushright}

\textsuperscript{52} Several vacancies were being filled including positions in the Audiencia Provincial, the Decanato de Primera Instancia e Instrucción, and the Tribunal Superior de Justicia in Cadiz, Ceuta, Zaragoza, Malaga, Pamplona and Marbella.

\textsuperscript{53} Section 5.2 of the announcement reads: Primer ejercicio: Consistirá en una traducción directa e inversa, en un tiempo máximo de una hora.

\textsuperscript{54} Interview with Mohamed Sali Mohamed, January 1996.

\textsuperscript{55} Section 6.1 of the announcement states: Entre la terminación de una de las pruebas de la oposición y el comienzo de la siguiente, deberá transcurrir un plazo mínimo de 48 horas y máximo de 20 días.
Candidates who successfully completed the first exercise were called to sit for the second. This one-hour written exam required candidates to answer a series of general questions about the functioning of the government, the Ministry of Justice and the court system, and the laws and regulations governing their rights as workers. A general outline of topics was included in an annex to the announcement. It is interesting to note that the same list of topics was stipulated for three different posts within the Ministry of Justice: Translator/Interpreter, Stenographer (court recorder), and Judicial Specialist. It is also quite telling that no oral exam of any type was required for these positions, even though a large percentage of the work done by a translator/interpreter in the court system is oral language mediation in courtrooms and at other stages of the legal process such as deposition taking and police questioning. No topics related to the ethics of court interpreting or to the functions of a court interpreter were included in the second part of the exam.

A score of 25 out of a possible 50 points was also required on this portion of the exam in order to pass and be eligible for the final ranking stage of the process. However, before we discuss how the final list of candidates is obtained, it is important to look at the qualifications required of candidates who wish to apply for these posts.

b. Qualifications

Qualifications required to apply for a specific post are an important indication of how the duties and responsibilities of that post are perceived by the administration and, to some degree, by society as a whole. The level of training or formal education required reflects perceptions of the degree of difficulty involved in carrying out the functions of a particular position and the expertise needed to do so successfully. A look at the qualifications for a staff position as a court interpreter in the Spanish legal system is quite revealing in this sense.

First of all, standard requirements such as holding Spanish citizenship, meeting basic worker’s rights criteria, and not being engaged in any type of work at the time of appointment that would be “incompatible” with the position being sought must be met. In addition to these, candidates must be physically and mentally able to carry out the duties and functions of the post, and must be able to state truthfully that they have not been discharged from any other civil service post for disciplinary reasons or

Three percent of the posts are reserved for the handicapped and stipulations for their inclusion in the exam process are included in the job announcement.
barred from filling a civil service post by any type of court order.

As we can see, none of these criteria is directly related to a candidate’s ability to carry out the duties of a court interpreter or legal translator. Rather, they are general criteria that could be applied to any type of civil service position. For example, the first -- holding Spanish citizenship -- is a requirement for all civil service posts. Even legal resident aliens with valid work permits are not at present allowed to compete for or hold civil service positions.

As regards the other criteria mentioned above, only the one referring to the candidate having to possess the physical and mental ability to carry out the tasks and duties of the position even remotely and then only indirectly addresses the issue of the performance capability of a candidate.

There is only one clause in the job announcement for the post of full-time staff interpreter in the courts that refers directly to level of preparation, and it is the final item on the list. This criterion requires applicants to be in possession of a secondary school degree (título de BUP) or its equivalent, or to expect to have that degree in

The announcement reads as follows as regards qualifications: a) tener nacionalidad española, b) tener capacidad para contratar la prestación de su trabajo, conforme a lo establecido en el art. 7 del Estatuto de los Trabajadores, c) tener la capacidad física o psíquica suficiente para el normal desempeño de las tareas o funciones correspondientes, d) no haber sido separado mediante expediente disciplinario del servicio de cualquiera de los administraciones públicas, ni hallarse inhabilitado para el desempeño de las funciones públicas, por sentencia firme.
hand by the application deadline. This degree in Spain is awarded to students who successfully complete three years of secondary level studies, or a total of 11 years of school work including primary and secondary education. No advanced level academic work or specific training of any kind is required to apply for these posts. While the purpose of the exam itself is to ascertain if a candidate has mastered the skills and acquired the knowledge required to successfully comply with the demands of a particular position, the fact that only three years of secondary school study is required indicates the level of general knowledge and all around culture the Ministry of Justice has deemed necessary for this post.

Although no specifications are made as to what the “equivalent” to the BUP degree might be, it is reasonable to assume that this provision allows Spanish citizens who have lived and studied abroad and finished their secondary education in a system other than the Spanish system to present documents to that effect from foreign countries as proof of having met the minimum educational requirements.

c. Final ranking procedure

Having reviewed the qualifications a candidate must have to apply for posts as Ministry of Justice staff translator/interpreters, and having seen the type of

The position announcement stipulates that candidates must: “(...) estar en posesión, en su caso, del Título correspondiente o en condiciones de obtenerlo en la fecha en que finalice el plazo de presentación de solicitudes: Traductor/Intérprete y Estenotipista: Título de BUP o equivalente.”

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exercises that comprise the exam, we can now move on to examining how the final ranking procedure of the applicants for these positions is carried out.

There are two types of civil service procedures used in Spain. One is simply the “oposición” approach, which allows candidates who meet the basic requirements for a position to sit for a qualifying exam and then publishes a final ranking based exclusively on exam scores. The other is the “concurso-oposición” which combines exam performance and prior related work experience and educational background along with some other specific merits related to the type of position being filled in the calculation of a candidate’s final score for ranking purposes. The selection procedure for the position of staff translator/interpreter for the Ministry of Justice is the second type: concurso-oposición.60

Under this system, candidates’ exam scores (the combined score of the two exercises which would have to be a minimum of 50 points out of the 100 points possible) are added to points received for other merits.

In the area of academic preparation, for example, merit points are awarded for specialized studies above and beyond the minimum educational level required (for example, 1.5 points are awarded for a PhD), for a grade point average above a certain level (one-half point for an average of notable [roughly equivalent to a B in the American grading system] or above), for seminars and short courses related to the

60 The job announcement reads: Sistema de Selección: El sistema de selección de los aspirantes será el de Concurso-Oposición para todas las categorías. Este sistema de selección se contempla en el artículo 26 del Real Decreto 2223/1984, 19 dic.
position that the candidate has participated in, and for conferences and workshops attended (up to 3 points). Research work and publications done by a candidate are also recognized and contribute a maximum of two points to the total points he can accrue. However, a maximum of 15 points can be awarded in this category, which when compared to the 100 points possible for the exam, is equivalent to only a small percentage of the score.

A second category an individual can be awarded points in is related to prior

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61 A detailed explanation of how points are assigned is given in the job announcement itself.

La valoración de los méritos se realizará en base a los siguientes conceptos y puntuaciones que se indican: a) Méritos académicos: Se valorarán solamente los títulos que a continuación se indican para cada categoría, no computándose los estudios necesarios para obtenerlos, ni el título exigido para la plaza salvo en los casos así especificados. La suma total no podrá ser superior a 15 puntos.

Baremo general: Titulación específica, según lo reflejado en el Anexo II, de igual nivel al exigido en la convocatoria (2 puntos)
- Título de Doctor (1.5)
- Título de Licenciado, diferente al específico (Anexo II) (1 punto)
- Diplomado diferente al exigido (1 punto)
- Expediente académico con valoración media de notable (0.5 puntos)
- Diplomas o certificaciones de capacitación o especialización en cursos relacionados con el puesto de trabajo (máximo 5 puntos en total)
- Participación en Congresos, Simposiums, Jornadas o Seminarios sobre la materia objeto de la plaza o impartición de cursos sobre materias objeto de la plaza convocada (hasta máximo 3 puntos)
- Publicaciones, Estudios o Trabajos de Investigación (hasta 2 puntos en total)
2. Plazas de personal cualificado, título de BUP o equivalente, niveles 3 y 4 del vigente convenio colectivo (el caso de T/I - my addition)
- Titulación específica exigido en la convocatoria (2 puntos)
- Expediente académico con media de notable (0.5 puntos)
- Diplomas o certificaciones de capacitación o especialización en cursos relacionados con el puesto de trabajo (max. 5 puntos)
- Participación en Congresos, simposia, jornadas o seminarios (máximo 3 puntos)
- Publicaciones, estudios y trabajos de investigación (2 puntos máximo)
work experience. The maximum number of points available for experience is 35, more than twice as many as the points available for education and other academic activities, but only slightly more than a third of the total points for the exam. Points are awarded in this category for work done in the Ministry of Justice and for work done in other governmental agencies, as long as the post was considered to be of equal or higher status than the one being sought. This system gives in-house personnel an advantage over outside candidates, even if the type of work they have done is not related to translating or interpreting. It is true that it is sometimes easier for government employees to opt for other civil service posts, even if their current or previous posts were not at all related to the one being sought, than it is for a better qualified individual from outside of the system to get an entry-level position.

It is clear then, that the exam itself is the single most important part of the qualifying process for candidates for translator/interpreter positions, accounting for fully two-thirds of the total possible points awarded (100 out of 150 possible points). After final numerical scores are calculated, a roster is prepared with the names of

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The job announcement says: *Méritos profesionales (máximo 35 points) - Por tiempo de trabajo desempeñado en la Administración de Justicia, en puesto igual o superior al que se convoca: 0.8 puntos por cada mes completo. - Por tiempo de trabajo desempeñado en la Administración del Estado u otras administraciones públicas en puesto igual o superior del convocado: 0.2 puntos por cada mes completo.*
candidates listed in order of their final point total in all categories. This roster is then used to fill all available vacancies.

d. Working conditions

Staff translator/interpreters are classified according to the current civil service classification system as Group C contracted employees. Other positions found in this category include psychologists, autopsy assistants, maintenance personal, heating technicians, administrative clerks and valets. The official annual salary for this category of employee for 1995 as reported in the BOE was based on an 8-point scale and ranged from a minimum of 1,207,385 pesetas to a maximum of 2,805,995 pesetas (roughly US $9,000 - $21,000). However, no indication was made in the BOE of the ranking of any of the posts in the category for remunerative purposes. The staff interpreters at the Juzgados Centrales reported their net salary as being 107,000 pesetas/month which places them somewhere in the middle of the scale. Staff translator/interpreters are hired on a renewable contract basis and their positions are not considered permanent civil service posts (funcionarios). Therefore they earn

In case of a numerical tie, an arbitrary alphabetical approach is used based on the first letter of the first last name of the candidates. This approach is used throughout the civil service system and basically entails the following: at the beginning of a calendar year, a letter from the alphabet is randomly chosen and established as the set point for that year. When a tie in civil service exam scores or overall ranking occurs, the position is given to the candidate whose first surname begins with a letter closest to the pre-established letter for that year. While this method may seem arbitrary and unscientific, it does not seem to be the brunt of much criticism. This is most likely due to the fact that, according to Ministry of Justice personnel, it is rarely necessary to apply this tie-breaking procedure.

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approximately 40,000 pesetas less a month than other group C employees who are classified as civil servants. Unsuccessful attempts have been made to have these positions converted into permanent civil services posts but the number of staff interpreters is so low that they do not have sufficient bargaining power as a collective to really affect any changes. Also, there are no ranks within this job category so that advancement or promotion within the interpreting services is not possible. Transfers to other divisions do occur, but these do not usually imply promotions, simply lateral movement.

As mentioned above, the number of staff interpreter/translators to cover all divisions and levels of federal courts in Spain is quite low. The workload of these staff interpreters is therefore quite high, although volume of work does vary from locality to locality and from one type of court to another depending upon the type of cases heard at that level. However, many situations are quite extreme.

For purposes of illustration, we will present the case of the Juzgados Centrales in Madrid. These courts are housed in huge buildings located in Plaza Castilla in the northern section of Madrid. The complex includes 46 Courts of Instruction, 30 Criminal Courts, and 52 Civil Courts as well as family and juvenile divisions. The complex itself houses approximately 180 courtrooms as well as administrative offices, related public services (photocopying service, newspaper

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64 Opinion expressed by Mohamed Sali Mohamed, Ministry of Justice staff interpreter working at the Juzgados Centrales in Madrid at the time of this personal interview in January, 1996.
stands, cafeterias, etc.) and police holding tanks in the basement known as the *calabozos*. Among the many divisions found in this maze of courtrooms and legal services is the interpreters’ office.

There are currently three full-time interpreters working in this office, although one of them is only employed on an interim basis. Each interpreter is required to be proficient in three languages. Their responsibilities include preparing written translations of documents needed by the courts, providing oral interpretation services in all divisions and in the *calabozos* when called upon to do so, and arranging for interpreting services when the language pair required is not one that any of the staff interpreters can offer, or when interpreting services are needed in more courtrooms than the staff interpreters can cover. This particular part of their job requires them to maintain lists of free lance interpreters who can come to the court buildings on short notice when the need arises. Paper work is also kept on these interpreting services.

A staff translator/interpreter’s normal work day is usually quite full but quite unpredictable. There is always a large amount of written documentation piled up, so

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65 This information was gathered in January, 1996.

66 The language groupings are Arabic-French-Spanish for two of the interpreters and English-German-Spanish for the third.
staff employees know they will have a full day’s work every day. However, as regards interpreting, these interpreters work mainly on an on-call basis. In the great majority of cases, they receive no advance notice that their services are needed. The court calendar does not usually stipulate linguistic considerations and therefore in most cases, the interpreter is contacted only moments before a proceeding begins and is asked to make his way immediately to the courtroom where language mediation services are needed. This is not to say that interpreters are never given advance notice or time in which to prepare for a case. When an important and complicated case is scheduled which might require the services of one of the interpreters for longer periods of time (several hours or more than one day), the interpreter’s office is usually contacted in advance, and one of the interpreter’s time is reserved. Materials on the case are sometimes made available in these circumstances. Nevertheless, the head of interpreting services at the Juzgados Centrales in Madrid estimates that no more than 5% of the cases needing interpreting services are scheduled in advance with notification made to the Office of Interpretation. For the other 95% of the cases needing language mediation services, virtually the only specific piece of information

67 This is particularly true at the Juzgados Centrales as all of the written background investigation for most cases -- what is known as instrucción -- is done here. Translator/interpreters at the provincial courts, for example, have a much lower percentage of written work and therefore dedicate most of their work day to oral interpreting functions.

68 Personal interview with Hassan Sahauri, head staff interpreter, Juzgados Centrales, January, 1996.
about the case the interpreter has before appearing in court is the language pair needed and the division or courtroom involved, which gives him only a very general indication of what type of case it might be.

Given the great number of courts requiring the services provided by the Office of Interpreting Services, it frequently occurs that when a call for an interpreter is made, an interpreter is not immediately available. In this instance, proceedings must be postponed until a staff interpreter is available or until a free lance interpreter can be contacted. The Office of Interpreting Services of the Juzgados Centrales has looked for possible solutions to this problem. For example, this office has entered into an agreement with a local university which offers an undergraduate degree program in Translating and Interpreting to provide student intern positions for their advanced level students. The students selected to participate in this program are usually in their final year of study and are students in good standing. However, they do not receive any specialized training in court interpreting before participating in the program, nor are they given any kind of orientation program or guidelines to follow upon their arrival at the Juzgados. Internships are quite short, usually lasting only a few weeks. Ethical issues such as what role the interpreter plays in a court of law or what limits there are to an interpreter’s interaction with the different parties to a court action are not clear to these novice interpreters, who sometimes fail to realize
the seriousness of the responsibility being entrusted to them. It is questionable that inexperienced students, no matter how bright and enthusiastic, are ready for the responsibilities involved in court interpreting, and as stated previously in this thesis, poor interpreting services are tantamount to no interpreting services. This type of program may even do more harm than good given that the entire system and all of the parties to a legal suit are assuming that the interpreter provided by the court system is capable of correctly carrying out the job entrusted to him.

As was mentioned above, when there is more demand than the Office of Interpretation can handle, free lance interpreters are often recruited. Some of the free lance interpreters used in the court system are "intérpretes jurados", but many are not. As we saw in the section on legal foundations, Spanish legal codes give judges the authority to appoint anyone they deem acceptable to serve as the interpreter in a case. As a result, virtually any person who is considered to have some language skills in the foreign language involved in a specific case, can be pressed into service. Earlier in this thesis we saw the results of this approach to providing language mediation services: family members, court employees and even other detainees being used by

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69 Personal interviews with three different student interns on two visits to the Juzgados Centrales in December, 1995 and January, 1996.

70 This is not to say that the author of this thesis is not in favor of internship programs. These opportunities for novice interpreters seem not only wise but necessary; however, careful planning of interns' interventions and participation in court proceedings and on-going supervision must be provided to ensure that people's rights to adequate services are not being sacrificed.
the court system as language interpreters. No training of any kind can be expected of these impromptu “interpreters” and the quality of their performance must be seriously questioned. These individuals seldom refuse a judge’s request (or order) to assist the court, but they are usually unaware of their limitations or of how to handle a situation in which they are not sure of the translation of a word or phrase or have forgotten part of the testimony. In these cases, untrained and inexperienced “interpreters”, usually in good faith, simply do the best they can by giving the gist of the testimony or by rendering only the portions they understood completely or remember well.

Free lance interpreters called in to serve in the courts are, of course, compensated for their work. As a matter of fact, the wage paid to free lance interpreters far surpasses what would be an equivalent hourly wage for staff

Individuals recruited by the Court to assist in a legal proceeding are required to provide the services requested or find themselves in a possible contempt-of-court situation. M. Sari Mohamed, one of the staff interpreters at the Juzgados Centrales, was actually arrested and put behind bars for refusing to interpret in a language that he was not certified or contracted to use. He was advised by the judge that his refusal constituted a delito de desobediencia a la autoridad judicial y de denegación de auxilio a la Justicia (the offence of disobeying judicial authorities and refusing to assist in the administration of justice). In Palma de Mallorca, an interpreter claims to have worked for 15 years for the court system with no compensation whatsoever out of fear of reprisals given that the notification he received to appear in court stated “... apercibiénole que de no concurrir a este llamamiento le parará el perjuicio a que haya lugar en Derecho” (advising you that if you do not comply with this request, you will be subject to any and all of the consequences contemplated in the Law). (Letter from Gaspar Morey-Servers to Juzgado de Primera Instancia Nº 8 in Palma de Mallorca, published in the Butlletí de L’Associació d’Intèrprets Jurats de Catalunya, nº.4, June, 1994.)
interpreters. However, those individuals who are pressed into service unexpectedly -- the friends or family members of defendants, court personnel, or even other jail inmates -- are not compensated in any way for their services to the Court or to the system of justice.

Finally it is important to mention that there are instances in which one of the parties to a civil case or the attorney for a defendant in a criminal case will bring an interpreter that has been privately retained. In civil cases, this is the standard procedure, but in criminal cases, the judge can either accept that interpreter or request an interpreter through the Office of Interpreting Services. Questions of impartiality arise whenever the interpreter in a case has been employed and is being paid by one of the parties to the proceedings.

We mentioned earlier the translation duties of the court interpreter at many levels of the court system. Translating duties are often squeezed in between oral interpretation functions, which as stated above, are usually quite unpredictable. These circumstances greatly affect the translating function as the translation process is continually interrupted and the translator/interpreter is asked to change modes, concentrate on another case which most certainly has nothing at all to do with the case he is translating, and then return to the translation task and pick up where he left

The Ministry of Justice paid 6000 pts/hour in 1995-96 to free lance interpreters who worked in the Juzgados Centrales while a staff interpreter’s salary was only 107,000 pesetas a month. However, free lance interpreters at the Juzgados report that it often takes months to receive payment for services rendered.
In order to shift not only from one type of case to another but also from the written mode to the spoken mode several times in one work day requires a great deal of mental agility and powers of concentration on the part of the translator/interpreter.

If the situation of the interpreters who work in the Juzgados Centrales is at all indicative of the general work requirements and conditions of staff translators/interpreters around Spain, and if we truly examine the skills and knowledge required to effectively and efficiently carry out their many duties, it is hard to believe that only a high school education is required, that the professional category in which these employees are placed is the same as for certain kinds of unskilled labor, and that their pay is so low. The attitude of the Ministry of Justice as reflected in its regulation of this profession does not reflect an understanding on the Ministry’s part of the true contribution these individuals make to society and to the cause of justice.

2. Ministry of Foreign Affairs sworn interpreters

a. History and current status

As mentioned in the previous section, sworn interpreters, known as intérpretes jurados in Spain, are often called upon to work in courts of law when there is no staff interpreter available. Sworn interpreters are certified through the Ministry of Foreign Affairs as competent to translate written documents from a
foreign language into Spanish. Although there is no specific mention of oral interpreting in the regulations of this profession, and in spite of the fact the certifying exam for this qualification is a strictly written instrument, those who pass the certification exam have often been perceived to be competent to do both written translations and oral interpreting.

The figure of intérprete jurado has a long history in Spain. The profession was created by means of several Royal Orders dating back to 1841. Current regulation of this figure can be found in Real Decreto 2555/77, which was modified by RD 752/1992 and more recently by RD 79/1996, dated January 26.

These decrees and orders, among other things, stipulate that the translations done by a certified sworn interpreter are considered official -- in other words legal and binding -- and can only be reviewed and revised by the Ministry of Foreign Affairs.

The only mention of oral interpreting is in Article 150 of the Reglamento Notarial which speaks of the intervention of an “intérprete oficial que hará las traducciones verbales o por escrito que sean necesarias declarando bajo su responsabilidad en el instrumento público la conformidad del original español con la traducción”. (official interpreter who will do oral and written translations as they are needed and will formally attest to the faithfulness of the rendition in Spanish with the original text.) While the work done in a notary's office in Spain can certainly be considered work done in a “legal setting”, it is not a courtroom venue, and so this mention of oral translating, in reality, has a limited scope.

Royal Orders dated September 24 and 25, 1841, which were replaced by additional orders dated March 31, 1870 and March 14, 1883. A Royal Decree was promulgated on April 27, 1900 which regulated this figure for many years.

Other Royal Orders that developed the figure of sworn interpreter were those dated May 30, 1988 and October 4, 1991.

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Affair’s Office of Interpretation of Languages and then only when competent authorities so request. This agency is also the organism charged with developing and administering the exam to certify qualified candidates and with providing the names of those who pass the exam to the appropriate authorities throughout the country who, in turn, have the information available for other government agencies including the court systems and the public in general. The list includes the name, current address and phone of the sworn interpreter and the language or languages in which he is certified to work. It is important to point out that a sworn interpreter is not a public employee and that passing the certification exam does not constitute an offer of employment by the Ministry of Foreign Affairs or any other government service, as does passing the Ministry of Justice’s exam.

Sworn interpreters see themselves as the only group qualified to work in the sphere of legal translating and interpreting and have carried on a lively battle to limit

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76 Article 13 states: “las traducciones al español que realicen los Intérpretes Jurados tendrán carácter oficial, y sólo serán sometidas a revisión por la Oficina de Intérpretación de Lenguas cuando lo exiigan las autoridades competentes.”

77 Article 14 states: “El nombramiento de Intérprete Jurado se hará por el Ministerio de Asuntos Exteriores, previo examen de los candidatos por la Oficina de Interpretación de Lenguas, de los idiomas para cuya traducción al español desee ser autorizado el solicitante.”

78 Those who pass the exam are required to present certain documentation to the Ministry within a given period of time. Their signature and the stamp they use to certify their work are registered with both the Ministry of Foreign Affairs and the provincial government of the area in which they reside, although they are certified to work throughout Spanish national territory.
access to this professional arena to those who have passed the Ministry of Foreign
Affair’s qualifying exam. They have met with little success in their struggle, due in part to the general lack of understanding of the figure of the legal or sworn interpreter not only by society in general but by important sectors of the judicial system.

Evidence of this can be found in a conversation that took place in 1994 between representatives of the Valencia Association of Sworn Interpreters and Mr. Fernando Escribano, a high ranking official of the Ministry of Justice. On the occasion of that conversation, Mr. Escribano said that the sworn interpreter’s sphere of action was civil and labor cases because in these cases, attorneys or parties to a suit were required to retain an interpreter privately. In criminal cases, however, when the Court system is charged with providing interpreting services when needed, Mr. Escribano stated that the Ministry of Justice could not require judges to retain certified sworn interpreters if the law does not require an individual to have any type of certification or qualification to be able to work in a court of law. He said that an interpreter is called upon to “facilitate communication between the judge, the attorney and the defendant” and that “no proof can be required as to the reliability of the interpretation.” He added that “the important thing is for the proceeding to run smoothly and effortlessly.” (translation mine) Although he recognized that

interpreting errors do occur and can lead to irreversible miscarriages of justice, he offered little hope for change in Ministry of Justice practices.

The fact remains that two different governmental bodies are involved in matters related to legal or court interpreting. The Ministry of Justice is charged with hiring staff interpreters and the Ministry of Foreign Affairs with certifying qualified legal interpreters. It is unlikely that the problems that currently exist or the inconsistencies that are presently found in the system will be remedied until the two bodies work together to coordinate efforts and develop a common philosophy on this issue. Most judges and lawyers do not understand the difficulties involved in accurate legal interpreting and therefore tend to believe anyone who is bilingual or who has a fairly good grasp of another language can do a satisfactory job in the courtroom.

Court administrators and budget officers are often concerned about the high costs involved in retaining sworn interpreters who as credentialed professionals, demand respectable compensation for the professional work they do. Therefore court managers often look for more economical solutions which many times may not provide any guarantees of quality. For example, in an attempt to control the costs involved in providing interpreting services and to eliminate the element of surprise at receiving what have sometimes been called "abusive" bills for services rendered, courts in some communities have turned to private translating agencies that, for an agreed upon amount, provide interpreting services during and after regular courtroom hours, in exotic languages and in emergency situations. Most of the interpreters
working for these agencies are not sworn interpreters. This approach has been tried in the Basque Country, in Valencia and in the Baleares (Mallorca specifically). Professional interpreters and sworn interpreters associations have tried unsuccessfully to challenge these practices both judicially and extra-judicially but with little success. To remedy the situation, a serious effort will have to be made to educate the participants in the judicial systems including government officials, judges, attorneys, relevant court employees and even the general public.

b. Certification exam

Before serious consideration is given to whether or not sworn interpreters should be used exclusively in the court system in Spain, it is important to evaluate the exam used to certify this category of professionals to determine if it does indeed offer reliable evidence that candidates who pass the exam are qualified to carry out the duties required of a language mediator in legal settings. As with the Ministry of Justice exam, there are certain qualifications for sitting for the intérprete jurado exam which include being of legal age and being a Spanish citizen or a citizen of a member State of the European Union. Although for many years, the minimal educational requirements to sit for the exam were exactly the same as those for the Ministry of Justice exam (BUP or a foreign equivalent to that degree which has been formally recognized by Ministry of Education officials), the reform of the regulations that took
place at the end of 1996 changed the requirement to a three-year university degree.

An earlier section of this thesis was dedicated to providing a detailed description of the characteristics of a valid and reliable profession-specific exam. By applying these characteristics to the exam for sworn interpreter, we can analyze the usefulness of the exam itself.

The exam offered by the Ministry of Foreign Affairs has been the object of criticism from many sectors - both professional and academic - for several years. Because of this criticism, efforts have been made recently to revise the exam in order to bring it more in line with the requirements of the profession. Although modifications were approved and a new law was promulgated, the exam format has yet to be altered. Therefore, up until and including the last sitting of the exam in the spring of 1996, the exam consisted exclusively of two written translation exercises, both from the foreign language involved into Spanish. Although the legal figure itself is called intérprete jurado, no oral exercise was included.

The written exercises were both timed and the use of dictionaries and glossaries was only allowed in the second exercise. The first exercise, which was eliminatorial, consisted of the translation into Spanish of a text taken from a popular news magazine or journal, usually on a topic of general interest or a current event. For the English exam, articles (or excerpts from them) have frequently been taken
Even a cursory examination of the selections shows a significant amount of disparity in many elements of the exam such as overall length (ranging from 299 words to 502 words), average sentence length (from 16.5 words to 33.2 words), lexical and structural density, and level of difficulty.

A rudimentary study of linguistic density was done on five of these texts in which number of idioms, slang terms and occurrences of figurative speech were counted along with the number of proper names, of specialized legal terminology, culturally bound items and what the author calls the use of unusual descriptors. This study showed that these texts had very few examples of what could be classified as specifically legal terms (ranging from 0 to a maximum of 4) but were replete with idiomatic and figurative language, and slang or culturally bound terms. Some examples of these include terms such as “bugbear”, “Clintonomics”, “Clintonites”, “Rugged Individualism” (as a philosophy), “press briefing”, and “special task force” and phrases like “to stage a comeback”, “some of us are up to the challenge”, “he seems genuine, off the pedestal, really there”, “there was this classic Bushism”, “the

The following articles were some of the texts used as exam selections during the last eight years: 1988 “The Business of Relief” (T.L.S. July 21-27, 1989) on eliminating poverty in the world (299 words); 1990 “Is Bush Nice?” (Time Magazine, July 16, 1990) on the popularity of George Bush during his term as president of the United States (348 words); 1994 “A Bride, A Corpse. . .” (Time Magazine, June 1993), on Ross Perot’s bid for the presidency of the United States as a third party candidate (424 words); 1994 “Clinton vs. The Press” (Time Magazine, June 7, 1993) on President Clinton’s relationship with the press corps during his presidency (502 words); 1995 “Germany” (The Economist, January 21, 1995) on German politics and political parties (375 words).
courage of one's nastiness, "getting under the presidential skin", "trying to flim-flam the American people", "Perot's celebrated crack that he would not hire Clinton" "shrug off such barbs", "the Administration is beginning to... well, not shoot but talk back", "trading raspberry for raspberry with Perot", "seen life turn decidedly sour", "reporters and editors who once gave candidate and President-elect Clinton generally favorable coverage are today, like the country, underwhelmed", "the press's bullyboy tendencies", "whose decency, unfortunately, is about an eighth of an inch thick", and so on.

Each of these examples would merit serious consideration and a bit of time for even a professional and experienced translator to do them justice. The frequency of this type of language in these texts ranged from approximately 15 occurrences, which happened to coincide with the shortest text, to well over 40 occurrences in the longest text. Two hours were allowed for this exercise which had to be done without the use of dictionaries or aids of any kind. As mentioned above, only candidates who passed this portion of the exam could proceed to the second exercise.

The text for the second exercise was more legal in nature, usually part of a code, a piece of legislation, a contract or some other legal document. As was the

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Some of the texts used over the last 8 years have included: "Increase of Share Capital/Reduction of Capital/Other Alteration of Capital" which is a fragment from a set of company bylaws (636 words); "Title 28 - Judiciary and Judicial Procedure - Chapter 97 - Jurisdictional Immunities of Foreign States" (794 words); "Pertinent Provisions Affecting the Fair Labor Standards Act from the Portal-to-Portal Act of 1947" an excerpt from a public law from the United States (678 words); "Tanker Voyage Charter Party" (568 words); "Interpretation of the 1968 Convention and References to the European Court" (601 words); an "Indenture" contract made
case with the first exercise texts, there has been substantial variance in the length of these texts over the last several years (ranging from 472 to 794 words for the examples we have cited) and in average sentence length (from 50 to 158 words per sentence [with the longest sentence encountered in each text ranging from 135 to 391 words]). As with the first exercise, the time period allotted for each exam remained the same: two hours.

A look at these texts also reveals a great deal of stylistic and thematic variety. The shortest text, the one that consisted of a textbook definition of the term “salvage”, although relatively dense lexically as regards specialized terminology, cannot be compared with the level of difficulty and amount of specialized jargon found in the longest text on the jurisdictional immunities of foreign states.

Given that this is an exam to qualify legal translators, a good case can certainly be made for the legal nature of the texts used in the second exercise, but the rationale for the first exercise is less clear and seems to be simply to ascertain general translating skills into Spanish. Regardless of the purpose of each exercise, it would appear that care was not taken to ensure equivalency from one exam session to the next, and it is reasonable to think that the same candidate sitting for different versions of the exam could produce very different results.

These preliminary comments on the sworn interpreter exam based on a very

in London, (599 words); and two definitions taken from law books, one on “Revocation” (607 words) and one on “Salvage” (472 words).
rudimentary look at the exams themselves, creates some doubt about their value as qualifying instruments for work in the courts, especially as an interpreter. However, this first look must be complemented by a more complete evaluation of the instruments in relation to how they measure up against the testing criteria presented earlier. In the following section, we will apply these criteria to both the sworn interpreter exam given by the Ministry of Foreign Affairs and the Ministry of Justice exam for staff positions.

E. Analysis of Spanish certification processes

First of all, a profession-specific exam should be performance-based and domain-referenced. As we said above, the purpose of the first exercise of the sworn interpreters exam seems to be simply to ascertain general passive knowledge (reading comprehension) in the foreign language and general translating skills. No real relation to the actual professional duties of a sworn interpreter can be found by examining the content of the texts used in the first exercise of the exam.

As regards the second exercise of the exam, if a sworn interpreter’s professional activity were to be limited to the translation of documents written in a foreign language into Spanish, then this part of the exam could be said to reflect that domain, although selecting texts on the very specific topics found in the exam
selections we have obtained, given the broad range of more general legal documents available, may sometimes create an artificial barrier to candidates who are good translators but find themselves before an area of the law they are unfamiliar with. Texts of a more general, yet still legal nature may be more appropriate in order to meet the criteria of giving a candidate an opportunity to show what he knows.

The exam as given for many years did not evaluate a candidate’s ability to translate into the foreign language. Furthermore, it included no evidence whatsoever of a candidate’s active language skills in the foreign language, but rather only showed, as was mentioned earlier, his abilities in one of the passive skills - reading. Therefore the exam could not be considered to test for the domains related to foreign language production skills. Furthermore, the fact that the exam included no oral exercise whatsoever, be it strictly from the foreign language to Spanish or in both directions, obviously disqualifies it as a performance-based exam for court interpreting.

This issue has been at the heart of much of the criticism that has been leveled at the sworn interpreter’s exam for some time now. Even the head of the Office of Language Interpretation of the Ministry of Foreign Affairs, María Luisa Gurruchaga, has herself admitted to trying to remedy this situation in the past, but meeting with

82 The author of this thesis is aware of newer theories that no longer accept the dichotomy of “passive” and “active” language skills and argue that reading requires active participation on the part of the language user. However, for purposes of this point, the more traditional division between production based language skills - speaking and writing - and more perception or reception based skills - listening and reading - is maintained.
opposition from some of her superiors.

The exam given by the Ministry of Justice for staff interpreter positions suffers from some of the same inadequacies and a few that are not present in the Ministry of Foreign Affairs exam. In the Ministry of Justice exam, candidates are asked to translate documents in both directions, in other words, from the foreign language/s to Spanish and from Spanish to the foreign language/s. However, there is no stipulation that either of the texts be legal in nature. As regards oral interpreting in the courts, the Ministry of Justice exam also lacks any type of exercise to determine a candidate’s oral skills in the languages required for the post. Once again, there is a total lack of evaluation of one of the main domains, if not the main domain, of the staff court interpreter employed by the Ministry of Justice.

The second exercise included in the Ministry of Justice exam is a content-oriented exam which requires candidates to answer questions posed and answered in Spanish, on the Spanish legal and governmental system and the rules that govern a civil servant’s relationship with the government. There are no questions that have to do with proper interpreter behavior or ethical issues of any type. Therefore, this part of the exam can be said to respond to the Ministry’s desire to know if a prospective...

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83 Personal interview, January, 1996.

84 Mohamed Sali Mohamed reports that the Ministry of Justice exam he took to get his position as a staff interpreter required him to translate between the two additional languages (in his case French and Arabic) required for the post and not between either of these and Spanish. Personal interview, January, 1996.
employee understands the relationship he is entering into with the Administration, but does not concern itself with ascertaining his knowledge about the specific duties he is to carry out if employed. The domain of interpreter ethics is therefore bypassed in favor or other issues. In summary, neither of the exams that are currently used in Spain seem to meet the criteria of being domain-referenced and performance-based.

As for the issue of criterion-referencing as opposed to norm-referencing, we can say that both the Ministry of Justice and the Ministry of Foreign Affairs take a somewhat combined approach in their exam philosophy.

At the Ministry of Foreign Affairs, for the languages which have the largest numbers of candidates (English, French and German, for example) a criterion-referenced approach is used, while for more exotic languages for which there are few candidates, the criteria for passing the test are relaxed a bit in relation to the criteria for other languages. This difference is found in both the level of difficulty of the texts used for the exam and in the evaluation criteria applied. María Luisa Gurruchaga, director of the Office of Interpretation of Languages, which is the agency within the Ministry of Foreign Affairs that is directly responsible for administering the exam for intérprete jurado, stated that the exams for English, French and German continue to get harder because there are so many candidates, but the exams for more exotic languages are somewhat easier in order to make sure that there are some intérpretes
jurados for those languages. In other words, while specific criteria are established for the exams, those criteria are modified for some languages to meet what is perceived to be the abilities of the best candidates so that not all candidates fail the exam.

In the Ministry of Justice exam, while specific criteria are set, a ranking is done which determines who actually is employed. This is a combined criterion- and norm-referenced approach.

The next general area of testing theory that we will apply to these exam instruments is the concept of validity. As stated earlier in this thesis, there are five types of validity. Face validity was presented as being of somewhat lesser importance than the others, but in the case of an exam that certifies individuals to carry out a task that other players in a situation cannot evaluate for quality, it is very important for the public and for other professionals in the field to perceive of the exam as valid. In the case at hand, judges, attorneys and individuals involved in legal proceedings all rely upon an outside agency’s evaluation of a professional’s abilities as their guarantee that quality work will be done. Therefore, it is especially important that the certification instruments used for court interpreters be considered valid. Unfortunately, as mentioned previously, there was a general mistrust of the exam format as it stood before the reform, and there is only a slight increase in confidence

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Conversation with María Luisa Gurruchaga in her offices of the Ministry of Foreign Affairs in January, 1996.
among professionals in the reformed exam, which will be discussed later.

Therefore, on the issue of face validity, the intérprete jurado exam does not meet the mark. As for the Ministry of Justice exam, it is the object of much less discussion because there is less awareness of its impact on the field. The number of staff interpreters throughout Spain is so small that little attention is paid to their plight. The professional translating and interpreting associations focus more on the intérprete jurado than they do on the staff interpreter, although they defend the position that only intérpretes jurados should be allowed to translate and interpret in legal settings and therefore, staff interpreters should be required to hold certification before being allowed to sit for the Ministry of Justice exams.

There is an on-going debate about whether the exam for intérprete jurado should continue to be the responsibility of the Ministry of Foreign Affairs or should be transferred to the the Ministry of Justice or even to the Ministry of Education and Culture, with proponents for each option. Those supporting the Ministry of Foreign Affairs suggest a professional association (a Colegio de Traductores e Intérpretes) be created and take on this responsibility while one suggested the Ministry of Commerce become involved. Some respondents were in favor of a combined effort such as one of the Ministries working with a professional association on the exam, and one favored a combined effort between the Ministry of Justice and the Ministry of Education. It is perhaps not surprising that

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The Department of Translators and Interpreters of the University of Granada surveyed university professors teaching in the area of Translating and Interpreting as to their opinions on the profession and specifically on the figure of intérprete jurado (February, 1994). This was a small survey; 18 universities were contacted and asked to have 5 professors respond. Thirty-eight responses were received. Results showed that in response to a question regarding which agency or organism should be responsible for certifying sworn interpreters, 13 were in favor of the Ministry of Education, followed by 10 who favored the Ministry of Justice. Eight were of the opinion that the Ministry of Foreign Affairs should continue to give the exam. Eleven respondents suggested a professional association (a Colegio de Traductores e Intérpretes) be created and take on this responsibility while one suggested the Ministry of Commerce become involved. Some respondents were in favor of a combined effort such as one of the Ministries working with a professional association on the exam, and one favored a combined effort between the Ministry of Justice and the Ministry of Education. It is perhaps not surprising that
Affairs option cite tradition and the long-standing experience of the Office of Interpretation; those supporting the Ministry of Justice option cite the obvious logic of having this institution be responsible for individuals who are going to provide services in the judicial system which is overseen exclusively by that Ministry, and those who offer the Ministry of Education and Culture as an option cite that Ministry’s expertise in testing and evaluation which best qualifies them to correctly administer and mark exam instruments. In spite of this on-going controversy, at present there seem to be no plans for change in any of the ministries or as regards any of the exams.

As regards content and construct validity, comments made above as regards domain-referencing and exam format show that even the most basic concepts related to these types of validity are not met in either of these exams. Content and construct validity have to do with how well the items on an exam match what the test as a whole is supposed to assess and how well an exam reflects the theoretical underpinnings that form its foundation. When the format and test items of a profession-specific exam meant to test skills and abilities as well as the corpus of

the largest number of respondents favored the Ministry of Education given that the survey was carried out in a university setting. However, it is interesting to note that although all respondents were academics, only 13 of the 38 were in favor of the Ministry of Education being completely and solely in charge of the exam.

The only exception to this statement is the proposal to allow graduates of university level Translating and Interpreting programs (four-year licenciatura degrees) who have completed specific course work to be certified automatically as intérpretes jurados without having to sit for the exam. This new proposal will be discussed later in the thesis.
knowledge related to a field of professional practice, do not reflect or evaluate those skills or functions or that corpus of knowledge, the exam cannot be said to have high content or construct validity. In terms of predictive and concurrent validity, it is hard to state with any certainty just how valid these instruments are as very little follow-up research is done on the performance of candidates who have passed either of the tests. If the candidates for the staff positions with the Ministry of Justice were required to be intérpretes jurados and then were required to take a Ministry of Justice exam, there could be some data by which to measure concurrent validity. As that is not the case, no such data is available. As regards other types of instruments, it is also quite difficult to draw any kind of conclusion given that, until very recently, neither of the exams required more than a high school level of education and so there are not even language exam scores or university course requirement criteria with which to compare Ministry of Justice of Ministry of Foreign Affairs test results. Several advanced-level language tests do exist on the market (TOEFL, Cambridge Series, London School, Official Language School Final Exam, etc.) but none can really be considered equivalent to these profession-specific exams and so at best, if data were available on how well candidates who successfully passed Ministry exams did on these other language tests, any correlation would only be partial as none of these alternative exams tests for interpreting or translating skills.

As for predictive validity, it is highly questionable that these exams as they are currently administered could be considered to have predictive validity. Since neither
of the exams evaluates oral skills, claiming that they could somehow predict a
candidate’s ability to succeed at oral interpreting is pure conjecture. The fact that
there are individuals who have passed the Ministry exams and are indeed good court
interpreters is an incidental coincidence and certainly not any proof of the predictive
validity of the exams as they currently stand for this particular profession.

As for the concepts of general test reliability, test elaboration and rater
training and reliability, little can be said about the methods used for these exams. No
statistics of any kind are kept and very little information is made available to the
public. Efforts were made to obtain information from Ministry of Foreign Affairs
officials, but questions posed in personal interviews to Ms. Guruchaga (the person
directly responsible for the intérprete jurado exam) on several aspects of test
elaboration and correction, went unanswered. Ms. Guruchaga stated that she was
not at liberty to provide the information being sought and that she would have to get
approval to disclose information from her superior. Even after that approval was
obtained, responses continued to be minimal and generally uninformative.

The questions posed addressed issues such as how test items are developed,
how individuals are selected to participate on test elaboration teams, if evaluation
criteria are pre-set, if the exam items are pre-tested or piloted in any way, what
techniques are used to ensure equivalency from exam to exam, what criteria is used
to select evaluators, if they received training and if so, what kind, how many exams
raters are required to correct and in what period of time, if there is any attempt to
measure inter- and intra-rater reliability and so on. Whenever the question allowed, a simple yes or no response with no further elaboration was given ("Yes, criteria are pre-established"; "No, we don’t collaborate with any other government agency", etc.). The other most frequent response was a referral to the regulations and guidelines published in the Official State Bulletin (Boletín Oficial del Estado) as virtually the only source of information. Even after "authorization" was given there was great reluctance to provide any type of information whatsoever about the Ministry of Foreign Affairs exam. It seemed quite clear that the Office of Interpretation of Languages did not consider any of this information to be in the public domain, and a sense of secrecy about the entire process permeated all attempts to gather first hand information.

In addition to the Ministry of Foreign Affairs, the Consejo General de Poder Judicial and the National Statistics Center were also contacted in an attempt to obtain information on numbers of candidates, pass/fail rates and so on, but virtually no information was available. The names of successful candidates are published in the BOE so it is possible to at least count those numbers by looking in that official publication. Once again, it is possible that some types of statistics are kept by the different agencies of these Ministries but if this is so, they are not released to the public domain.

As a matter of fact, the only kind of statistical information I was able to obtain was related to the number of cases needing interpreters in the Juzgados Centrales which was supplied to me by Hassan Sahauri, head staff interpreter at the Juzgados, and was a project of his own undertaking.
As regards evaluation criteria, the only piece of information that I was able to obtain was an extra-official explanation by an intérprete jurado who wished to remain anonymous. He stated that he had been told by members of evaluation teams that one or two items of relatively high difficulty were usually identified in the first few lines of a text and successfully negotiating these items was essential to passing the exercise. It is interesting to note, that once again, there was a sense of secrecy surrounding my conversation with this individual. While he was very confident about the veracity of his statements, he made it clear that he had been told this in confidence, and that he was aware of the great reluctance there was to make any of this information available.

One further reference to evaluation criteria was provided by Irene Prüffer, professor of German in the Department of Translation and Interpretation at the University of Alicante. While preparing a paper on the situation of sworn interpreters in Spain, she decided to call the Ministry to ask about how exams were graded. The response that she received from the Office of Interpretation of Languages to her question on criteria for evaluation purposes was:

There are none. The translation should be done well as regards terminology, spelling, and so on. There are many criteria...

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As for providing information to the candidates prior to the exam session about evaluation criteria, little information is given. Candidates receive an instruction sheet upon arrival at the exam which provides them with a brief orientation to what is expected on the exam and a clue as to the marking of the exams. The issue of instructions was also addressed in the section on exam elaboration and the point was made that instructions should be clear and concise and should assist the candidate as much in possible in understanding what is expected of him.

Using the instructions provided candidates for the second exercise of the Ministry of Foreign Affairs exam as an example, we see that they include an indication of the time allotted for the exam (2 hours) and the fact that dictionaries can be used. Some practical advice is included such as the fact that the translation can be turned in in rough draft form and that therefore candidates should leave space between the lines for possible corrections. Specific instructions are given in relation to the translation itself. For example, candidates are advised that they cannot provide alternative translations for any part of the text, and that only their final choices should be incorporated in their final version. They are also told that abbreviations, quotes, references or words written in other languages do not have to be translated. Even elementary reminders about neatness and penmanship are included, warning students to be careful to write clearly, especially as regards the final letters of words to avoid any possible confusion.

The most interesting part of the instructions, in my opinion, are the translation

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“tips” given to the candidates. As regards this, the instructions read as follows:

Do not give alternative translations: only one translation will be accepted, the one you consider the most correct. However, you may use two or more words to translate one, but only if you feel it is necessary to do so.

The criterion considered to be the most appropriate when translating...
legal texts is the difficult task of finding just the right term between a literal translation, which at times can turn out to be unintelligible, and a free translation which maintains the general sense of the text as if it were simply a reading, without following the text carefully: we repeat, the best thing to do is stick closely to the text and retain all of the nuances found in the text in a correct and appropriate Spanish version. (Fairly literal translation mine)

It is interesting to note that the instructions remind candidates of that always difficult line between a too literal and a too liberal translation, but then goes on to advise candidates to tend toward the literal. This advice in and of itself, might give a candidate an idea of what criteria the raters will be using to mark the exams; however, telling candidates to use two or more words to translate one word in the original only when it is absolutely necessary is an unusual piece of advice and might mislead candidates into thinking that an overly literal translation is recommended. If what is trying to be said is that explanation or definition-type translations are not as acceptable as the use of precise terminology when it exists, a better way to express that should be found.

We have mentioned several times that the Ministry of Foreign Affairs exam for intérprete jurado has recently undergone a reform. This reform is reflected in the new regulations of the field as stipulated in Real Decreto 79/1996, (January 26). The
The decree itself states that the modifications in the regulations are due to "circunstancias de diversa índole" (circumstances of various types) and lists four.

The first is the need to recognize that sworn interpreters do oral as well as written translations and "translate" (used in this context as both written and oral language transfer) both from foreign languages into Spanish and from Spanish into foreign languages. As the prior regulations only conferred official status on written translations from a foreign language into Spanish, it did not reflect the reality of the professionals who held this certification.

The second is the entry into force of the European Economic Space Agreement which stipulates that citizens of member States of the European Union must be permitted to sit for the exam, which previously was limited to Spanish citizens.

The third is the recognition that qualifications for this certification should be modified. The new regulations stipulate that candidates must at least have completed a three-year university program known as a diplomatura or another type of university level technical degree in order to sit for the exam. An equivalent foreign degree is also acceptable. In this section of the modifications there is also a stipulation that individuals who already have the status of sworn interpreter under the old regulations will be automatically recertified without having to take the new version of the exam.

Finally, point four states that individuals who complete a university degree program known as a licenciatura in Translating and Interpreting will not have to sit
for the exam if they meet certain curricular requirements.

At the time the modifications were proposed, both the Asociación Profesional Española de Traductores e Intérpretes (APETI - The Spanish Association of Professional Translators and Interpreters) and the Conferencia de Centros y Departamentos Universitarios de Traducción e Interpretación del Estado Español (Conference of University Departments and Centers of Translating and Interpreting Studies in Spain) were approached for their opinion on the proposal, and both attempted to influence the outcome of the reform effort.

APETI was extremely critical of the proposed reform and presented a several page document stating that not only did the new proposal continue to lack validity and fail to respond to the realities of the profession, it also prejudiced the professional status of those individuals who were already certified as intérpretes jurados. APETI officials also slammed the Ministry for not allowing sufficient time for adequate discussion of the proposal in professional and academic fora, and in very strong terms expressed their rejection of the proposal requesting it be tabled until further consultations could be made.

The academic association of university departments and centers had a milder response and offered some suggestions for change to the Ministry on several issues including the acquired rights of those already holding certification, the need to clearly

90 The entire text of their response as well as an alternative proposal can be obtained from Francisco Aviñó, Vice-President of APETI in charge of the section on Sworn Interpreters, Calle Recoletos, 5-3, 28001, Madrid.
delimit and define the duties and responsibilities of sworn interpreters, a suggestion to change the official name of this figure from sworn *interpreter* to sworn *translator*, support for direct certification of university graduates from T/I programs, and finally the possibility of separating this combined profession and having two titles, one for translators and one for interpreters, each with its own certification exam. Having expressed their opinion on these points, the Conference gave their qualified support to the project.

The two most interesting points of the new regulation of the figure of *intérprete jurado* are that the exam format has been modified and that graduates of university degree programs (*licenciaturas*) in Translating and Interpreting will be certified as *intérpretes jurados* upon completion of a specified number of university credits in the areas of legal and economic terminology and translating and interpreting. As mentioned above, these graduates will not be required to sit for the exam in order to obtain certification.

As regards this issue, there was a great deal of support from the academic community, and very weak support from the professional community. The key to this provision in the new regulations is in defining exactly what courses and what evaluation standards will be required at the university level for certification to be automatic. University departments are now struggling with what it is feasible to offer at each center (time, qualified professors, materials, etc.) and how to come up with a standardized and uniform curriculum. Since no final agreement has been reached
between the Ministry of Foreign Affairs and university departments as of yet, this provision in the regulations cannot be put into effect. Students in Translating and Interpreting programs are confused as they have interpreted the regulations as saying they will be certified upon completion of their degree programs, and often express surprise and displeasure at finding that the provision is indeed included in the new regulations but that no final agreement has been reached as to just what courses will be required and when they will actually be offered by the different university programs throughout the country.

A related issue has to do with those translators/interpreters who hold university degrees in the field but graduated before the new regulations went into effect. These graduates will have the option of going back and making up any new courses that might be stipulated and combining them with courses they have already successfully completed, or of taking the exam itself in its new format.

The second major issue related to the reform is the modification of the exam format itself. The new exam consists of a written bi-directional exercise to be done without a dictionary. Both the Spanish-language and foreign-language texts will be general in nature, similar to the type of text used in the past for the first exercise. The only novelty is that candidates will have to show that they can translate into the foreign language as well as from it. Each exercise is marked separately and is eliminatory in and of itself. In order to proceed to the next exercise, candidates much recieve passing marks on both of these written translations.
The next part of the exam is exactly the same as it was in the former version: translating a written text of a legal nature from the foreign language into Spanish. No modifications have been made in this exercise, and candidates are not required to show any ability in producing foreign language legal texts in writing, although the new certification will confer official status on any translation of a legal nature that a sworn interpreter does, be it into Spanish or into another language.

The final part of the new exam consists of an oral interview in the foreign language. This is in recognition of the fact that sworn interpreters are asked to perform oral interpretation in legal settings. The purpose of the oral exercise in the new format is for the candidate to "acreditar a satisfacción del Tribunal su capacidad de comprensión y expresión oral en la lengua de que se trate" (prove to the satisfaction of the Examining Board his ability to understand and express himself orally in the language in question). In this part of the exam candidates are ask to orally summarize a written text that is provided them and then respond to any questions the Examining Board might ask them about that text. No mention is made of the nature of the text or the type of question that might be asked. The purpose, according to Ms. Gurruchaga, is to see if the candidate can communicate orally in the language for which he is seeking certification.

It is clear to see that this new exam format still does not meet reliability and validity criteria. While recognition of the need to assess oral skills is now evident, the exam is still not performance-based as the format of the oral portion does not in any way reflect real situations in which a sworn interpreter qualified to work in legal
settings will have to perform. No measurement of interpreting skills of any kind is included in the new format. This exam implicitly supports the erroneous premise that anyone who is bilingual can interpret, and that anyone who can interpret, can handle the specific demands of court interpreting.

If it is indeed true that taking small steps in the right direction is better than taking no steps at all, then this reform can be said to be positive. On the other hand, given the rigorous procedure involved in modifying regulations and laws in Spain and the efforts needed to convince proper authorities of the need for a change, limiting that change to such a small step might be considered by many as a wasted opportunity, or at best, as very minor rewards for very significant effort.

A review of the current exam instruments and practices, then, shows us that Spain is still a long way from ensuring adequate language mediation services in legal settings. Good interpreting does take place in Spanish courtrooms, but it is due to personal ability and effort on the part of individuals who take the profession seriously. Just as often, poor interpreting takes place in the courtrooms of Spain, and serious measures are still needed to remedy the situation. A broad movement from within the judicial system itself is needed to create an atmosphere in which change can take place. Only through increased awareness on the part of judges, attorneys, governmental officials, university professors, professional organizations, and the public at large, will this be possible. Studying what has been done in other countries and creating educational programs can contribute to obtaining these goals. The next section of this thesis will be dedicated to these two concepts.
Chapter Seven. THE UNITED STATES MODEL

A. History of the development of the Federal Certification Exam

In an earlier section of this thesis we laid the legal foundations for the figure of court interpreter in several countries around the world including the United States. It is important to remember that the legal system in the United States is basically a common law system and this means that case law or jurisprudence is important as a source of law along with legislation itself. Therefore, in addition to the legal foundations for language mediation in the courts found in the 5th, 6th and 14th Amendments to the United States Constitution, and the principal pieces of legislation that directly address interpreting services in the courts and other legal settings (The 1978 Court Interpreters Act and Public Law 100-702 of 1985), we must also look at the rulings made in specific court cases which addressed and clarified certain aspects of these services. Some of the cases that directly addressed the right to interpreting services were cited in the section on legal foundations. Nevertheless, there are others that develop the figure of the court interpreter and address specific points of contention as regards their role in the system.

A look at the situation that existed in the United States prior to the passage of the 1978 Court Interpreters Act shows that many of the practices that have been described as regards procuring interpreting services in Spain were also commonplace.
in American courtrooms. Defendants who needed interpreting services were not getting them, and when interpreters were used, they were often friends, family members, court employees, and so on. Prior to the Court Interpreters Act, the two main provisions that governed the area of court interpreting were Rule 28(b) of the Federal Rules of Criminal Procedure and Rule 604 of the Federal Rules of Evidence.

Rule 28(b) basically stated that the selection of an interpreter for use in the courts and compensation for his services were issues to be decided by the judge. There were two problems with the wording of this rule and its subsequent application. First of all, it left the decision as to whether or not to provide interpreting services strictly up to the presiding judge. Unless the defendant or one of the witnesses was totally monolingual in a language other than the language of the court, it was often difficult for the judge to determine if he needed interpreting services or not. The second important element of Rule 28(b) was that if it was determined that language mediation services should be provided, it was once again strictly up to the presiding judicial officer to determine who would provide those services.

Rule 604 of the Federal Rules of Evidence stipulated that interpreters be considered expert witnesses and as such they were required to take an oath to “make a true translation”. This recognition of the interpreter as a specialist was the first important step in recognizing the need for qualifications and quality control for the profession. Rule 604 also allowed for an interpreter’s work to be challenged -- as any

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other expert testimony could be -- in the interest of the protection of the constitutional rights of the individuals involved.

As stated above, it is important to study case law in the United States as it is an important source of law. There are many cases that have developed or determined interpreting practices at the state level\textsuperscript{2}. The rulings issued in several key cases merit mention as they set precedent and established practices on specific aspects of the court interpreting function. For example, the case of U.S. ex rel. Negrón v. New York (434 Fed. 386 (2nd Cir. 1970)) established the right to an interpreter for individuals with “extreme English comprehension and communication problems” (de Jongh, p. 9) as a constitutional right. As we saw earlier, the case called U.S. v. Tapia, 631 F.2d 1207 (1980) determined that a defendant has the right to have the entire proceedings interpreted to him (party-oriented interpreting), not just to have his testimony or the testimony of non-English speaking witnesses interpreted for the court (witness-oriented interpreting). However, another important issue was decided in this case and that was to determine exactly who had the right to waive interpreting services for a defendant. The ruling in this case established that only the defendant, having been informed of his right to an interpreter, could waive that right. Neither the court nor counsel for the defendant could make that decision on behalf of the defendant.

In R&D Sod Farms v. Vestal, 432 So.2d 622 (1983) the issue in question was the qualifications of the individual used as the interpreter. In this civil case, the claimant’s brother served as the interpreter, based on his own declaration that he was

\textsuperscript{2} See section in this thesis on the legal foundations for court interpreting in the United States.
capable of understanding court proceedings and representing his brother in the case. However, since no proof was given as to his qualifications and since he was not sworn in as the interpreter, the Court finally ruled that the testimony given through him could not be used as a basis for a decision.

Throughout the late 60's and the 70's, several attempts were made to further regulate language mediation services in the judicial system or to develop the regulations and rules that governed those practices. Although some of the legislative proposals did not pass (HR 4096, H.R. 2243 and the Bilingual Courts Act), they can be considered precursors to later legislation and did serve to create a climate in which the 1978 Court Interpreters Act could be enacted. The debates that took place on these proposals in the Congress of the United States brought attention to the issue of court interpreting and set the stage for the subsequent passage of more sweeping legislation.

One issue related to court interpreting that had nothing to do with the quality of interpreting services but rather addressed a more practical aspect of the administration of linguistic justice was the issue of how to implement interpreting services in the judicial system and how to pay for them. No one denied that providing language mediation services was going to be costly, but as Senator John Tunney of California (the sponsor of the Bilingual Courts Act) said: “significant additional cost” also meant “significant additional justice” (de Jongh, p. 11).

De Jongh points out that the Civil Rights Movement in the 60's indirectly helped create awareness of the need for court interpreters by addressing the rights of minorities in general and focusing some attention on the needs of language minorities in the legal system. (p. 10)
The 1978 Court Interpreter’s Act is the most important single piece of legislation on language mediation in legal settings that exists in the United States. This public law provides for interpretation services in all civil and criminal cases in federal courts in which parties to the case are deemed to need language mediation. It also recognizes the field of court interpreting as a highly specialized profession which merits regulation and specific procedures by which to guarantee quality. In other words, in addition to stipulating the use of court interpreters in all federal cases in which a defendant or witness does not speak the language of the court, the Act goes on to stipulate that these interpreters be qualified and that certification procedures be established by which to evaluate an individual’s skills and expertise in the field before he enters a court of law.

A Federal Court Interpreters Advisory Board was established by the Chief Justice of the U.S. Supreme Court and the Director of the Administrative Office of the U.S. Courts and was charged with overseeing interpreting services and the certification process that was to be developed. This board was also responsible for developing a code of ethics for the profession and for suggesting solutions for courts in cases in which more exotic or less frequently used languages were involved and interpreting services were needed.

In 1988, an amendment to the 1978 Court Interpreter’s Act was proposed and approved in the Congress. This new law, Public Law 100-702, is known as the Judicial Improvements and Access to Justice Act. Among the “improvements” it offers are:
- guidelines on how to select “otherwise qualified interpreters” (when a certified interpreter is not available in a locality or when one of the more exotic or less used languages mentioned above is involved in a case),

- a stipulation mandating that interpreting services also be available in pretrial and grand jury proceedings (similar to the “instruction” phase of court cases in Spain),

- the creation of a permanent file in the U.S. Attorney’s office of all certified interpreters,

- a process by which a judicial circuit or district can petition the Administrative Office of the U.S. Courts for certification of individuals in specific languages based on a demonstration of need in that particular area, and

- interpreter certification based solely on the successful completion of a criterion-referenced performance evaluation, an absolute measure of language proficiency and interpreting skills.

Other important issues addressed include the monitoring of interpreting
services and the follow-up of certified interpreters, the establishment of a fee schedule
for free lance use of certified interpreters and a civil service ranking for staff
interpreters94, and a provision that interpreted court proceedings can be recorded if
a motion to that effect is made by one of the parties and provided that certain criteria
are met.

Finally, it is important to note that in this public law, it is explicitly stated that
simultaneous interpretation is the preferred mode of interpretation and that summary
interpreting is no longer authorized. This is not to say that presiding judges do not
have some discretionary authority on how to best make use of interpreting services
in a particular case and in a particular courtroom, but by stipulating modes of
interpretation in the law, incentives are given for providing the best language
mediation services a specific circumstance allows.

As the judicial system in the United States is quite complex and comprised of
federal, state and municipal courts95, it is important to remember that practices in state

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94 According to information provided by the National Center for Interpretation Testing, Research
and Policy, the current fee schedule for free lance court interpreting in U.S. District Courts
establishes a rate of $254/day (approximately 34,000 pesetas at current exchange rates) and
$135/half day (approximately 18,000 pesetas) for certified or professionally qualified
interpreters. De Jongh reports that staff interpreters’ salaries (as reported in 1992) range from
$31,116/year (just over 4 million pesetas) for grade 11 civil servants with one year of
experience up to $68,129/year (approximately 9 million pesetas) for grade 14 with four or more
years of experience (p. 17).

95 De Jongh cites a relatively non-technical definition given in Abraham’s Judicial Process: “a
system of justices of the peace and trial courts, with the pyramid gradually winding its way
upward through a more or less elaborate appellate system, culminating in a supreme court”
(Abraham, p. 143). Black’s Law Dictionary explains that city and county courts are considered
part of the state court system in some places but not in others, and that state law (as opposed
to federal law) can include municipal ordinances. Also of interest is the fact that when there is
and local courts as regards interpreting services differ from the practices in federal courts. Nevertheless, thanks to the case law and federal legislation mentioned above, there is a growing awareness at all levels of the court system of the need to provide adequate language mediation in the courts.

One very important factor that must be mentioned is the availability of statistics on the use of interpreters in the courts throughout the federal judicial system and at the state level. Some of the statistical information available includes how many docketable events require interpreting services each year, which languages are the most frequently used in the courts, and which languages are prevalent in different geographical areas around the country. It is also important to note that interpreting services are scheduled in the same way cases are. The Office of Interpretation in a district court is advised of which of the docketed cases will need language mediation. In this way, an interpreter can be assigned to the case in advance and can familiarize himself with the facts of the case. This tends to enhance the quality of his interpreting. By using a schedule system, unnecessary delays in proceedings are avoided. When a proceeding cannot take place because the need for an interpreter has not been foreseen, not only is it costly for the judicial system, but it tends to produce irritability on the part of the presiding judge, the attorneys and the jury members, and contributes to increasing the stress and fear experienced by defendants and witnesses.

an issue that is not clearly governed by federal law, federal courts will turn to state law and follow its dictates. (De Jongh, p. 4)

Information on state legislation and practices was presented in the section on Legal Foundations in this thesis.
There is always a higher risk of error and poor quality with impromptu interpreting than with pre-planned and prepared interpreting.

B. Characteristics of and rationale for the federal exam

The current Federal Court Interpreters' exam was developed by a panel of experts from several fields related to testing, language, and law. Court interpreters, conference interpreters, university language specialists, and test construction experts participated in the original design and development of the exam (Arjona, p. 183).

The result of their work was a two-part written and oral exam that tests for both language proficiency in the language pair for which certification is being sought and for interpreting skills. The format of the original design is still being used today.

1. Description of the written and oral portions

The first part of the exam consists of a written standardized test that measures level of proficiency in both English and the other language being evaluated. It is a multiple-choice exam with sections on antonym/synonym selection, sentence completion and reading comprehension. There are also questions that could be considered general usage questions which measure a candidate's ability to choose grammatically and structurally correct options in an objective-testing format. The types of errors included in this section are generally those a native speaker of a
language would use, not those typical of second-language learners in the process of acquiring a language.

The lexical content in this section of the exam is not specifically legal in nature. Candidates are not required to show expertise in judicial terminology or in the functioning of the court. The purpose of this part of the exam is simply to measure a candidate’s overall proficiency in the languages involved using an easy to administer, objective format as a screening instrument. The developers of the exam state the difficulty of the exam to be at a level roughly equivalent to a college degree level of proficiency.

The written portion of the exam is eliminatory. Candidates must pass this portion of the exam in order to take the oral portion at a later date.

The oral portion of the Federal Court Interpreter Certification Exam is described in the official examination manual provided to all candidates as:

(...) a functional performance test of the candidate’s ability to interpret in a simulated courtroom setting. It is approximately 40 minutes in length. The test consists of three parts and is preceded by an introduction that includes a brief interview and an explanation of the instructions. Some sections of the test are prerecorded and are heard through earphones. (p. 28)

The oral exam is designed to simulate courtroom interpreting activities and
so the divisions of the oral exam are based more on type of courtroom procedure than on mode of interpretation. For that reason, there is one sight translating exercises, two simultaneous exercises, and one consecutive exercise.

The interpreting mode used in the first part of the oral exam is sight translating. Candidates are required to render written documents into spoken language spontaneously. Two texts are provided, one in each language. They are usually either formal documents such as notarized statements or laws, or texts of a colloquial nature such as simulated probation reports, presentence reports or depositions (Exam manual, p. 28). Candidates are given a short period of time in which to scan the text, and are then asked to give their rendition. Five minutes is allowed for each text for a total of 10 minutes for this portion of the exam.

The second section of the exam consists of the simultaneous interpreting of a simulated opening or closing statement which is based on actual court transcripts of criminal or civil cases brought in federal court (Exam manual, p. 28). It is approximately seven minutes in length. This exercise is prerecorded and the candidate makes use of a tape recorder to listen to the text and simultaneously interpret it. The interpreted version is evaluated as it is produced, but is also recorded for further evaluation by raters after the test session is over.

The third section of the exam is called the “cross-examination” portion and comprises 19 minutes of the total exam. There are two exercises in this section, one using the consecutive mode and one using the simultaneous mode. Candidates are asked to interpret simulated witness testimony in the two modes.
The consecutive exercise is the most extensive, and fully 15 minutes of the test period is devoted to this section. Furthermore, it is this portion of the exam that most closely reflects real courtroom activity as the simulated cross-examination is live. Candidates give sequential interpreted renditions from and into both of the languages involved. Notetaking is allowed. Once again, the source of material for this portion of the exam is an actual criminal or civil case brought in federal court.

Finally, the candidate finishes the oral exam by returning to the simultaneous mode but continuing with cross-examination. This section is similar to the previous one in content and style, but is much shorter (approximately 4 minutes) and is prerecorded.

The type of language that can be encountered in the oral exam may cover virtually all of the registers described earlier in this thesis as characteristic of spoken legal language. The questions posed by the attorney will reflect higher-register, more formal language, while the testimony given by a witness may be extremely colloquial and may include street-language, slang or special jargon of some type. The exam also reflects the party-oriented approach to court interpreting that prevails in federal courts in the United States. The fact that the simultaneous interpreting section of the exam is uni-directional, in other words, is only an exercise in interpreting from English into the foreign language, also reflects the reality of court interaction. There would be virtually no situation in which simultaneous interpreting would be used in the other direction as any testimony given in a language that the court does not understand is given in consecutive mode.
Standards are set for the elaboration of the exams so that elements such as length and lexical and structural density are reasonable given time constraints and other administrative dictates and so that consistency can be insured from one exam session to the next.

This consistency is ensured through what González and the other test elaborators call “equating”. They describe the process in the following way:

The process of equating is simply establishing that scores have the same weight on different tests. More specifically, two scores, one from test X and one from test Y, are considered equivalent if X and Y measure the same trait with equal reliability and percentile ranks. The equating process establishes an index of consistency from one examination administration to another. As a result of this equating procedure, cut-off scores from each administration of the examination can be determined. This process ensures that all versions of the written examination are equal in difficulty and content to prior examinations. Furthermore, this procedure also accounts for the variation in passing scores from year to year. (Exam manual, p. 27)

2. Scoring

A three-member panel presides over the oral exam procedure. Each member
has a pre-arranged role and knows when and how to interact with the candidate.

Evaluation of the candidate's performance is on-going during the exam session, but the taped versions are available for further consultation if exam scores from the three raters vary significantly or if for any reason it is deemed wise or necessary to reevaluate performance.

Raters have very specific guidelines to follow in their evaluation of candidate performance. Scoring units are determined prior to the exam sessions as part of the elaboration process. These scoring units are words or phrases that are identified and delimited, and respond to the kinds of language and interpreting skills the exam developers wish to measure. The number of scoring units in each category is also predetermined. In other words, certain categories of evaluation are created and then certain phrases or words from the text are identified that fit into that category. Candidates may make errors outside of the scoring units and not be marked down for those errors. The rationale is that if the scoring units are correctly identified and do truly reflect the skill or knowledge base they are meant to test, a candidate's

For example, for one of the state exams (New Jersey), there are three main scoring unit categories: Grammar and Usage, Lexical Range, and Conservation. In the Grammar and Usage category, features of grammar that might confuse an inexperienced or unsophisticated user of a language and false cognates or common areas of source language interference are measured. In the category of Lexical Range, there are also three categories: general vocabulary, terms or phrases peculiar to a court context, and idioms. Finally, in the Conservation category, many different aspects of language production are included: a) units related to register, b) specifics such as names and numerals, c) words or phrases that give emphasis or precision to an utterance such as intensifiers or markers, d) words or phrases that are often omitted because they are embedded or positioned in a such a way in the original as to make it somewhat difficult to include them in the target language rendition, and e) slang and colloquial usage. (Taken from an Interoffice Memorandum of the Administrative Office of the Courts of the State of New Jersey, dated August 17, 1987)
performance on these specific points will be representative of his overall ability. Furthermore, this approach allows for objectivity to be maintained to the greatest extent possible.

Possible responses are predicted and identified through pre-testing and piloting of the instruments, and are classified as acceptable and unacceptable. All raters throughout the country at the several different exam sites have the same list of parameters to apply to the exams they are grading. Any response that falls significantly outside of the prepared list of responses is marked for study by the exam designers or the administrative board who decide whether or not to accept it. Alternative responses not predicted in the exam preparation stage are often added to the preprepared lists.

Although objections might be raised to the fact that raters are required to overlook certain errors that they witness in a candidate's performance, this approach is generally accepted as a reasonably accurate and at the same time reasonably objective method for testing interpreting skills.

As regards cut-off scores or pass-fail criteria, the Federal Court Interpreter Certification Exam is reported to have more stringent requirements than the state court interpreter exams. For the Spanish/English language pair, candidates for certification for the federal courts must perform at approximately an 80 percent level of accuracy in a forty minute exam in which approximately 220 scoring units are evaluated. Scoring of the exam is holistic in the sense that there are no internal
divisions in the scoring procedure.

There are some subjective categories of evaluation that are measured as part of the court interpreter certification exam. These include pronunciation in both languages, fluency, quality of voice, delivery, and so on. On both the federal exam and on some state exams, there is a separate category for these skills or areas of proficiency and general guidelines are provided for determining scores. Defining specific scoring units for these categories would not be feasible. However, a candidate receives feedback on these aspects of his performance on his evaluation sheet as well as the number of scoring units he got right and wrong on the overall exam. It is important to point out that score reports are made available to candidates upon request and written comments by the raters are included on these reports.

3. Pre-test materials and instructions

Perhaps it is in the area of assistance to the candidate that the biggest difference between the methods used in Spain and those used in the United States are

The New Jersey State exam requires a 70% level of accuracy for certification and then defines a “critical range” just below this which allows candidates whose scores indicate that they have good potential to be hired on a provisional basis by the state court system and to receive training in order to improve their skills. These individuals are then given a second opportunity to take the exam. However, each of the three sections of the oral exam - simultaneous, consecutive and sight - must be passed separately.

There is currently a proposal to modify the way in which the oral portion of the federal certification exam is administered and rated as the current system, with three live raters at each session, is quite costly. According to Dr. Roseann González, head of the Federal Court Interpreter Certification program, these proposals are in response to economic concerns, not to issues of test validity or reliability.
found. Anyone requesting information about the U.S. Federal Court Interpreter Certification exam is sent a 51-page manual and a 49-page sample test booklet, complete with answer key, free of charge.

The test manual includes exhaustive information about the exam itself, including a list of the names of the individuals who participated in elaborating the exam and their qualifications, the historical development of the exam, and its purpose, development and format. An explanation is even given of exactly what certification means for successful candidates.

The manual also provides a discussion of each section of both the written and oral portions of the exam with a rationale for each exercise, examples of typical questions and specific strategies candidates can use to be successful on that part of the exam. An entire section is dedicated to suggesting techniques and materials that candidates can use to prepare for the exam and a list of publishing companies and bookstores where candidates can obtain these materials. Tips are given on general test-taking strategies, on how to measure preparedness by evaluating performance on the practice exam, and on how to make the best use of time in a timed exam. Two pages are dedicated to explaining in a detailed fashion how to fill out the answer sheet, and a sample is provided. Suggestions are even given on what to do the day before the written exam and on the day of the exam itself, including things such as how early to arrive and what materials and documentation to bring. An explanation is given of the concepts of validity and reliability and their significance for this exam, thereby sharing with the candidate the more technical side of the exam procedure.
This lends to the concept of face validity that was discussed earlier.

In the section specifically dedicated to the oral exam, some general instructions are given which guide the candidate in appropriate oral language usage. For example, candidates are told to use colloquialisms in the target language if they are used in the source language and that register should be maintained in their renditions. Warnings are given not to “clean up” or “improve” the speaker’s language in any way and that interpreter versions are expected to be unedited and complete, not summarized or paraphrased (Exam manual, p. 33). Some interpreting techniques are included such as tips on what to do if a candidate cannot remember a word immediately (“Say the word in the source language if necessary so as not to distract your pacing” p. 33). A complete explanation of the scoring of each section of the exam is included in the manual. For the oral exam, this includes both objective and subjective criteria. Each category of evaluation is described and examples are given of a correct and an incorrect response with the reasoning for each. Candidates are made aware in the manual that raters are specially trained for their task and of the latitude that they have in their marking.

The last ten pages of the manual are dedicating to providing sample texts and questions for the written part of the exam, although no texts are provided for the oral part. However, students are given specific suggestions on how to prepare for the oral part of the exam which include court observation, building notetaking and memory skills and improving analytical skills. Specific sources of texts and techniques for practicing sight, simultaneous and consecutive interpreting are provided (pp. 28-32).
In addition to the manual described above, a sample test booklet is provided for the written exam. There is a 12-page introduction and then a full sample test (160 items) for both the Spanish and the English exams. An answer key is provided at the back.

These materials clearly show the effort that is made to provide complete and accurate information to all candidates on the nature of the exam and the qualifications or skills required to be successful when taking it. Receiving these materials allows prospective candidates to better assess their ability to pass the exam, aids them in preparing for it, and contributes greatly to an acceptance of the exam as valid.

C. Alternative testing methods

It is clear that in addition to being quite challenging and extremely time-consuming, developing and administering certification exams is a very costly undertaking. It is perhaps not realistic to expect exams to be designed and administered for every language and at every level of a nation’s court system. Experience and resources can and should be shared whenever possible so that the desired outcome - guaranteeing linguistic assistance to those needing it - can be achieved. González and her colleagues have developed other techniques that can be used as qualification tools by specific courts to meet their own unique needs when it is not feasible to institute a full-blown testing program. These methods include
carrying out an interview, having candidates prepare a biographical sketch, administering standardized written proficiency exams, and finally, using shadowing, memory and back-interpreting exercises to determine language proficiency and rudimentary interpreting skills (pp. 192-200). Given that alternative methods must be used so frequently, each of these methods merits brief explanation.

1. The interview

Court personnel can obtain some indication of a potential interpreter’s language ability in either or both languages in question by carrying out a structured interview. González et al. describe a four-tiered approach with each level of the interview increasing in complexity and specific content. Except for in very specific circumstances, the interview takes place in the candidate’s second language, and an assumption is made that he is more proficient in his native language. The interview as suggested by González et al. includes the following four levels of questions:

Level 1: General information questions such as personal data and previous educational or work experience both in the individual’s home country and abroad.

Level 2: Questions on travel abroad and what the candidate has learned about the culture, politics or economics of other countries through his travel. This requires the candidate to speak at a more
sophisticated level and elicits somewhat specific vocabulary related to
fields mentioned above.

Level 3: Questions on how a candidate would handle a hypothetical
courtroom situation. Here the candidate is no longer talking about
himself or his own sphere of reference, but about a profession-related
situation.

Level 4: Questions related to the government or the judicial system of
the country in which the interpreter will be providing his services.
These questions are more technical and require candidates to perform
at a significantly higher level of language proficiency than the
questions asked in the three previous sections. The purpose here is
not strictly to judge the content of the candidates answer (although
this is an opportunity to evaluate how much legal knowledge the
candidate does have) but to evaluate his ability to speak at a higher
register using abstract concepts for specific purposes. (p. 193)

If a candidate cannot successfully negotiate Level 4 questions in his second
language, his ability to provide adequate interpreting services in a court of law should
be seriously questioned.
2. The biographical sketch and standardized written exams

These two approaches are both limited to the written word. One is an active (the sketch) and one is a passive (standardized exam) exercise.

The first requires the candidate to write - in his second language - a short summary of his own background, preparation and life experiences. This exercise allows an evaluator to assess the candidate’s level of sophistication and variety of language usage.

The second approach simply makes use of standardized language proficiency exams that are available through universities or testing organizations. These exams at the very least provide some information as to a candidate’s passive knowledge of the languages involved. The use of these instruments requires no expertise on the part of court personnel in languages, testing, exam administration and so on. Answer keys are provided with the exams and multiple choice tests are easily scored. This type of instrument could be considered roughly equivalent to the first part of the federal court interpreters exam, although the equivalency is mostly in terms of format.

To achieve a certain degree of equivalency as regards content, the instrument to be used and the federal exam would have to be evaluated and compared.

While using this type of standardized test is certainly better than accepting someone into the courts with no proof of proficiency whatsoever, it should only be considered a first step. González et al. stress that no selection procedure for court interpreting should rely exclusively on a passive, written instrument. Some type of oral skill assessment must be included.
3. Shadowing

Shadowing is a technique that is often used in interpreter training programs. It requires a candidate to listen to a recorded text and repeat verbatim exactly what he hears as he listens, in other words, simultaneously. The exercise can be done in either or both languages. Scoring simply requires an assessor to listen to the candidate’s version and count the number of words missed. A percentage can be calculated of amount of text correctly reproduced. While this type of exercise only tests one part of the interpreting process, any candidate who can not complete it successfully is definitely not able to carry out the more complete and complex tasks required of an interpreter. When there is no one available at a particular site with the skills or ability to evaluate or assess a candidate’s interpretation, this method is an acceptable, albeit not perfect, substitute.

4. Memory tests

As we saw in the section on interpreting theory, short term memory plays a major role in successful interpreting. Therefore, any instrument that can measure a candidate’s ability to process information in short term memory helps in the qualification process. The exercise that González et al. suggest is a monolingual exercise, always keeping in mind that the individuals who will be using these alternative methods of evaluation are most likely going to be monolingual themselves. This exercise would consist of asking candidates to repeat verbatim a series of
unrelated sentences that they hear. Scoring units reflecting the typical pitfalls and problems faced by an interpreter are predetermined, and candidates are asked to repeat exactly what they hear, without paraphrasing or altering the utterance in any way. Candidates who cannot recall an utterance of moderate length and complexity in the same language, will probably not be able to render a complete and accurate version of the utterance in another language.

5. Back interpretation

This technique is the most complete in that it requires an individual to interpret a text into the target language, and then some time later, reinterpret it back into the source language using only his interpreted version. This allows a monolingual examiner to assess some actual interpreting skills by comparing the reinterpreted version with the original. Of course, the pitfall here is that the examiner cannot be certain how much of the back translation, or reinterpretation, is based on the candidate’s memory of the original and how much is actually based on the interpreted version. For this reason, it is advisable to have a time lapse between the first interpretation and the back translation. Another exercise could be administered in the interim so that it would be reasonable to expect that the candidate’s ability to recall the original had decreased. In scoring this exercise, it is important for the examiner to realize that lexical equivalence is not important. Reasonable substitutions can be made and are to be expected. Maintaining the original meaning and avoiding any significant omissions or insertions are the criteria to be applied.
As a last resort, González et al. suggest the possibility of a phone assessment of a candidate by language specialists.

We can see by the nature of these techniques that they are really more useful for weeding out those who are clearly not qualified to work in a court of law than for guaranteeing high quality interpreting. Individuals who cannot meet these minimum standards should be disqualified, but individuals who can pass these alternative tests have only proven that they are minimally qualified. Nevertheless, eliminating the clearly unqualified is an important first step, and using any of these techniques is certainly better than using none.

D. Concluding remarks

The experience garnered by the professionals in the United States in their efforts to provide quality interpreting services to language-handicapped individuals can serve as a roadmap for others trying to achieve the same goals. While one country’s experiences never exactly parallel those of another, examining the successes and failures of others’ efforts is a worthwhile endeavor.

There is room for debate as regards the United States model. For example, questions as to why issues of professional ethics are not included anywhere in the exam procedure could be brought up. Also, some specialists would argue that the language proficiency portion of the exam should have some legal content, as it does
in the Canadian exam. However, several aspects of the exam could be held up as a
very positive example. Some of these might include the interdisciplinary approach to
the test elaboration team, the careful pilot-testing and analysis of test items, the on-
going equating processes in use from testing session to testing session, the clear
identification of performance objectives and evaluation units as part of the test
elaboration process, and the very high degree of transparency surrounding the entire
process, from beginning to end.
Chapter Eight. EDUCATION AND TRAINING

A. General considerations

The final step in this process of defining court interpreting as a field, from its legal foundations to issues involved with ensuring quality services, is perhaps to propose some guidelines for training individuals interested in providing this vital social service. Training programs could be offered by universities, professional associations, government institutions, or by private, specialized academies or centers. Courses could be designed for a variety of professionals who have some, but perhaps not all, of the required skills and knowledge to be court interpreters. For example, experienced conference interpreters have interpreting skills and therefore would only need orientation in the specific demands related to court interpreting. Legal translators who have experience with legal texts and perhaps are knowledgable about the legal system would need skills development in oral interpreting. Another group that could potentially provide very skilled court interpreters with the proper training would be members of the legal profession who have highly developed language skills in one or more foreign language. These individuals bring a great understanding of the law and of proper legal terminology to the task and would need to concentrate on developing interpreting skills. And then, of course, there are the novices, usually young students who choose translating and interpreting as a future profession. These
students might not even be aware at the outset of their studies of the specific fields available to them, but they certainly bring desire and enthusiasm to their studies and with the proper instruction can become excellent court interpreters.

Each of these types of potential court interpreters would require a slightly different type of training. Nevertheless, the basic skills and fields of expertise are common to everyone who wishes to enter this field.

In this section we are going to focus on the basic elements of an effective court interpreter training program in general and then make some specific suggestions on how these elements relate to Spanish reality. We will take into account that in Spain, as in other countries to a greater or lesser degree, both staff and free lance court interpreters are required to do written translations of legal documents as well as oral interpreting. However, course descriptions offered will emphasize the oral skills needed to do court interpreting and the ethical and practical issues related to the use of language mediators in courtrooms and other legal settings. These suggestions are by no means a comprehensive plan, but rather some general comments about areas that should be included in a curriculum and a few ideas about methods.

B. Language Development

Of course, specialized instruction in language mediation services assumes candidates to have a strong foundation in the languages they will be mediating.
Native or near-native knowledge of two languages is absolutely necessary. In addition to native-like fluency, clear and easily understandable pronunciation in both languages, and grammatical and structural accuracy, good court interpreters must also have a well-developed level of general knowledge that they can easily access in both languages and the ability to understand and express ideas and information at all registers on a wide variety of subjects. In other words, to be successful, court interpreters must be curious and active participants in the world around them and become accustomed to reading and obtaining information through as many sources as possible on a regular basis. As is true for all students of interpretation, all participants in court interpreting programs should be strongly encouraged to find a way to spend a significant amount of time living in a country where the language they will be using is spoken. Life experience is a vital factor in developing language skills that are adequate for the task of court interpreting. It is only through day to day life, coupled with extensive reading and study, that an individual acquires the scope of language needed to adequately cover all of the registers of courtroom language.

Having achieved this level of language proficiency should be a prerequisite to admission to any court interpreter training program, not a part of the program itself. Likewise, solid translating and interpreting skills should be acquired before specialized training begins. Given the focus of this thesis, we will assume that students who come to the specialized course we are suggesting, have at least had some preparation in written translation. For our purposes, we will offer suggestions for a course that assumes little or no preparation in any of the modes of oral interpreting and combines
preparation in the main modes of oral interpreting used in a court of law with other issues and areas of development that should be covered in a specific program of study.

C. Interpreting skills

Earlier in this thesis we defined the types of interpreting that language mediators in legal settings are asked to carry out. These were consecutive interpreting, simultaneous interpreting, the sight translation of written documents, and, to a lesser degree, summary interpreting. Each type requires specific skills and abilities and therefore a specific type of training. All require extensive directed practice.

1. Consecutive interpreting

Consecutive interpreting requires excellent listening, short-term memory, speaking and note-taking skills, and high levels of concentration and mental agility. An educational or training program would have to include exercises that develop each of these skills. For example, listening skills can be developed by combining traditional listening exercises in which students are asked to listen for both general and specific information to demonstrate understanding, with prediction based approaches (CLOZE, for example) in which students are asked to use context clues and prior
knowledge to predict the next element in an utterance.

To develop good short-term memory skills, students might be required to listen to a short text that has a pre-determined number of semantic units, some supporting or developing details and a certain amount of independent information such as proper names and numbers. Segments can be short and anecdotal at first, and increase in density, difficulty and length as the course proceeds. Students should be asked to reproduce these utterances first in the language in which they hear them in an accurate but paraphrased version. This requires students to focus on complete and accurate understanding of meaning rather than on the words of an utterance and gives them practice at abstracting and reproducing information without having to negotiate specific language transfer problems as of yet. This technique also allows students to develop flexibility and variety in language usage in their first language.

After this skill has been practiced and mastered, students can be asked to do the same type of exercise, but this time transferring the information given in the original into the target language. Emphasis should be on maintaining all semantic units found in the original at the same register and in correct and convincing target language usage. As in written translations, the goal is for the utterance to sound authentic, not interpreted, while at the same time preserving the original meaning and intent.

Using anecdotal information for these exercises is useful at the outset as much courtroom testimony “tells a story”. However, there is also a great deal of expert testimony given in court cases, so students must eventually be taken beyond the
strictly anecdotal approach to a more all encompassing approach covering topics on which expert witnesses are frequently asked to testify in court.  

Conference interpreters use notetaking much more frequently than do court interpreters due to the fact that they are asked to remember long periods of spoken discourse more often than are court interpreters. Nevertheless, this skill is often used by the courtroom interpreter and should be practiced. The level of accuracy demanded in a courtroom or in a legal situation requires interpreters to make use of notetaking to ensure accuracy in such things as proper names, dates, and figures. While in conference interpreting, some approximation is admissible (such as rendering “at the beginning of November” for “November 2-3”), in a court of law, complete faithfulness to the original and precision in the second language rendition is of the utmost importance. The change in a date or even the hour at which something occurred can be pivotal in a court of law. It is important to realize that taking notes during oral proceedings adds to the load of cognitive processing being carried out by an interpreter at a given moment in time and is an additional source of distraction from the task of attending completely to the utterance to be transferred into the target language. Therefore, for purposes of court interpreting, while developing good notetaking skills is necessary, emphasis should be put on using short-term memory as much as possible and reserving use of notetaking for the

In criminal cases, expert testimony is often required from medical personnel including psychiatrists, arms experts in cases in which a violent crime was committed, and scientists with the ever-increasing emphasis on probatory evidence that requires expert interpretation or analysis. However, other types of expert testimony are also sometimes needed such as testimony given by graphologists or polygraph experts.
specific type of information mentioned above.

One possible type of introductory exercise for developing good, specific notetaking skills while still concentrating on receiving and processing auditory input, is to have students write down a series of numbers that are flashed on a screen or held up on cards for a few seconds at the same time they are listening to a spoken text. Students are then asked to respond to detailed questions on the material heard and to compare the accuracy of the numbers or information they took down. Although this combines the use of both the visual and the auditory channels of input, it helps develop that dual capacity to process information. From here, exercises in which students hear a text but are only allowed to write down numbers and proper names in the order they appear in the text, and then are asked to rerender the information in the source language or interpret it into the second language can be useful.

Other points that should be emphasized as regards notetaking is that it is a very personal activity and that there is no one set or “correct” way to take notes. Each interpreter must develop a system that works well for him, and even issues such as whether notes should be taken in the source or target language are largely up to the individual interpreter. Stressing that a combined approach is also acceptable is also important. Suggestions for the use of abbreviations and symbols as methods for saving time should be made. Once again, the key to mastering this particular aspect of consecutive interpreting is to practice as much as possible.

Another extremely important area of preparation that must be given serious attention and often is not, is the area of public speaking. Interpretering in a court of
law can be a daunting experience the first few times around. The interpreter finds himself surrounded by both high-prestige individuals such as judges and attorneys, and by nervous and frightened individuals who sometimes depend too heavily on him as one of the few, if not the only, court official with whom they can communicate.

An interpreter working in the consecutive mode is positioned in plain view of all participants and observers, and attention is focused very heavily on him. Therefore, the interpreter must be able to remain calm and collected, to always be poised, to have appropriate body language and non-verbal communicative behavior and to act professionally. A clear and understandable speaking voice, with correct pacing and volume, aids in the smooth progress of legal proceedings while choppiness, false starts, hedges and generally poor voice quality not only hamper proceedings but, as we saw earlier, often affect how a judge or jury perceives of the credibility of a witness. Therefore good public speaking skills must be developed.

Many times, little attention is given to this aspect of interpreting. Specific lessons should be created on proper breathing, diction, and voice control, and on relaxation and stress control as it affects speech and performance in public situations. Students should be required to speak spontaneously in front of class on serious topics and be critiqued on the aspects mentioned above. Nervous tics or unconscious habits a speaker may have should be pointed out to him, and suggestions on how to maintain proper eye-contact and what to do with one’s hands and so on, should be given.

Another benefit of spontaneous speaking exercises is that they require students to produce original speech, and although the renditions given by an
interpreter in a courtroom are closely based on the testimony given, the interpreted version can be considered original speech in that by virtue of having to reproduce the message in another language, the interpreter is creating speech by choosing from the myriad of lexical, structural, and syntactic options available to him. Sometimes an individual's own speech patterns in the source or target language interfere in achieving an accurate target language rendition, so any exercise that requires students to produce original speech and to vary that speech as much as possible, contributes to developing the language production skills necessary for good court interpreting.

2. Simultaneous interpreting

In a court of law, simultaneous interpreting is used to keep a defendant who is not proficient in the language of the court abreast of all that is transpiring during the proceedings when he is not actively involved. If certain kinds of transmission and reception equipment are available, the interpreter can be positioned anywhere in the courtroom and speak into a microphone and the defendant can receive the transmission of the interpretation on a headset. If this type of equipment is not available, the interpreter is usually seated next to or directly behind the defendant and renders a whispered version of what is transpiring. The use of the correct equipment greatly facilitates an already difficult task, but interpreters must be prepared for the second type of simultaneous interpreting described, as it is far more frequent than the first type.

Simultaneous interpreting, as described earlier in this thesis, requires an
interpreter to listen to the source text and render a target language version at the same time. The theoretical models that were described and which focused mainly on simultaneous interpreting and the cognitive processes involved in it, show just how complicated this undertaking is. Interpreters in this mode, as is the case with consecutive interpreting, must have an excellent command of both languages, a great deal of mental agility and great powers of concentration. While memory is not as important in simultaneous interpreting as it is in consecutive, having to simultaneously listen and speak more than equals the difficulty of remembering utterances verbatim.

In order to prepare students to be good simultaneous interpreters, programs can begin with shadowing exercises, which simply give students a chance to become accustomed to listening and speaking at the same time. At first, students should simply be required to listen to a taped text and, starting one semantic unit behind the original, reproduce the text word for word as it is heard. More adept students can move quickly on to same-language paraphrasing. Once a student becomes comfortable with listening and speaking at the same time, listening and language processing activities can progressively be introduced. These might include having students listen to a text and recite unrelated information at the same time (for example, multiplication tables, girls’ and boys’ names, the alphabet, etc.). Questions

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101 This technique was suggested earlier in this thesis as one of the ways to evaluate a prospective interpreter when certification or qualifying exams are not available.

102 The usefulness of shadowing exercises can be questioned because requiring students to simply repeat exactly what they hear sometimes leads to very literal translation once the students begin to interpret. Paraphrased same-language shadowing does not suffer from this limitation.
can subsequently be asked on the text students were listening to. This allows them to develop the skills needed to listen and do basic processing activities at the same time. Eventually, the student moves to interpreting graded recorded texts, starting with general information texts taped at a relatively slow speed and working up to more complex texts at more realistic speeds. Strategies for negotiating translating problems such as lexical and syntactic misfits should be presented in an on-going and as-needed basis.

During simultaneous interpreting training, it is important to work on concentration skills, as the level of concentration required to interpret is very high. A wandering mind wreaks havoc with an interpreted proceeding, and requests for repeats cannot be made. Also, interpreters in training should be exposed to many different types of voices, accents and speech idiosyncracies as possible to aid in improving the all important skill of accurate listening. If source discourse is not correctly understood, it cannot possibly be correctly interpreted.

3. Sight translating

As mentioned earlier in this thesis, sight translating is a hybrid form of language mediation which bridges written and spoken forms. This mode of language mediation in the judicial system: the role of the court interpreter. Cynthia Giambruno

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Recommended beginning speed for novice interpreters is around 100 words a minute. Average word per minute of spoken text has been reported in at least one study as 164 words per minute and discourse measured at over 220 words a minute has been recorded in studies of courtroom language. See “Credentialing Court Interpreters” by Robert Joe Lee, Chief of Court Interpreting, Legal Translating and Bilingual Services Section of the Administrative Office of the Courts, State of New Jersey, in Proceedings of the Second Annual Institute for Court Interpreters, August 1990, p.128.
transfer takes a source text presented in written form and transfers it into a spoken version in the target language. This fact presents the translator/interpreter with some very specific difficulties that he does not encounter in the other types of interpreter. The most obvious of these is that written discourse has different features than does spoken discourse and in transferring from one to the other, these differences must be taken into account and accommodated. In legal settings, many of the documents that are read in court and therefore become part of the record, are legal documents that are written in very high register, formal language that includes all of the characteristics described in the section on written legal language included in this thesis.

In preparing students for this type of interpreting, it is especially important to remind them and train them to focus on the meaning of the original text (without ignoring register) and not on the specific words of the text. In the consecutive mode, interpreters must depend on their memory of meaning, not words. In simultaneous mode, interpreters depend on immediate transfer of discourse. In neither of these modes, is the written text available to them. In sight translation, the fact that the written text is available always tempts the interpreter to adhere too closely to the words of the text themselves rather than the meaning. This can be fatal in producing a correct and comprehensible target language rendition.

In training students for this mode, specific strategies for common, recurring lexical and syntactic accommodations should be pointed out and practiced so that students become very comfortable with their application. Also, standard written legal
documents should be studied and analyzed for these types of accommodations, and
the standard terminology and structure used in each language for certain types of legal
documents should be studied and learned. This will allow students to recognize and
successfully negotiate the problems that frequently occur in this mode.

In addition to formal legal documents, discourse representing exactly the other
extreme of the register scale is often presented in written form in courtrooms. This
occurs when a police report or a deposition that was taken upon arrest or during pre-
trial conferences is presented as evidence. Although this testimony is presented in
written form, and is sometimes a summarized version of testimony prepared by court
officials or attorneys, it is based on spoken language and does not present the same
formal difficulties that legal documents such as contracts, wills and testaments, or
birth certificates do. However, they do often contain slang or street language or
idiolectic features that the interpreter must negotiate.

Finally, as regards sight translating, we saw earlier that in the Spanish legal
system, this mode of interpreting is frequently used, especially in civil cases and at
pre-trial proceedings. Testimony is taken and a summary version is prepared for the
witness or complainant to sign which must be read back by the interpreter for
verification. This document becomes part of the official record of the case.
Therefore, good preparation in this mode of translating/interpreting is absolutely
essential for individuals who plan to work in the Spanish legal system.
4. Summary interpreting

When using this mode, an interpreter is required to give a summarized version of the proceedings or of some portion of the proceeding that cannot be rendered in one of the other modes of interpretation. While this mode is virtually out of use in the United States, it is still used in some courtrooms in Spain\textsuperscript{104} in lieu of on-going simultaneous interpretation of the entire proceedings.

To prepare students in a training program to successfully work in this mode, in addition to developing the skills mentioned in the section on consecutive interpreting, it is also important to develop summarization skills. Exercises based first on identifying the main points and important supporting details of a written text should be used in the classroom. Students must be taught to outline as a mental exercise and as a beginning step for notetaking when working with spoken discourse. After achieving a high degree of accuracy in this sense, students should be asked to apply the skills they have acquired to spoken discourse. For this mode of interpretation, more extensive notetaking skills will have to be developed and practiced as interpreters will be required to listen to and retain longer periods of speech including monologal and dialogal discourse which they will have to render in a summarized fashion for a defendant.

\textsuperscript{104} As reported by the staff interpreters at the Juzgados Centrales in Madrid who said the decision to use simultaneous or summary interpreting belonged to the judge or judges presiding in a given case.
D. The judicial system

Mastering interpretation as a skill is still only one part of the training of any court interpreter. Training programs for this profession must also include instruction on areas specific to legal interpreting. As most programs are usually language and system specific, in other words, they prepare students to work in a specific language pair and a specific court system (or to sit for a specific qualifying or certification exam), an introduction to the judicial system in which students expect to work should be presented. This section would include information on the organization of the court system itself and of other related justice system agencies (law enforcement, notary services, community and social services, the state attorney’s office, the system of public defenders, etc.). Both criminal and civil court procedures should be explained with as much detail as possible, always assuming that students know nothing, rather than that they have even basic knowledge in this sense. This assumption allows for the reenforcement of correct information the students may already have, and avoids the misinformation that students may get by guessing, asking someone who is not informed or only partially informed, or by simply not knowing what or whom to ask. Any area in which there can be variation from court to court, whether due to the type of court or the fact that an issue is at the presiding judge’s discretion, should be included. All stages of the judicial process should be presented, from arrest and notification of charges, through instruction, to sentencing and appeal. A clear description should be given of how the interpreter is expected to function at
each stage of the process.

A comparative study of legal systems can also be incorporated into this block in programs that are language specific. In other words, if the interpreters in the training program are all from the same language pair, i.e. English-Spanish, then some information about the British and American judicial systems can be presented to contrast with Spanish court procedures. This often helps the interpreter understand some of the misconceptions a language-handicapped individual might have about the functioning of the court.

If, on the other hand, this portion of the course is offered to interpreters in training representing several language pairs, or languages spoken in such a large number of countries that it is not feasible to present an accurate representation of the legal systems, this section may have to be limited to the originally stated purpose of presenting information on the system in which the prospective interpreters will be working. At the very least, some information can be included in this part of the course on the differences between civil law, common law and socialist law and how type of law affects systems of justice.

E. Language in the courtroom

In this section of the training program, a complete explanation of the characteristics of written and spoken legal language should be included and emphasis
should be given to how language can affect the outcome of a trail or a legal proceeding. Issues related to specialized vocabulary, register, para-linguistic and extra-linguistic features should be discussed. The use of vulgar language during legal proceedings will need to be specifically addressed as many students (and many professional interpreters) do not feel comfortable reproducing certain words or phrases in a formal situation such as a courtroom.

Glossary building skills and how to work with case-related materials when they are provided prior to a hearing are useful to develop. Presenting and studying standard forms in both languages is a good technique that can be used to deal with courtroom and legal jargon as well as frequent topics of expert testimony. Alternatives for what to do when faced with something totally unfamiliar during a legal proceeding can be introduced here and reenforced in the section on interpreter ethics. Likewise, a court interpreter's obligation to provide a faithful rendition of the original discourse, while also an issue of interpreter ethics, should be continually stressed when discussing any language related issue.

F. Interpreter ethics

Of all the areas to be covered in a comprehensive training program for court interpreters, this one is perhaps the one that is most overlooked. Nevertheless, it is of equal importance as excellent language proficiency, well-developed interpreting
skills, and knowledge of the judicial system. The training program is the appropriate venue for students to learn about proper behavior in legal settings and the relationship between the interpreter and all of participants in a legal proceeding. In another section of this thesis, interpreter ethics were discussed at length and one of the several codes of ethics used in the United States was reproduced. Standards such as these, based on a full understanding of what is expected of court interpreters as determined by professionals, jurists and other experts within a given system should be developed and taught in training programs. They should also be available in written form at courthouses around the country, and efforts should be made to educate not only interpreters but also judges, attorneys, court personnel, government officials, and even society at large. Only in this way will the profession come to be considered “professional” and garner the respect it deserves.

Training is an essential prerequisite to certification. As stated above, an excellent certification exam is of no use if there are not well-prepared candidates who can pass it. The figure of the court interpreter plays a pivotal role in ensuring that justice is done. Excellence in performance is to be expected. Therefore, quality educational and training programs are essential.
CONCLUSIONS

In this final section, it is important to restate the philosophy that underlies this thesis, the approach taken to it, and the objectives which were set for such a project at the outset.

As was stated in the introduction, the field of translating and interpreting is a recently recognized area of specialization in Spanish academics. While there is a growing corpus of research in translation, this thesis is one of the first in Spain to specifically address the field of interpretation, and the only one to look at interpreting for a specific purpose or in specific contexts such as courtrooms or legal settings. The approach taken has been interdisciplinarian, with legal, linguistic and testing aspects included together with an analytical study of current court interpreting practices. Broad questions about the field in general have been posed in order to provide a framework for further analysis of the more specific questions and how they affect the larger picture. Furthermore, this thesis could be considered to have a policy orientation in the sense that in addition to providing a framework, it identifies some areas in need of improvement and suggests solutions for questions on institutional and public policy in an area related to language and its usage.

As regards the structure of the thesis itself, a dual approach was used. The first was descriptive, based on the need to clearly identify the theoretical underpinnings of the question at hand and define the state of the question at the present time. The second was analytical, in which the criteria presented in the
descriptive part of the thesis were applied to the situation as described in order to ascertain strengths and weaknesses in the system being studied and suggest possible ways to improve it. This structure was in keeping with the objectives as stated in the introduction. The main focus of the analytical portion of the thesis was on certification instruments and practices as a means by which to meet the goal of providing quality interpreting services. A comparative approach was taken which involved studying not only the current situation in Spain, but also the experiences of other countries and other communities which could serve as models or examples in the analysis.

Having restated these points as the guiding factors of this study, several conclusions can be drawn from the research that has been done. Given the nature of this thesis, some of these conclusions are stated in the form of recommendations. The conclusions are divided into six categories.

**Foundational and theoretical conclusions:**

1) There are strong historical foundations for the field of court interpreting as evidenced by the specific and extensive set of rules developed by the Spanish Crown to govern interpreting services in the New World as far back as the 16th century. More importantly, however, is the fact that there is strong legal support for the protection of language and recognition of language as an identifying characteristic of
an individual or a people in contemporary international documents such as the
International Declaration of Human Rights and the European Convention for the
Protection of Human Rights and Basic Freedoms. Furthermore, the current law,
codes or constitutions of several countries specifically mandate language mediation
services in legal settings when a linguistically handicapped individual is involved.
These legal mandates create an obligation not only to provide interpreting services,
but also to monitor their quality.

2) There has been sufficient theoretical work done on interpreting as a field to allow
us to understand the cognitive processes involved and to apply the findings of this
theoretical research to the analysis of interpreting and to the development of
educational programs. Areas that have been studied include memory, human
information processing, multi-task processing strategies, and cognition during
interpreting, among others.

3) Legal language has specific characteristics that set it apart from ordinary language
and from other special languages. These characteristics must be recognized and
understood in order to find adequate solutions to translating and interpreting
problems that legal interpreters encounter in the course of their work.

4) While spoken legal language maintains some of the characteristics of written legal
language, there are many additional features that must be considered. Some of these
include the wide range of registers used in oral proceedings, and the extra- or para-linguistics elements such as hedges, hesitations, false starts and so on, which have been shown to affect perceptions of credibility and trustworthiness.

Interpreting as a field and court interpreting as an area of specialization within this field:

1) Court interpreting entails simultaneous, consecutive, and summary interpretation as well as sight translating. Court interpreters are also frequently asked to carry out transcription and translating tasks in addition to their oral interpreting functions.

2) Interpreting in legal settings is distinguishable from oral interpreting in other situations such as that done at conferences or meetings. Court interpreters must be able to work in all modes and must maintain a higher degree of equivalency than do conference or liaison interpreters and still maintain the register and conserve the paralinguistic elements of the source language.

3) There are clear ethical issues involved in court interpreting which are related to the actions and interactions of individuals working in this field. Ethical issues include the interpreter’s interaction with defendants or witnesses, impartiality, confidentiality and the protection of case-related information during the proceedings, an interpreter’s
obligation to perform his duties well and to inform the court of any difficulty he encounters while interpreting or any error he realizes he has committed, and so on. A code of ethics for the field should be developed and disseminated for each system of justice.

4) There are many practical issues related to court interpreting that must be addressed. These include whether a party or a witness approach to interpreting is going to be adopted in a specific case, courtroom or judicial system, what kind of equipment should be made available, interpreter comfort and placement in a specific setting, interpreter availability and scheduling, availability of case materials for advance preparation, record keeping, compensation procedures and so on.

5) Current practices in many countries, including Spain, do not adequately address the practical issues mentioned in number 4.

6) Current practices in many countries, including Spain, as regards obtaining interpreting services do not guarantee quality or impartiality. These practices include the use of anyone available in or around a legal proceeding who is perceived to have the necessary language skills. No formal instrument of any kind is used to ascertain ability. These individuals include family members of one of the parties (often time the defendant or the victim), court personnel, attorneys, and even other detainees or prisoners. The quality of the interpretation given by these individuals cannot be
monitored in any way, and decisions are made based on their renditions. These individuals are often uncomfortable in these roles and tend to summarize or omit information they do not know how to interpret or which they forget in the course of the interaction taking place.

Certification exams

1) In order to guarantee quality language mediation services in the system of justice, a qualifying exam is needed. This exam should be a profession-specific, performance-based exam based on a careful needs assessment study to determine language pairs and exam format. The exam should be domain-referenced, have clearly stated objectives, meet validity and reliability criteria, and be criterion-, not norm-referenced.

2) The test elaboration process should be entrusted to a group of professionals representing several fields including language and linguistics, testing, the law, and translating and interpreting. This team should have clear guidelines for item development based on clearly stated domains and objectives. Once written, the exam should be pilot-tested.

3) Identification of scoring units should be done as part of the test elaboration
process, before the exam is administered. A preliminary list of acceptable and unacceptable answers should be developed prior to administering the exam and modified and expanded as a result of the test-piloting process.

4) Selection of exam raters or markers is as important as exam elaboration itself. Raters should be carefully selected according to preestablished criteria and should receive special training on how to decide if an answer is acceptable or not. Training should also include instructions on how to properly administer the exam so that testing procedures are uniform at all sites. Inter-rater and intra-rater reliability measurements should be carried out.

5) Clear and concise instructions contribute to ensuring a fair exam. Candidates should be well-informed prior to the exam of the format of the exam and of the requirements and procedures for taking it.

Court interpreting in Spain

1) Current practices in Spain as regards providing language mediation assistance in legal settings are extremely irregular. They include using staff interpreters who are full-time employees of the Ministry of Justice, free lance interpreters who are sometimes but not always sworn interpreters, individuals sent by a private agency
who has a contract with court administrators, or anyone who seems to have the requisite language skills and is available.

2. The two “qualifying” procedures for court interpreting that exist in Spain (Ministry of Justice employment exam and the Ministry of Foreign Affairs sworn interpreter exam) do not meet validity and reliability criteria or follow any of the testing practices recommended for profession-specific exams. These exams do not test for the skills needed to carry out the functions of a court interpreter and need to be substantially redesigned.

3) Working conditions for interpreters who work in the Spanish system of justice are very poor. There is little awareness of the nature of their job and little attention is paid to facilitating their task. Pay is very low and does not reflect the importance of the role interpreters play in the court system or the knowledge and skills they are required to have.

4) There is a lack of transparency surrounding the profession itself, and particularly around the certification or testing procedures related to it. Few statistics are maintained about the need for interpreting services or the services rendered, and those that are gathered, are not considered of public domain. The reluctance to provide complete information on all facets of certification exam development and administration creates a sense of distrust towards the certification procedure itself.
Also, not providing detailed information to applicants results in many individuals taking the exam who are clearly not prepared or qualified.

Relevant experience from other countries

1) Evaluating and analyzing the experiences of other countries and other communities is a useful and productive way by which to seek possible solutions and strategies for one's own situation.

2) The United States has the most developed program in court interpreter certification of any country. Their experience at both the national and state level can provide models and guidelines for professionals in Spain to consider.

3) The most useful aspects of the American experience are the efforts made to educate the judiciary, the interdisciplinary approach taken towards the evaluation and monitoring of the field and the development of a certification instrument, the successful promotion and passage of a comprehensive piece of legislation to govern the field, and the cooperative efforts made between different levels of the federal and state court system to share resources and expertise. These items are in addition to careful exam elaboration, the establishment of clear evaluation criteria, and the preparation of extremely complete instruction materials for candidates including a
full-length practice test for the written portion of the exam.

**Training**

1) Adequate educational and training programs are needed to achieve quality in court interpreting.

2) Educational and training programs should include the development of interpreting skills, public speaking skills, a broad knowledge of the legal system and of legal language, and a clear understanding of the ethical issues surrounding this profession.

3) The design of educational and training programs should be based on a clear understanding of the realities of court interpreting and on the input offered by experts from many fields.
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